Course Description

The principle of justice has occupied legal and political theory for centuries. But what is “justice”? How does one analyze and measure what is “just,” and what does it mean to do the “right” thing and avoid doing the “wrong” thing? This course focuses on contemporary dilemmas of justice: are international borders and citizenship regimes just? What duties of justice do humans owe to one another, to the future generation, and to the environment, including animals? How to think of legal lies, racial profiling, affirmative action, and torture in terms of justice? What does justice have to say about concepts of equality, loyalty, judging, war, and money? And what role should justice play in international and national law/politics?
Course Goals

Understanding the principle of justice would help students to better master the connections between law, morality, economy, and politics.

Grading

Grade: (1) final paper: 90%; (2) constructive participation based upon the reading assignments (10%).

Final Paper: The paper will be written alone or in pairs (8/12 pages, accordingly, not including bibliography) and should focus on one of the course’s subject matters; topics that are not covered by the syllabus are welcomed. It should include a research question, a literature review, and a thesis. Students must send the chosen topic, the research question, and a short abstract no later than April 1, 2021. Students cannot write on a research question that has already been chosen; the selection will be on the basis of “first-come, first-served.” The final paper should be submitted no later than June 1, 2022, via email and be written in Times New Roman 12, double-spaced, and a standard width margin.

Learning Outcomes

Classes are interactive. They combine lectures, discussions, and learning activities. The goal is to stimulate a debate on some of the most urgent subjects of our time.

Before each class, students will receive the mandatory reading materials as scanned files via email or the course website. On average, there will be about 35 pages per class, 70 pages per week. Students are expected to come to classes prepared and discuss the reading assignments.

Lecturer Office Hours

Office Hours by digital appointment. Please contact me by email at oliav@idc.ac.il.

Reading List

SYLLABUS
Class 1: **Doing The Right Thing**

What is justice, and what does it mean to do the “right” thing? What principles of justice should guide us in addressing the trolley dilemma and, more broadly, in distributing benefits and burdens: is it maximizing utility, respecting liberty, or promoting virtue? Would it be just to kill one to save many? Is it just to torture in the ticking time bomb case, or shoot down a hijacked aircraft planning to crash into a civilian target? How would you justly prioritize patients’ medical treatment during the pandemic? What should be the perspective—the individual or society? Is justice universal or culturally dependent? Is it derived from moral instinct/intuition or inductive reasoning (or perhaps both)? Should justice always derived from general rules of morality or also be a function of the concrete, practical cases? And should law and justice converge, or may differ from one another?

1. Short Film: Eleanor Nelsen, “Would You Sacrifice One Person to Save Five?”
3. BVerfG, Judgment of the First Senate, 1 BvR 357/05 (February 15, 2006) (excerpts).

**PART I: THEORY**

Class 2: **Utilitarianism**

What does Bentham’s “principle of utility” mean? What is “pleasure” (or “happiness”) for Bentham, how to measure it, and from which perspective? What are the main points of disagreement between Bentham and Mill over the ultimate end of human life and action? How does Mill distinguish between higher and lower pleasures, and what are the consequences of the distinction? What does Mill’s “principle of harm” mean, and why is it seen as utilitarian? How would you apply Bentham’s principle of utility and Mill’s principle of harm to the case of *R. v. Dudley & Stephens*, the German aviation case, and the pandemic crisis—the distribution of medical resources and the lockdown?

Class 3: Libertarianism

What are the moral concerns of the libertarian theory? What type of state it advocates and why? What would the libertarian theory say about gambling, seatbelt laws, mixed swimming lessons, minimum wage laws, and progressive tax? What are Friedman’s central claims against government regulation of markets? Why, in his view, people are more free in free-market capitalist societies compared to egalitarian social-democratic regimes? What are the sources of tensions between individual freedom and equality of outcome? What are the main differences, according to Hayek, between “merit-based” and “value-based” sources of inequality, environmental and biological advantages? What is Nozick’s idea of a “minimal state”? What are the differences between “justice in original acquisition” and “justice and transfer”? How does a private property come to exist, according to Locke, how can it be justified, and what is the connection between property and labor?

