Course Manual

Law Justice and Morality 1

PPLE 2019-2020
1. Introduction

1.1. General Information

<table>
<thead>
<tr>
<th>Course number</th>
<th>3801LJQPVY</th>
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<tbody>
<tr>
<td>Credits in EC</td>
<td>6</td>
</tr>
<tr>
<td>Semester, period</td>
<td>Semester 1, Block 2</td>
</tr>
<tr>
<td>Instructor</td>
<td>Dr. Roland Pierik</td>
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</tbody>
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1.2. Content of the course

**Objective:** This course explores (1) the interrelationships between law, justice and morality; and (2) it analyzes how law relates to moral values in society and how it is used to advance notions of social justice.

**Description of content:** It is often assumed that law, justice and morality come together to form a single, coherent and straightforward entity. The popular media often suggests, for example, that a constitutional state equals just institutions, and that legal procedures, if they function properly, lead to outcomes that are fair from a moral point of view. However, contrary to these popular views, law, justice and morality are often not at all aligned. For one thing, there are quite some theories of justice, each proposing different ways of organizing law and the institutions of the state. Moreover, legal theory tends to emphasize that even unjust law can, in specific instances be legally valid. Finally, Western societies are characterized by a plurality of (religious and secular) ideas of the good life (moralties). The question then becomes: how can law and formal institutions offer just and effective solutions when such moralities conflict?

In this course we will take a closer look at the concepts of law, justice, and morality, and how the three are interconnected. The course revolves around a discussion of dominant philosophies of law: legal positivism and natural rights theories; ethical theories: utilitarianism, virtue ethics and deontology; and theories of justice: egalitarian-liberalism, libertarianism, and feminism. The basic question underlying the course is aptly summarized by David Miller: how should the good and bad things in life be distributed among the members of a human society? “When, more concretely, we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a category of persons, enjoys fewer advantages than that person or group of persons ought to enjoy (or bears more of the burdens than they ought to bear), given how other members of the society in question are faring.”

All the approaches described above are derived from three three dominant backbone theories of ethics. Firstly **consequentialism:** the view that normative properties of an act depend only on its consequences: the right action is the action that has best (overall) consequences. Secondly, **deontology** argues that an action as right when and because it is in line with a supreme, highest

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principle of morality and regardless of its consequences. Finally, **virtue ethics** approaches ethical questions in a broader way by asking a more fundamental question: what is the good life? It then presents a teleological view and argues that an action is right when it fits with the requirements of a certain role or position in life.

Informed by these various legal-philosophical, ethical and philosophical-philosophical approaches, this course discusses several issues on the intersection of law, justice and morality, including the following:

- to what extent does law as a formal system of rules in a specific society reflect ideas about justice and morality; and what to do when law deviates (fundamentally) from such normative ideals?
- how does the idea of a just society (justice) relate to various ideas of the good life (morality)?
- how should a just society deal with conflicting ideas of the good life in a pluralist society?

During the course, these theoretical discussions are usually analyzed from actual political and legal controversies and issues.

### 1.3. Intended learning outcomes

At the end of this course students:

- **recognize, distinguish between, outline, and apply** the dominant normative philosophies of law, justice and morality: consequentialism, deontology, virtue ethics, liberalism, libertarianism, and critics of liberalism.
- **can explain** the disciplinary aims and structure of law itself (as opposed to private morality and to public justice);
- **can critically evaluate** the main ideas of philosophical theories in relation to current political and legal issues;
- are able to **develop their own ideas** about the relationship between law, justice, and morality, and to defend their views with arguments and examples;
- can **articulate** their personal moral code and compare it to dominant normative philosophies of law and justice. **Can apply** that moral code in an honest and principled way to their own acts and the acts of others;
- can **demonstrate** the above skills in short and long-form written essays, classroom debates, and group presentations.

