



UNIVERSITY OF AMSTERDAM

Course Manual

Law Justice and Morality 1

PPLE College 2020-2021

Dr Roland Pierik

1. Introduction

1.1. General Information

Course number	3801LJQPVY
Credits in EC	6
Semester, period	Semester 1 block 2
Lecturer	Dr. Roland Pierik

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 and sometimes contrasting 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 (moralities). 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 and deontology; and theories of justice, including egalitarian-liberalism, libertarianism, and critics of liberalism. 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."¹

Underneath the approaches described above we can find two foundational 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**: the view that an action is right when and *because* it is in line with a supreme, highest principle of morality and regardless of its consequences.

¹ David Miller, *Principles of social justice* (Cambridge, Mass.: Harvard University Press, 1999), p. 1.

Informed by these various legal-philosophical, ethical, and political-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. Learning Outcomes

At the end of this course students:

- Can *recognize, distinguish between, outline, and apply* dominant normative philosophies of law, justice and morality: consequentialism, deontology, natural law theory, legal positivism, liberalism, libertarianism, communitarianism, and the various relevant 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.

1.4. Timetable

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

Lectures

Lecture A	Lecture B
Tuesday 18-20h REC C1.03	Thursday 15-17h REC C1.04

Tutorials

Information about the timetable and locations of the tutorials can be found on

<https://rooster.uva.nl/schedule>

Exam: 21 December, 15:30-18:30h (IWO 4.04A – Red examination room/or online)

Resit: 7 February, 18-21h (place to be announced).

1.5. Literature / readings

- Sandel, M. J. (2009). *Justice: What's the right thing to do?* London: Penguin Books.
This book provides the backbone for the course in that the several chapters provide an introduction to the various themes. However, most lecture and tutorials revolve around primary literature.
- Hage, J., Waltermann, A. & Akkermans, B. (Eds.) (2017) *Introduction to law, 2nd edition.* Heidelberg, New York, Dordrecht, London: Springer.
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/>

2. Weekly schedule

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 through 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 of how law is related to, but distinct from, morality. 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, November 2)

Mandatory reading:

- Sandel, M. J. (2009). *Justice: What's the right thing to do?* (Chapter 1) London: Penguin Books.
- Hart, H.L.A. (1964). *The Concept of Law, 2nd edition.* Oxford: Oxford University Press 1994, pp. 192-202.
- Fuller, L. (1969). *The morality of Law, revised edition.* New Haven: Yale University Press 1964, pp. 33-41.

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. We will also discuss some basic concepts relevant in these discussions on law, justice, and morality: legal positivism versus natural law; the circumstances of justice, and the social contract.*

Natural law theory vs legal positivism

One way of understanding the complicated interrelations between on the one hand law, and on the other hand morality and theories of justice, is by studying the long-standing legal philosophical debate between natural law theory and legal positivism. According to natural law theories, the content of law can be deduced from certain characteristics of human nature itself. For example, John Locke argued that humans by nature possess the right to life, liberty, and estate (property). The primary function of law and government is to provide legal protection of everyone's natural rights and to apply them impartially. Should the government issue law that conflict with this, e.g., by excluding certain groups from the protection of their right to life, liberty, and estate, then citizens have a right to resist. This means that they no longer have to obey this government. According to Locke's theory, the validity of the law of the land depends on the amount to which it coincides with natural law. Thus, positive law loses its validity when it conflicts with fundamental principles of natural law.

According to legal positivism, on the other hand, law does not refer to natural law principles. Instead, law consists of rules of conduct that are established by the competent legislative and judicial authorities within a state. Thus, the law in force can be identified by a number of formal characteristics, such as the manner in which it was created. One consequence of this formal approach is that legal positivists tend to emphasize the distinction between law and morality. A legal norm, such as a legal provision, applies regardless of whether it is just. It is valid because it comes from certain authorities (e.g., the legislature) and was properly enacted (e.g., by a majority vote in both houses of Parliament).