1. Milton Friedman and Rose Friedman, Free to Choose: A Personal Statement (1979): Ch. 5.
4. John Locke, Second Treatise on Civil Government (1689): Ch. 4-5.

Class 4: Egalitarianism

What is justice, and why do we need a theory of justice, according to Rawls? What is “the original position of equality”? What are the goals of the “veil of ignorance” and the ways it functions? Would you choose to be an egalitarian (or utilitarianism/libertarianism) under the veil of ignorance? What does “justice as fairness” mean? Is it a “procedural justice”? What are Rawls’s “basic liberties” and “two principles of justice”? What can be the objections to Rawls’s theory of justice? According to Sen, what are the three types of equality? What alternative formulation of equality he is offering and why? How does Dworkin’s principle of equality differ from the principles of Rawls and Sen?


**Class 5: Contractarianism**

What are the core elements of contractarianism? What is the “social contract” according to Hobbes and Locke? How does the social contract differ from an actual contract, and what consequences it may have on the theory of justice? How can justice derive from an agreement that never took place in reality? What are the moral limits of contracts (e.g., think of contracts for polygamy or slavery)? Is the idea of a hypothetical contract a compelling way of thinking about justice? Will actual social contracts (e.g., integration contracts for immigrants or loyalty oaths) have a stronger moral force? Will it be more just to design “digital social contracts” to govern human actions in cyberspace?


**PART II: CONTEMPORARY DILEMMAS**

**Class 6: Are Immigration/Mobility Restrictions Just?**

Are immigration restrictions just under utilitarian, libertarian, egalitarian, and contractarian theories? According to Carens, what is the most compelling case for open borders, and in which circumstances immigration restrictions can be justified? According to Walzer, what are the justifications for immigration restrictions, and what are the exceptions under which immigration restrictions cannot be justified? Do you agree with Carens or with Walzer? According to Miller, how do non-relational theories of justice differ from relational theories of justice, and what are the consequences of it for immigration restrictions? How should the type of immigration and physical location affect the duties of justice? On what grounds, if any, do you think immigration should be restricted (e.g., to preserve national culture, protect the native workers, enable democratic politics)? Among the four methods to select immigrants according to Orgad/Ruthizer—universal selection, positive selection, random selection, and racial selection with just compensation—which one is the most just and why?

Class 7: Are Citizenship Regimes Just?

What are the central problems with the concept of citizenship, and in particular with citizenship’s transfer mechanisms? According to Shachar, what is the “birthright lottery,” what is its connection to property ancient property regimes, and how the injustice it creates can be rectified? Can we view citizenship as a “primary” good that should be distributed under justice theories? What are the feudal roots of the institution of citizenship? According to Kochenov, why are citizenship regimes totalitarian, sexiest, and racist? Do you agree? According to Cabrera, what are the three possible meanings of the concept of “global citizenship”? Will global citizenship (in addition to national citizenship) create a more just world under utilitarian, libertarian, egalitarian, and contractarian theories? According to Orgad, what are the ethical dilemmas in access to citizenship in the sense of naturalization? What can be just integration requirements states can/may impose on newcomers?


Class 8: Are Loyalty Demands Just?

What are the possible meanings of the concept of political loyalty in terms of objects, sources, and obligations? Are demands for political loyalty compatible or in conflict with theories of justice, according to Sandel? What is the justification for political loyalty in Plato’s Crito? According to Fletcher, what are the three dimensions of loyalty, its minimal and maximal meanings, and possible
justifications? Can demands for political loyalty be considered “liberal”? According to Nussbaum, what is the connection between patriotism and cosmopolitanism, and what conception of loyalty she is advocating? Is patriotism a virtue, according to MacIntyre? Can loyalty override universal principles of morality? And how to deal with conflicting loyalties according to justice theories?


