

The rule and the exception
University of Richmond – Jepson School of Leadership
Winter 2023
Vincent Chiao

Course location & time. Tuesdays, 9-11:40. Jepson 108.

Course description. It often seems important that those in positions of authority treat people “as individuals,” and exercise case-by-case, contextual judgment. From this perspective, blind rule-following is an abdication of judgment. At other times, however, we insist that decisions be made consistently, without bias, and by reference to general principles. From that perspective, fairness seems to require setting aside personal circumstances in favor of “equality before the law.” In this course, we will consider how these contrasting theories of moral judgment play out across a range of legal and philosophical contexts. Topics may include discrimination, the rule of law, statistical evidence, and algorithmic decision-making in law. Some background in philosophy is helpful, but not required.

Materials. Course readings will either be posted to the course website or available for free on the Internet.

Office hours. I have an open-door policy: you should feel free to drop in at your convenience. I am also happy to schedule an appointment. My email address is: vchiao@richmond.edu.

Evaluation. Two response papers of roughly 1500 words (each 30%); one class presentation (30%); and regular posting to the course website (10%).

Response papers. The papers should aim to (a) represent accurately and fairly the views of those to whom you are responding, supported by citations; (b) critically engage with their arguments, for instance by raising a novel objection, extending their argument to other cases or contexts, or defending their position from objections raised during class. You should endeavor to represent the views of those to whom you are responding as sympathetically as you can. The subject matter of response papers should be limited to issues raised in the readings and discussed in class. No outside research is expected.

Response papers are due no later than the beginning of class one week from the date on which those readings are covered in class. For instance, if you choose to respond to the readings from January 17, your response paper would be due by the beginning of class on January 24. You may choose the weeks for which you would like to write a response paper, so long as you submit the first response paper by February 21 and the second by April 25.

Please upload your papers to the course website.

I will provide feedback on your papers and give you an opportunity to improve your mark by submitting a revised draft.

Course presentations. Every enrolled student is responsible for a brief (approx. 5-10 min) presentation on one of the readings listed on the syllabus. I will assess the presentations by considering (a) how accurately you represent the author’s principal arguments and claims; (b) the clarity and organization of your presentation; (c) whether you identify potential weaknesses, assumptions, or limitations in the arguments; and (d) how effectively you respond to questions about the reading, such as those posted to the course website or raised during class.

I will circulate a sign-up sheet with available readings.

Course website. You should post regularly to the course website, i.e., at least every other week over the course of the semester. Your posts should be brief and directed toward at least one of the week’s readings. Posts may respond to another student’s post, raise a challenge to an author’s argument, extend it in a novel direction, or request clarification of an ambiguous passage – although, in the latter case, you should also explain why you find the passage ambiguous. Please ensure that your post is visible 24 hours prior to class.

Extensions. Extensions should be arranged with me in advance. Late papers lose points at 2 points per day, including weekends.

Grading rubric. Points will be translated into letter marks at the following rate:

A	96-100
A-	91-95
B+	86-90
B	81-85
B-	76-80
C+	71-75
C	66-70
C-	61-65
D+	56-60
D	51-56
D-	46-50
F	0-45

Awarding of Credit. To be successful in this course, a student should expect to devote 10-14 hours each week, including class time and time spent on course-related activities. registrar.richmond.edu/services/policies/academic-credit.html

Honor system. All assignments are expected to be the student’s original work. The Jepson School follows the provisions of the Honor System as outlined by the School of Arts and Sciences. This means that no student is to use, rely on or turn in work that was paid-for, copied, excessively summarized without citation, created in collaboration (without

permission), produced by AI, or is otherwise not the original work of the student for the specific assignment (without explicit permission).

Accommodations. Students with a Disability Accommodation Notice should contact their instructors as early in the semester as possible to discuss arrangements for completing course assignments and exams. disability.richmond.edu/

Religious Observance. Students should notify their instructors within the first two weeks of classes if they will need accommodations for religious observance. See: registrar.richmond.edu/planning/religiousobs.html

Academic and personal support services. If you experience difficulties in this course, do not hesitate to consult with me. There are also other resources that can support you in your efforts to meet course requirements.

- **Academic Skills Center** (asc.richmond.edu): Academic coaches assist students in assessing and developing their academic and life-skills (e.g., critical reading and thinking, information conceptualization, concentration, test preparation, time management, stress management, etc.). Peer tutors offer assistance in specific subject areas (e.g., calculus, chemistry, accounting, etc.) and will be available for appointments in-person and virtually. Peer tutors are listed on the ASC website. **Email Roger Mancastropa** (rmancast@richmond.edu) **and Hope Walton** (hwalton@richmond.edu) **for coaching appointments in academic and life skills.**
- **Boatwright Library Research Librarians:** (library.richmond.edu/help/ask/ or 289-8876): Research librarians help students with all steps of their research, from identifying or narrowing a topic, to locating, accessing, evaluating, and citing information resources. Librarians support students in their classes across the curriculum and provide individual appointments, class library instruction, tutorials, and [research guides](http://libguides.richmond.edu) (libguides.richmond.edu). Students can [contact an individual librarian](http://library.richmond.edu/help/liaison-librarians.html) (library.richmond.edu/help/liaison-librarians.html) or ASK a librarian for help via email (library@richmond.edu), text (804-277-9ASK), or [chat](http://library.richmond.edu/chat.html) (library.richmond.edu/chat.html).
- **Career Services:** (careerservices.richmond.edu or 289-8547): Can assist you in exploring your interests and abilities, choosing a major or course of study, connecting with internships and jobs, and investigating graduate and professional school options. We encourage you to schedule an appointment with a career advisor early in your time at UR.
- **Counseling and Psychological Services** (caps.richmond.edu or 289-8119): Assists currently enrolled, full-time, degree-seeking students in improving their mental health and well-being, and in handling challenges that may impede their growth and development. Services include brief consultations, short-term counseling and