The second lecture this week (1B) delves deep into this debate between natural law theory and legal positivism. During this first lecture (1A) we already discuss two preliminary issues. The chapter from Herbert Hart's *The Concept of Law* discusses the minimum content of natural law. Harts posits that our society is a collective endeavor with the purpose of an enduring and peaceful survival which men have in associating with each other (p.193). So even though he does not endorse natural law theory, even as a legal positivist he acknowledges certain "universally recognized principles of conduct which have a basis in elementary truths concerning human beings, their natural environment, and aims, may be considered the minimum content of Natural Law." (p.193). After all, society is a social arrangement for continued existence, not a suicide club (p.192): "The general form of the argument is simply that without such a content laws and morals could not forward the minimum purpose of survival which men have in associating with each other." (p.193). These elements of the minimum content of Natural Law, are also known in the literature as the 'circumstances of justice' – those basic facts of the 'human condition' that makes that we need law and the state to organize our society as a collective enterprise. In the chapter we read Hart's account of this minimum content of natural law.

In chapter *The morality of Law* by Lon Fuller, we read his argument that law and morality cannot be disconnected. Fuller argues that law has an inevitable internal morality, since the legal form in which legal rules are unavoidably 'molded' already implies a certain morality itself.

Tutorial 1A

Mandatory reading:

- Hage, J., Waltermann, A. & Akkermans, B. (Eds.) (2017). *Introduction to law, 2nd edition*. (Chapter 1 (pp. 1-20) and Chapter 3 (pp. 33-52; but skip section on 'juridical acts' on pp. 39-42)). Heidelberg, New York, Dordrecht, London: Springer.
- Aldisert, R., Clowney, J. S., & Peterson, J. D. (2007-2008). Logic for law students: How to think like a lawyer. *University of Pittsburg Law Review*, 69(1), 1-22.

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, November 4)

Mandatory reading:

- Radbruch, G. (1946, 2006) 'Statutory Lawlessness and Supra-Statutory Law', *Oxford Journal of Legal Studies*, Vol. 26, No. 1, 26(1), 1–11.
- Hart, H.L.A. (1964). *The Concept of Law, 2nd edition*. Oxford: Oxford University Press 1994, pp. 208-212.
- Fuller, L. (1958) 'Positivism and Fidelity to Law.' *Harvard Law Review*, 71(4). pp. 644-657 (selection).

Theme: *the relationship between law and justice. In normal circumstances, we assume that the application of the law contributes to justice. But what should judges do when they are confronted with laws that are completely unjust? This situation occurred at the time of the Third Reich (1933-1945) and the German occupation (1940-1945), when judges were confronted with the extremely unjust and racist laws of the National Socialists. Thus, the Nazis introduced a series of legal measures that excluded certain groups, especially Jews, homosexuals, Sinti and Roma, from the legal order and denied them any form of legal protection. Those who had the courage to resist the National Socialist regime were also subjected to extreme forms of legal injustice: for example, the slightest criticism of the regime was already punished with imprisonment in a penal camp or execution (and often both).*

In *Statutory Lawlessness and Supra-Statutory Law*, Gustaf Radbruch first notes that the slogan 'Gesetz ist Gesetz', 'law is law', is typical of National Socialism. Although legal certainty may require the application of laws that are considered unjust, it can never be an excuse to evade moral responsibility for legal decisions. Thus, in certain cases, the contradiction between positive law and justice can be so great that the law must give way to justice. In those cases, the judge has a legal duty not to apply positive law. The English legal philosopher Herbert Hart argues in his *Concept of law* that the question of the legal validity of Nazi law is independent of any moral judgment on the content of that law. Thus, although Nazi law may be morally reprehensible, it may nevertheless have been applied as positive law. Hart thus emphasizes the positivist distinction between law and morality that Radbruch rejected. Hart argues that the legal validity of the law is independent of the moral question of whether the law should be applied. Finally, Lon Fuller's article 'Positivism and Fidelity to Law' links his more general argument on *The morality of Law* as we read for lecture 1A to the discussion of Nazi law.