Class 9: *Is Affirmative Action a Just Policy?*

What are the three goals of affirmative action, according to Sandel, and can they be justified under utilitarian, libertarian, egalitarian, and contractarian theories? What are the main methods for affirmative action; which one is the most/least justified? According to Dworkin, do racial and ethnic preferences promoted by affirmative action violate individual rights? According to Rachels, what is the relation between justice and desert, and is desert a just criterion for affirmative action? Can affirmative action only be justified in cases of minorities, or can it also benefit the majority? Are there any criteria (e.g., physical appearance, religion) and policy areas (e.g., university admission, the private sector) in which affirmative action is more/less justified? According to Schuck, what are the main objections to affirmative action, and how can they be resolved? Are there alternative means to achieve corrective justice, distributive justice, and diversity besides affirmative action?

Class 10: Is Racial Profiling Just?

Are legal generalizations just, according to Plato, and how does Aristotle’s equity correct the errors of general rules? What is “profiling,” and what is “racial profiling”? In which policy areas the use of racial profiling prevalent? Can profiling be avoided? What is the case “for” and “against” racial profiling from a utilitarian perspective? Take ethnic profiling at airports: how would you calculate the “costs” and “benefits”? Can procedural justice mitigate these costs? Is universal or random law enforcement more just than group-targeted law enforcement according to a utilitarian theory? Will your view remain the same from an egalitarian perspective? Can rational/statistical discrimination be justified? In which cases statistical evidence be more just than individualized evidence? And how can the law deal with unjust unconscious bias (think of both ex-ante and ex-post mechanisms)?


Class 11: Should Everything be For Sale? On Justice and Markets

Are there any social goods that should never be bought and sold? Think, e.g., on organ trade, a global “cap and trade” system for refugees, buying a COVID-19 vaccine-entitlement, or putting citizenship for sale: should they be part of a free market under utilitarian, libertarian, egalitarian, or contractarian justice theories? How about selling civic, political, social, and cultural rights, or civic duties, such as paying extra taxes instead of serving in the military or being in prison? Can we sell any of our rights and entitlements or buy our way out of civic duties? Do cases of buying and selling sex, a marriage partner (there are websites advertising buying bridges and grooms), or renting a friend raise different moral issues? Does it make a difference if buying and selling social goods are not for case money but trade exchanges? Is the claim “for” or “against” marketization fundamental /principled or relative/conditional—based on the terms, policy areas (e.g., intimate relations, commercial products, life and death issues, or politics), and contexts? Are there actions
that should always or never be financially incentivized in the market economy (think, e.g., of incentivizing “unwanted” citizens to emigrate to a different state or parents to give up their child for adopting)?


**Class 12: Genetic Injustice**

Is inborn talent the same as inborn property, or should inheritance of talent (strength, ability, skill) be treated differently than the inheritance of property (e.g., citizenship, class, money)? Under utilitarian, libertarian, egalitarian, and contractarian theories, should we compensate for some disadvantages yielded by inborn talent indirectly—by taking into account natural goods in the redistribution of social goods—or directly, by trying to interfere with a natural endowment through technological interventions, such as gene editing? What is right or wrong with genetic selection and gene editing under different justice theories, and would your answer remain the same under relational and non-relational approaches? If some genetic intervention can be justified, should it be confined to genetic diseases and other misfortunes, or should it further include traits, such as strength, intelligence, and memory? Is it morally different to edit the genes of an embryo compared to a fully developed human being? Should the government incentivize individuals to use genetic technologies by funding and, if so, what should be the criteria for allocating funding to individuals? Is a world where all individuals are equal in talent and property an egalitarian dream or nightmare?

Class 13: Can Institutional/Legal Lies be Just?


Class 14: Global Justice


Class 15: Is Judging Just?

Class 16: **Should Justice be applicable to Animals?**


Class 17: **Just and Unjust Wars**