### 2. Practical information

**Didactic practices:** two weekly lectures (2 x 2 hours) and two tutorials (2 x 2 hours).

**Teaching staff**

<table>
<thead>
<tr>
<th>Lecturer:</th>
<th>Roland Pierik</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Tutors:</td>
<td></td>
<td></td>
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<tr>
<td>Anna Blijdenstein</td>
<td><a href="mailto:a.e.e.blijdenstein@uva.nl">a.e.e.blijdenstein@uva.nl</a></td>
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<td>Jessica Dorsey</td>
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Lectures

<table>
<thead>
<tr>
<th>Lecture A</th>
<th>Lecture B</th>
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<tbody>
<tr>
<td>Tuesday 9-11 REC C1.04</td>
<td>Thursday 15-17 REC C1.04²</td>
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Tutorials

Information about the timetable and locations of the tutorials can be found on https://rooster.uva.nl/schedule

Exam: Tuesday, 17 December 2019 18:30 - 21:30 (digital exam room IWO blue)
Resit: Monday, 3 February 2020 18:00 - 21:00 (digital exam room IWO red, left hand side of the room)

3. Literature

  This book is used as general background reading throughout the various law-oriented courses during your PPLE bachelor, so you need to buy the book for the bachelor as a whole. In this course, we will read the first few chapters. Beware, you need the second edition (2017), which is significantly different from the first edition.
- Reader with additional literature, available via https://uva.shop.canon.nl/
  Beware: part of the exam is open book. This means that you are allowed to bring a paper copy of the reader but not an iPad or other electronic reader. Thus, it makes sense to study for the course using a printed and self-annotated reader.

² Due to incompatible commitments of the lecturer, the lecture of Thursday 21 November will take place on Friday 22 November, 9-11h in REC C1.04.
4. Format
Overview of lectures and tutorials: compulsory literature and themes.

First week (#44)
In this first week, we provide a general introduction to the themes of the course. The first lecture addresses the intersections between law, justice, and morality. In addition, we discuss the justification of law as a coercive system though the idea of the social contract. If we all are born as free and equal, what can justify the power of the state to enforce law, including taxation and a penal code upon us? The second lecture and the tutorials focus on the law element in this law, justice, and morality-course. The second lecture addresses a central debate in legal philosophy on the question how law is related to, but distinct from, theories of morality and theories of justice. This lecture revolves around the now famous Hart-Dworkin debate that still defines many discussions in contemporary legal theory. In the tutorials, we focus on some specific legal methods and approaches that characterizes the legal approach and separate it from more empirical or philosophical approaches.

Lecture 1A  (Tuesday October 29, 2019)
Mandatory reading:


Theme: What does it imply (and require) to do the right thing'? General introduction to the themes of the course and a first analysis of the concepts of law, justice and morality and their interrelationships.

Tutorial 1A
Mandatory reading:


Theme: this tutorial discusses some basic concepts of law: the source thesis, fields of law, the distinction between public law and private law, and how judges solve conflicts between legal rules.

Lecture 1B  (Thursday, October 31, 2019)
Mandatory reading:

Suggested reading:


Theme: law differs categorically from justice and morality in that it is a *formal* system with a specific decision-making procedure and a recognized authority that can settle all its controversial questions. This lecture analyses the most influential *Hart-Dworkin debate* in legal philosophy to explain this formalistic character of law and how it is related to but distinct from morality and justice. In addition, we also analyze Jerome Frank’s ‘legal realism.’

**Tutorial 1B**

Mandatory reading:


Themes: in certain respects, legal analysis differs categorically from political theory, political science or economics. This tutorial explains some particularities of the legal discipline and addresses how to make and support legal arguments.

**Second week (#45)**

This week is dedicated to the first of three dominant backbone theories of ethics, namely *consequentialism* – the other two being deontology and virtue ethics. Consequentialism is the view that normative properties of an act – either of a person or a collective of persons, including the state – should be assessed merely on its consequences: the right action is the action that has best (overall) consequences. Utilitarianism is a further interpretation of consequentialism and argues that defines the right action in terms of the promotion of happiness and avoidance of pain. Utilitarianism argues that our moral focus ought to focus on maximizing happiness – or human flourishing generally – and minimizing pain for the greatest number of people. The first half of the week is dedicated to a basic description, defence and discussion of consequentialism and utilitarianism; the second half of the week is dedicated to Mill’s translation of the utilitarian axiom into the ‘harm-principle’ and the way this principle can be employed to regulate the freedom of speech.

**Lecture 2A  (Tuesday, November 4)**

Guest lecture Dr. Gijs van Donselaar, Department of Philosophy, UvA

Mandatory reading:

Theme: a basic description and defence of consequentialism and utilitarianism.

**Tutorial 2A**
Mandatory reading:

Theme: This tutorial addresses the issue of individual responsibility of affluent persons for global inequalities and world poverty. Singer’s seminal article discusses designer shoes, ponds, and provides a utilitarian defense of global justice.