Tutorial 1B

Mandatory reading:

- Hage, J., Waltermann, A. & Akkermans, B. (Eds.) (2017) *Introduction to law, 2nd Ed.* (Chapter 2, 'Legal Reasoning', pp. 22-31). Heidelberg, New York, Dordrecht, London: Springer.
- Kerr, O. S. (2007) How to read a legal opinion, *The Green Bag*, 11(2), 51-63.

Theme: *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 *consequentialism*, the first dominant backbone theory of ethics around which the course revolves. 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 the best (overall) consequences. Utilitarianism is a further interpretation of consequentialism and 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 9)

Mandatory reading:

- Bentham, J. (1789) *Introduction to the Principles of Morals and Legislation* (Selection).
- Mill, J.S. (1861) *Utilitarianism* (Selection).

Suggested introduction:

- Sandel, M. J. (2009). *Justice: What's the right thing to do?* (Chapter 2) London: Penguin Books.

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

Tutorial 2A

Mandatory reading:

- Singer, P. (1972). "Famine, Affluence, and Morality." *Philosophy and Public Affairs* 1(3), 229-243.

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 11)

Mandatory reading:

- Mill, J. S. (1859). *On liberty*, chapter I-III, excerpts.
- Waldron, J. (2012) *The harm in hate speech*, (pp. 77-89) Cambridge: Harvard University Press.

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:

- Mill, J. S. (1859). *On liberty*, chapter I-III, excerpts.
- Waldron, J. (2012). *The harm in hate speech*, (pp. 77-89) Cambridge: Harvard University Press.
- *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 theory of ethics around which the course revolves. Lecture 3A addresses deontology as a general ethical theory that argues that an action is right *because* it is in line with a supreme, highest principle of morality and regardless of its consequences. In lecture 3B we analyze deontology in (international) law: Kantian universalism has led to exalted theories of cosmopolitanism and universal human rights but can – simultaneously – not be disconnected from less sublime practices like imperialism and colonialism.

Lecture 3A (Tuesday, November 16)

Mandatory reading:

- Kant, I. (1785). *Fundamental Principles of The Metaphysic of Morals* (selection). Translated by Thomas Kingsmill Abbott, excerpts.

Suggested introduction:

- Sandel, M. J. (2009). *Justice: What's the right thing to do?* (Chapter 5) London: Penguin Books.

Theme: Deontology and the intrinsic worth of human beings.

Kant's Fundamental Principles of The Metaphysic of Morals is one of the most important texts in contemporary Western moral and political philosophy. It is also one of its most difficult texts to comprehend. One way of better understanding Kant's arguments is by working from one of his main questions: why is utilitarianism and the aim of maximizing happiness wrong? Is there an alternative basis for morality that is more compelling? Kant's answer is that the foundation of morality is the moral law, but that answer only raises more questions. Should each and every person follow her own moral law, or is there a single universal moral law? Kant's rather demanding conception of morality

is not satisfied with the answer: “If you really want something, then you should also want the necessary means to this end” – a ‘hypothetical imperative’. Instead, for Kant morality must take the form of a ‘categorical imperative’ I must do the right thing because it is right, not because it will promote my personal interest of satisfy my desires.

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
- Gäfgen v. Germany: threat of torture to save a life? Stijn Smet on Academic blog *Strasbourg Observers* <https://strasbourgobservers.com/2010/07/06/389/>

Mandatory viewing:

- Deontological and Utilitarian Arguments About Torture: German Missing Child Case: Michael Sandel interviews Dieter Grimm, Caroline Emcke, and Peter Singer, available at <https://www.youtube.com/watch?v=7FR-FuhN2HM> (6:37).

Theme: *deontology in practice – discussing some thorny dilemmas and possible deontological (and utilitarian) solutions.*

Lecture 3B (Thursday, November 18)

Mandatory reading:

- Pierik, R. & Werner, W. (2010). “Cosmopolitanism in Context” in Pierik, R. & Werner, W. (Eds.) *Cosmopolitanism in Context: Perspectives from International Law and Political Theory*, (Cambridge: Cambridge University Press), pp. 1-15, selection.
- Kleingeld, P. (2019) *On Dealing with Kant’s Sexism and Racism*. *SGIR Review* 2(2), pp. 3-22.

Suggested reading:

- Achiume, E. (2019). Migration as Decolonization. *Stanford Law Review*, 71(6), (selection: p.1533 A. *Colonial Imperialism* to p.1547 III. *Revisiting the Right to Exclude*; the paper will be read in full in tutorial 3B).
- Butt, D (2013). Colonialism and Postcolonialism. In Hugh LaFollette (ed.), *The International Encyclopedia of Ethics*. Blackwell. pp. 892-898.
<https://onlinelibrary.wiley.com/doi/full/10.1002/9781444367072.wbiee763>

Theme: *The implication of deontology and the categorical imperative is cosmopolitanism and universal human rights. But as critics say: scratch a cosmopolitan and you’ll find an imperialist just below the surface. This lecture shows that Kant’s legacy consists of both cosmopolitanism and colonialism.*

Tutorial 3B

Mandatory reading:

- Achiume, E. (2019). Migration as Decolonization. *Stanford Law Review*, 71(6), pp. 1509-1574, excerpts.

Suggested reading:

- Butt, D (2013). Colonialism and Postcolonialism. In Hugh LaFollette (ed.), *The International Encyclopedia of Ethics*. Blackwell. pp. 892-898.
<https://onlinelibrary.wiley.com/doi/full/10.1002/9781444367072.wbiee763>
- Bhambra, G.K. (2017) The current crisis of Europe: Refugees, colonialism, and the limits of cosmopolitanism. *European Law Journal*, 23(5), pp. 395–405.
<https://doi.org/10.1111/eulj.12234>
- Literature on neo-colonialism

Theme: *this tutorial discusses the current refugee-crisis in Europe in the context of the colonizers-colonies-history.*

Achiume’s article is a typical law journal article: rather long, slightly long winded, and with a gazillion of footnotes that take up about half of the words in the paper. It is quite well structured in three main themes, and it would be good if you ask the students to reconstruct this structure in three parts to enable them to understand better the way the argument is set up.

Part I explains the justification of state borders and the exclusion of so-called economic migrants (minus any violence) as a matter of sovereign self-determination of first world states. In international and domestic law, the territorial nation-state is the privileged vehicle for the collective self-determination of peoples.

Part II explains the history of colonial and neocolonial imperialism of the First World states, generating the current state of inequality in which Third World states are in a position of permanent political and economic subordination (the neocolonial empire).

part III in the context of on this feasibly unchangeable situation, Achiume defends her argument that, as the result of colonialism and neocolonialism, First and Third World peoples are de facto co-sovereigns of neocolonial empire, each with an equal right to a say in their collective self-determination. “The First World nation-state, by virtue of its beneficiary status within neocolonial empire and the effectiveness of its sovereignty (secured in part through Third World subordination), has no more right to exclude Third World persons from its institutions of equal political membership than it has over its de jure citizens.”

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.

Lecture 4A (Tuesday, November 23)

Mandatory reading:

- Rawls, J. 1999. *A Theory of Justice* rev. ed. Oxford: Oxford University Press, pp. 3-19, 52-56, 118-123.

Suggested introduction:

- Sandel, M. J. (2009). *Justice: What's the Right Thing to Do?* (Chapter 6) London: Penguin Books.
- Pierik, R. (2021). *Between Equal Citizenship and Equal Circumstances Developing Responsibility-Sensitive Egalitarianism*. Unpublished paper, University of Amsterdam, §1-2; the paper will be read in full for lecture 4B.