**Lecture 2B  (Thursday, November 7)**
Mandatory reading:

Theme: John Stewart Mill further developed Bentham’s utilitarian theory of liberty. Mill has translated the utilitarian axiom on the avoidance of pain and the promotion of happiness into the ‘harm-principle’ and he employs that principle in the discussion of the freedom of speech. He argues that if and only if some sort of pain has been inflicted by a specific speech act, the harm principle is violated, and government can legitimately limit free speech. Jeremy Waldron, in his discussion of hate speech also endorses the harm principle but employs a much more inclusive conception of harm. He therefore arrives at significantly different recommendations for state interference concerning free speech.

**Tutorial 2B**
Mandatory reading:
- Snyder v. Phelps, 131 S. Ct. 1207 (2011) United States Supreme Court
  - Opinion of the Court, as delivered by Chief Justice Roberts.
  - Dissenting opinion by Justice Alito.

Theme: following up on the discussion in lecture 2B, this tutorial employs the harm-principle in legal practice. Should the US Supreme Court limit the freedom of speech of the Westboro Baptist Church?

**Third week (#46)**
This week is dedicated to deontology, the second of three ethical theories. Lecture 3A addresses deontology as a general ethical theory that argues that an action as right because it is in line with a supreme, highest principle of morality and regardless of its consequences. In lecture 3B we analyze a more deontological defense of the duties of citizens in affluent societies – recognize the slightly different formulation – towards the global poor. In tutorial 3B we discuss a partial theory of global
justice that focuses on one specific issue, namely the regulation of transnational clinical trials and which seems to combine utilitarian and consequentialist arguments.

Lecture 3A  (Tuesday, November 12)
Guest Lecture Dr. Thomas Nys, Department of Philosophy, UvA
Mandatory reading:
Theme: Deontology and the intrinsic worth of human beings.

Tutorial 3A
Mandatory reading:
- Excerpts from the *Convention Against Torture* (1984)
- 8 U.S. Code § 2340 –
- Torture Utilitarian Argument Against Torture: Remarks by President Barack Obama
Mandatory viewing:
Theme: deontology in practice – discussing some thorny dilemmas and possible deontological (and utilitarian) solutions.

Lecture 3B  (Thursday, November 14)
Mandatory reading:
Theme: A translation of deontology into human rights, and what that implies for global justice.

Tutorial 3B
Mandatory reading:
Theme: Comparing utilitarian and deontological defenses of global justice and employing them in practice.

Fourth week (#47)
This week discusses a number of contemporary political theories that have dominated the field of social justice over the last decades. Each of them presents its own mixture of consequentialist and deontological arguments. Rawlsian liberal-egalitarianism (4A), libertarianism (4B) and luck-egalitarianism (5A). These political theories have dominated the field of social justice over the last decades and each of them present its own mixture of consequentialist and deontological arguments. Only in week 5 we turn to virtue ethics, the third dominant ethical theory.

**Lecture 4A  (Tuesday, November 19)**

Suggested introduction:

- Pierik, R. (2019). *Reconciling Social-Egalitarianism and Luck-Egalitarianism: Between Equal Citizenship and Equal Circumstances*. Unpublished paper *University of Amsterdam*, §1-2; the paper as a whole will be read for lecture 4B.

Mandatory reading:


**Tutorial 4A**

Mandatory reading:


Theme: Rawls (lecture 4B) presents quite *highbrow* conceptualizations and defenses of fundamental rights. Arendt’s experience as a stateless person induced her to present a radical alternative conception of fundamental rights: *the right to have rights*.

**Lecture 4B  (Friday, November 22, 9-11hs C1.04)*

Suggested introduction:


Mandatory reading:


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*a Beware: the lecturer also is member of the Health Council of the Netherlands, (www.healthcouncil.nl) and has a sitting this Thursday afternoon. Therefore, the lecture will take place on Friday 22 November, 9-11h in REC C1.04.*
Theme: Rawls’ *Theory of Justice* generated a large ‘industry’ of political theories. This lecture is dedicated to two major reactions to Rawls’ work: Nozick’s libertarianism and ‘luck-egalitarianism’. The latter strand of thought has generated social-egalitarianism, which could be interpreted as a full-circle back to Rawls again. This social egalitarianism will be discussed in lecture 5A through Elizabeth Anderson’s work.

**Tutorial 4B**

Mandatory reading:


**Fifth week (#48)**

After the discussion of Rawlsian liberal-egalitarianism, Robert Nozick’s libertarianism and luck-egalitarianism, lecture 5A analyses and discusses Elizabeth Anderson’s frontal attack on some central tenants of luck-egalitarianism. Tutorial 5B analyses and discusses Iris Young’s critique of the individualistic overtones in liberal-egalitarianism from a group-oriented perspective.