Theme: *John Rawls's Theory of Justice (1971, 1989) is one of the most influential and criticized books of the legal- and political philosophy of the last century. The central question in Rawls's work is: which principles of justice should form the basis of the most important institutions of the legal and political order? Rawls's goal in A Theory of Justice is to discover, formulate, and defend these principles of justice. It then looks at positive law and other "major institutions" on the basis of these principles, to assess whether they conform to them and, if not, how to bring them into conformity with these principles.*

Tutorial 4A

Mandatory reading:

- Arendt, H. (1976 [1951]). 'The Perplexities of the Rights of Man', Chapter 8 in *The Origins of totalitarianism*. New York: Harcourt, 290-302.

Theme: *Rawls (lecture 4A) 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. Students, beware: Arendt has quite a different style of writing and arguing than Rawls or other 'analytical philosophers' discussed later.*

Lecture 4B (Thursday, November 25)

Mandatory reading:

- Nozick, R. 1974. *Anarchy, State and Utopia*, (pp. 149-164; 167-174) New York: Basic Books.
- Pierik, R. (2019). (2021). *Between Equal Citizenship and Equal Circumstances Developing Responsibility-Sensitive Egalitarianism*. Unpublished paper University of Amsterdam.

Suggested introduction:

- Sandel, M. J. (2009). *Justice: What's the Right Thing to Do?* (Chapter 3) London: Penguin Books.

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:

- Sandel, M. J. (2009). *Justice: What's the right thing to do?* (Chapter 4) London: Penguin Books.
- Satel, S. (2014, May 3). Why people don't donate their kidneys, *New York Times*.

Theme: *Markets and morals in practice – limits of self-ownership and the commodification of non-market goods.*

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.

Lecture 5A (Tuesday, November 30)

Mandatory reading:

- Anderson, E. (1999). What Is the Point of Equality? *Ethics*, 109(2), 287-337, excerpts.

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)² 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:

- Sandel, M. J. (2009). *Justice: What's the right thing to do?* (Chapter 7) London: Penguin Books.
- Young, I.M. (2001) 'Equality of whom? Social groups and judgments of injustice' *Journal of Political Philosophy*, 9(1), pp. 1-18.

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, December 2)

Mandatory reading:

- The first part of the lecture discusses: Mills, C.W. (2017). 'Rawls on Race/Race in Rawls' (Chapter 8, pp.139-142; 145-152; 154-160) in *Black Rights/White Wrongs: The Critique of Racial Liberalism*. Oxford: Oxford University Press.

² <https://dailynous.com/2019/09/25/elizabeth-anderson-wins-macarthur-fellowship/>

- Second part provides a rudimentary introduction on how to read legal cases, especially cases of the *European Court of Human Rights* by employing the IRAC method.

Suggested reading:

- Yancy, G. & Mills, C. (2014) Lost in Rawlsland. *The New York Times* (opinion page), 16 November. [nyti.ms/1xc2IDE](https://www.nytimes.com/2014/11/16/opinion/yancy-mills-rawlsland.html).
- Nice discussion on Rawls and Race between Glenn Loury & Josh Cohen: <https://www.youtube.com/watch?v=Q3lKmm4mYIA>
- Sewell, S. (2019). Is it time to unlearn race? Thomas Chatterton Williams says yes. Interview with Autor of the book *Self-Portrait in Black and White*. *The Guardian*, 3 October. <https://www.theguardian.com/books/2019/oct/15/thomas-chatterton-williams-race-books-interview>
- Coates, T. (2017). The First White President. *The Atlantic*, October. <https://www.theatlantic.com/magazine/archive/2017/10/the-first-white-president-ta-nehisi-coates/537909/>
- Grant-Thomas, A. & Powell, J.A. (2006). "Toward a Structural Racism Framework." *Poverty & Race*. (15)6, pp. 3-6. <https://prrac.org/toward-a-structural-racism-framework/>
- Blake, John. 2014. "The new threat: 'Racism without racists'." CNN (<https://www.cnn.com/2014/11/26/us/ferguson-racism-or-racial-bias/index.html>)
- Brown, D.L. (2020). It was a modern-day lynching': Violent deaths reflect a brutal American legacy. *National Geographic*, 3 June. <https://www.nationalgeographic.com/history/2020/06/history-of-lynching-violent-deaths-reflect-brutal-american-legacy/>
- Garfield, J.L. & Van Norden, B.W. (2016). If Philosophy Won't Diversify, Let's Call It What It Really Is. *The New York Times* (opinion page), 7 October. <https://nyti.ms/24JZPJv>
- Cowie, J. (2020) Is Freedom White? *Boston Review*, September 23, <http://bostonreview.net/race/jefferson-cowie-is-freedom-white>
- Acharya, A., Blackwell, M. & Sen, M. (2016). The Political Legacy of American Slavery. *The Journal of Politics*, (78)3, pp. 621-641. <http://dx.doi.org/10.1086/686631>