In the second half of the week – lecture and tutorial 5B – we turn to virtue ethics, the third dominant backbone theory of ethics. Virtue ethics approaches ethical questions in a broader way than consequentialism and deontology by asking a more fundamental question: what is the good life? It presents a teleological view and argues that an action is right when it fits with the requirements of a certain role or position in life.

**Lecture 5A  (Tuesday, November 26)**

Mandatory reading:

Theme: Luck-egalitarianism (Lecture 4B) is built upon Rawls' theory – especially his difference principle – and revolves around the choice-chance distinction. Elizabeth Anderson (one of the 2019 recipients of the MacArthur Fellowships)⁴ argues that the luck-egalitarian focus on redistribution simply miss the point of equality and re-emphasizes a Rawlsian focus on the basic structure.

**Tutorial 5A**

Mandatory reading:


Theme: When we discuss inequality, should we focus on individuals or on inequalities between groups? Shouldn’t we view inequality not first and foremost as a systemic outcome of the way the institutions in the basic structure of society (cf. Rawls) are organized?

Lecture 5B  (Thursday, November 28)

Guest Lecture Dr. Tobias Arnoldussen, Tilburg University

Mandatory reading:


Theme: virtue ethics and Aristotle.

Tutorial 5B

Mandatory reading:

• Wekker, G. (2016). ‘For even though I am black as soot, my intentions are good: The case of Zwarte Piet/Black Pete’ (Chapter 5, pp. 139-167) in White Innocence: Paradoxes of Colonialism and Race. Duke University Press.

Sixth week (#49)

In this last week, we discuss two different issues. The various liberal strands of thought are criticized for being too individualistic and their lack of attention to more communal issues: tradition, culture, community and religion. In lecture 6A we analyze and discuss communitarianism, a theory of justice that is generally considered to be the contemporary heir of virtue ethics (Sandel). The strand of thought we discuss (re)emerged in the mid-eighties of the last century as a reaction to various liberal theories of justice as discussed in 4A and 4B. More in particular, these discussions revolve around the role on religion in the public sphere of liberal democracies (Habermas). In tutorial 6A we apply this discussion between liberals and communitarians to an actual political dispute that ultimately ended up in the European Court of Human Rights. Should the state and its institutions acknowledge religious traditions and symbols that had an important role in the emergence of the specific state or does the liberal norm of neutrality prohibit such partial acknowledgements?

The second half of the week – lecture and tutorial 6B – discuss a topical issue in contemporary western democracies: the emerging hesitancy of highly educated parents to vaccinate their children against infectious diseases like measles. The resulting diminishing vaccination rates generate serious worries for public health institutions that diseases that for decades were assumed to be under control might re-emergence. This discussion is interesting tot the course because it discusess thorny issues, situated precisely at intersections of law, justice and morality.
Lecture 6A  (Tuesday, December 3)

Mandatory reading:


Theme: Biting the egalitarian bullet? If we endorse Rawls’s liberal egalitarianism and the underlying ideal that citizens should be treated as equals, what does this imply for (the freedom of) religion in constitutional liberal democracies?

Tutorial 6A

Mandatory reading:


Theme: State neutrality and historic alliances in practice – Do Crucifixes belong in classrooms of public schools?

Lecture 6B  (Thursday, December 5)

Mandatory reading:


Theme: The 2015 Disneyland measles outbreak in the US unequivocally brought to light what had been brewing below the surface for a while: an emerging vaccine hesitance, leading to decline in vaccination rates, resulting in the rise of measles outbreaks in Europe and Northern America. Between January 2017 and August 2018 nearly 70 (mostly unvaccinated) persons in Europe have died from measles. How should liberal-democratic governments deal with such opposition to vaccination when it leads to the re-emergence of diseases that for decades were assumed to be under control?

Tutorial 6B

Mandatory reading:

More contested discussions on vaccination: HPV-vaccination for girls and boys in order to enlarge herd immunity so that girls are protected better against cervical cancer?

Seventh week (#50)

Lecture 7A  (Tuesday, December 10)

Mandatory reading: none
Theme: This is the end... Wrapping up the course, a final attempt to connect the dots and prepare for the final exam and paper.

Tutorial 7A
No tutorial – tutors have office hours.

Lecture 7B  (Thursday, December 12)
No lecture

Tutorial 7B
No tutorial – tutors have office hours.