Theme: *Where discussions by Anderson and Young remained critiques within the egalitarian-liberal margins, Charles Mills criticizes the whole architecture of Rawls endeavor as inherently racist and (willfully?) blind to an overwhelming character of US society: its history of chattel slavery, Jim Crow laws and racial segregation.*

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.

Suggested reading:

- Schols, H. (2019). Keeping things gezellig: Negotiating Dutchness and racism in the struggle over 'Black Pete'. <https://hdl.handle.net/11245.1/950fde09-d1ea-4b11-a50d-ddfba563a844>

- Jabbar, S. (2012) Black Pete exposes the Netherlands' problem with race. *The Guardian*, 5 December. <https://www.theguardian.com/world/2012/dec/05/black-pete-race-netherlands>
- Doyle, H.B. (2014) When It Comes to Race, the Famous Dutch 'Tolerance' Runs Out. *The nation*. 21 November. <https://www.thenation.com/article/archive/when-it-comes-race-famous-dutch-tolerance-runs-out/>

Theme: *Issues of structural racism and implicit bias can sometimes best be analyzed from seemingly 'innocent' traditions like Sinterklaas en zwarte Piet. On 'pakjesavond' and black face. Again, this text is more factual anthroposophical description than a philosophical argument.*

Sixth week (#49)

In this last week, we discuss two different issues. The various liberal strands of justice are criticized for being too much focused-on individuals and their rights and their lack of attention to national identity as the necessary motivation for citizens to pursue collective liberal goals as the rule of law and social justice. In lecture 6A we discuss the delicate role of national identity in liberal political theory. It should be 'thick' enough to generate solidarity within a society but 'thin' enough to secure the liberal ideal of 'state neutrality' and to not undermine equal citizenship of all – including members of minority groups. In tutorial 6A we discuss the role of national identity and the dominance of the vestigial Christian establishment in 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 discuss a topical issue in contemporary western democracies: vaccination. This discussion is interesting tot the course because it discusses thorny issues, situated precisely at intersections of law, justice, and morality. Lecture 6B revolves around 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. Tutorial 6B discusses an utterly timely theme: the regulation of vaccination in this Covid-19 era.

Lecture 6A (Tuesday, December 7)

Mandatory reading:

- Laborde, C., & Laegaard, S. (2019). 'Liberal Nationalism and Symbolic Religious Establishment.' In G. Gustavsson, & D. Miller (Eds.), *Liberal Nationalism and Its Critics: Normative and Empirical Questions*. Oxford University Press, pp. 172-187.
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Tutorial 6A

Mandatory reading:

- Weiler, J. (2010). Lautsi: Crucifix in the classroom redux (Editorial). *The European Journal of International Law*, 21(1), 1–6.

- Pierik, R. (2012). "State neutrality and the limits of religious symbolism". In J. Temperman (Ed.), *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (pp. 201-218). Leiden, Boston: BRILL/Martinus Nijhoff.
- Judgement of the Second Chamber and the Grand Chamber of the *European Court of Human Rights* in the case of *Lautsi and others v. Italy*, (selection) not in the reader, downloadable via Canvas.