5. Assessment

Examination Scheme

<table>
<thead>
<tr>
<th>Component</th>
<th>Deadline</th>
<th>Weight</th>
<th>Minimum grade</th>
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<tbody>
<tr>
<td>Short Essays (x3)*</td>
<td>Unknown</td>
<td>30%</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>In-class presentation***</td>
<td>Varies</td>
<td>10%</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Final Exam***</td>
<td>***</td>
<td>60%</td>
<td>5.5</td>
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*Short Essays – Students will write a short thought paper each week in response to a question related to the readings and bring a copy of the essay in print to class. These assignments will be published at least one week ahead on Canvas. Three of these essays will be graded, but students will not be told in advance which of the weekly assignments these will be. Thus, it is to your advantage to write each paper as if it is for a grade. All students will be graded on the same week’s assignments. Grading will reflect the following components:

- Answer to the question presented
- Demonstrated knowledge of assigned readings
- Structure and clarity of answer
- Correct formatting and citations
**In-Class Presentation** – In class, we mostly read classic or canonical works of political philosophy, but that does not mean that there are not critiques of these writer’s positions. Beginning in week two, one or two students per tutorial will be assigned to critique the writings of the week-half and use at least one additional article to support their critique. Students have to send the article to the tutor 24 hours before the tutorial.

A full grading rubric will be posted to Canvas. In general, grading will reflect:

- Demonstrated knowledge of the assigned readings, including connections between the readings and to larger themes of the course;
- Logical articulation of a position critical to the readings;
- Correct formatting and citations

*** Final Exam. This exam consists of two parts. The first part is a closed book exam focusing on the readings in the course. You will be required to provide concise answers to direct questions over the required reading materials. The second part of the exam focuses on longer essay questions. This part of the exam is open book.

In order to complete the course, the total average course grade must be a 5.5 or higher and the final exam grade must be 5.5 or higher.

6. Attendance & Responsibilities

**Attendance**

The bachelor PPLE presupposes that all students will be present in class and are expected to attend lectures. Attendance in monitored through Academy Attendance. All students may miss two tutorial meetings per course, regardless of the reason. Missing three classes will lead to exclusion from the course.

**Late policy**

Tardiness will be punished consistently. When the door to the room has been closed, the tutorial meeting has started. All students coming into the classroom after the door has been closed (whether it is 5 or 20 minutes after) will be noted as ‘late’. Being late three times leads to one full absence.

**Deadlines**

All assignments that are handed in after the respective deadlines are to be graded as ‘1’.

**Fraud and Plagiarism**

For all written assignments, a Turnitin assignment is made on Canvas. Turnitin is a tool that can detect work that is copied. All suspected cases of fraud and/or plagiarism will be reported to the Examinations Board. This course uses the 'Regulations Governing Fraud and Plagiarism for UvA
7. **Reading philosophical texts**

1. **What conclusion does the author want to reach?**

Understanding what conclusion an author wants to reach is the first and most important step in reading a paper. This conclusion is usually an answer to a research question, description of a problem, etc., which is usually presented in the introduction. If you do not know what claim an author will defend, it is impossible to understand the structure of the paper, and impossible to take a critical position towards the text (since you do not know of what you should be critical about).

2. **Why is the conclusion interesting?**

You should only attend courses when you think the central subject is interesting. If you do, most of the literature in the course should be at least partly interesting. If a text does not look appealing at first sight, try to understand why the instructor has included the text into the reading list – the instructor apparently thinks there is something valuable to be learned from the paper. If authors disagree, try to find out what they’re disagreeing about, and which position you yourself hold. Therefore the first few weeks are harder than the later, because during the course you will get more and more background knowledge, helpful for reading later texts.

3. **What is the argument and what are premises of the argument?**

The conclusion is usually a result of a line of reasoning based on specific premises and arguments. Which assumptions are being made? Which inferences are being made during the argument? What are the links between the different steps in the argument?

4. **Should the premises of the argument be accepted?**

Premises are usually never supported with arguments, they are assumed to be accepted or true? But are they? Do they contradict common sense? Can you find counter examples? If an argument is based on false premises, it does not prove anything.

5. **Is the argument valid in its own terms?**

Reading philosophical papers should always be based on the principle of charity. Give an author the benefit of the doubt. If you think he or she is wrong, make very clear for yourself what you think he is saying and why you think he is mistaken. Grant all arguments a fair hearing, especially those with which you disagree.