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

Lecture 6B (Thursday, December 9)

Mandatory reading:

- Pierik, R. (2020). "Vaccination Policies: Between Best and Basic Interests of the Child, Between Precaution and Proportionality." *Public Health Ethics*, 13(2), pp. 201–214. doi.org/10.1093/phe/phaa008.
- **Theme:** *The recent measles outbreaks in Europe and 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, and dire results. 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:

- Judgement of the Grand Chamber of the *European Court of Human Rights* in the case of *Vavříčka and others v. the Czech Republic* (Applications nos. 47621/13 and 5 others).

Seventh week (#50)

Lecture 7A (Tuesday, December 14)

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.

Tutorial 7A

No tutorial – tutors have office hours.

Lecture 7B (Thursday, December 16)

No lecture

Tutorial 7B

No tutorial – tutors have office hours.

3. Assessment and testing

3.1. Assessment

Examination Scheme

Component	Deadline	Weight	Minimum grade	Resit
Short Essays*	week 2, 4 & 6	45%	No	No
In-class presentation**	Varies	10%	No	No
Final Exam***	***	45%	5.5	Yes
In order to complete the course, the total rounded average should be 6.0 or higher.				

***Short Essays** – Students will write a short thought paper in week 2, 4 and 6 in response to a question related to the readings, upload it tough canvas, and bring a copy of the essay in print to class. These assignments will be published one week ahead on Canvas. All essays will be graded and will be run through the plagiarism detection software. Each of the three essays represent 15% of the final grade. 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 a PDF of 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.** Due to the uncertain Covid-19 situation it is not it is still unclear how the exam will be administered. We will inform you ASAP.

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.

4. Attendance & Responsibilities

4.1. Attendance

The bachelor PPLE presupposes that all students will be present in class and are expected to attend lectures. Attendance is 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.

4.2. Late policy

Tardiness will be punished consistently. This also applies to online teaching. **Being late three times leads to one full absence.**

4.3. Deadlines

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

Online teaching: ZOOM Rules & guidelines PPLE College

In the situation of symptoms/covid diagnosis online attendance will be possible in Block 1 and 2. The classrooms will be set up with cameras, and the student in question will be able to follow the tutorial from home. This option is set up strictly for pandemic related circumstances and students that do not adhere to the rules will be marked absent.

When participating in an online tutorial lecture make sure to:

- Be on time with your camera on.
- Be prepared for class just as you would in person.
- Make sure you are in a quiet space where you can join us uninterrupted.
- Please pay attention during the class and avoid leaving the computer outside of scheduled breaks.
- If you lose the Zoom connection, simply try to rejoin by clicking the link again. If all fails, notify your teacher asap of what you missed through an appropriate channel.

6. Fraud and Plagiarism

For all written assignments, a Urkund assignment is made on Canvas. Urkund 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 Students'. For more information, see <http://student.uva.nl/pple/shared/studentensites/uva-studentensite/en/az/plagiarism-and-fraud/plagiarism-and-fraud.html?origin=bg5ujKpFRM6MmU9azVVbsw>

5. More information

This course has a Canvas page. Here you can find the necessary details, like the group information of your tutorials, the assignments etc. You are expected to look at this website regularly, because any updates will be communicated through Canvas.

You are registered for this course via SIS. This means that you are automatically registered for exams that are part of this course. Should you wish to deregister, please email Educationdesk-PPLE@uva.nl
 For more information about SIS visit: www.student.uva.nl/sis.

6. Contact information

Lecturer:	Roland Pierik	r.pierik@uva.nl
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7. Reading philosophical texts

In this course we will read some canonical texts in law, legal- and political philosophy. They are not an easy read, especially if you want to grasp the underlying ideas. Here are some guidelines.

1. *What conclusion does the author wants 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.