psychotherapy, skills-building classes, crisis intervention, psychiatric consultation, and related services.

- **Disability Services** (disability.richmond.edu) The Office of Disability Services works to ensure that qualified students with a disability (whether incoming or current) are provided with reasonable accommodations that enable students to participate fully in activities, programs, services and benefits provided to all students. Please let your professors know as soon as possible if you have an accommodation that requires academic coordination and planning.
- **Speech Center** (speech.richmond.edu or 287-6409): Assists with preparation and practice in the pursuit of excellence in public expression. Recording, playback, coaching and critique sessions offered by teams of student consultants trained to assist in developing ideas, arranging key points for more effective organization, improving style and delivery, and handling multimedia aids for individual and group presentations. Remote practice sessions can be arranged; we look forward to meeting your public speaking needs.
- **Writing Center** (writing.richmond.edu or 289-8263): Assists writers at all levels of experience, across all majors. Students can schedule appointments with trained writing consultants who offer friendly critiques of written work.

Tentative course outline – subject to revision as the course proceeds

- January 10: Rule by rules**
J Henrich, *The WEIRDest People in the World*, pp.204-10, 360-7
M Weber, *Economy and Society*, pp.341-8, 353-4 (Tribe trans.),
pp.973-80 (Roth & Wittich trans.)
H Fry, *Hello World*, ch.1
- January 17: Rule-based reasoning I: belief**
M Bishop & JD Trout, *Epistemology and the Psychology of Human Judgment*, ch 3
G Gigerenzer, *Gut Feelings*, pp.13-6; ch. 3; pp.193-7
- January 24: Individualized evidence I: statistical evidence paradoxes**
M Pardo, "Paradoxes of Legal Proof: A Critical Guide," pp.253-66
M Colyvan et al, "Is it a crime to belong to a reference class?"
United States v Shonubi
- January 31: Individualized evidence II: cold hit DNA**
A Roth, "Safety in Numbers? Deciding when DNA Alone is Enough to Convict," pp.1135-70
J Mnookin, "Of black boxes, instruments and experts"
- February 7: Rule-based reasoning II: action**
L Alexander & E Sherwin, *The Rule of Rules*, pp.11-21; ch. 2; pp.53-61,
77-86
- February 14: Rules & moral judgment I: utilitarianism**
JJC Smart, "An outline of a system of utilitarian ethics," pp.9-12, 42-5
B Hooker, "The role of rules in consequentialist ethics," ss.3-6
(pp.445-58)
E Posner & A Vermeule, "Should coercive interrogation be legal?"
pp.672-4, 680-6, 700-3
- February 21: Rules & moral judgment II: particularism**
R Shafer-Landau, *Fundamentals of Ethics*, excerpts
J Dancy, *Ethics Without Principles*, Introduction pp.1-5, 11-12; ch. 5
pp.73-8
R v Latimer
- February 28: Stereotyping & anti-discrimination I: university admissions**
F Schauer, *Profiles, Probabilities and Stereotypes*, ch. 5
B Eidelson, "Respect, Individualism, and Colorblindness," pp.1602-16,
1635-50

“The inherent contradictions in the affirmative action debate,” *The New Yorker*

- March 14:** **Stereotyping & anti-discrimination II: the ethics of belief**
R Basu, “What We Epistemically Owe Each Other”
RC Osborne, “What Do We Epistemically Owe Each Other? A Reply to Basu,” pp.1010-7, 1020
G Loury, *The Anatomy of Racial Inequality*, pp.23-37, 52-4
City of Los Angeles Department of Water & Power v Manhart
- March 21:** **The rule of law I: the rule of rules**
F Hayek, *The Road to Serfdom*, ch. 6
HLA Hart, *The Concept of Law*, pp.124-36
Frey v Fedoruk
City of Chicago v Morales
- March 28:** **The rule of law II: constitutions and rights**
S Holmes, *Passions & Constraint*, pp.135-7, 161-4, 166-77
J Waldron, *Law and Disagreement*, ch.12
“Coronavirus app doesn’t track students’ locations all the time, Albion college president says”
“Yale announces new stricter public health guidelines ahead of spring term”
- April 4:** **The rule of law III: treating like cases alike**
F Schauer, *Profiles, Probabilities and Stereotypes*, ch.8
P Westen, “The Empty Idea of Equality,” pp.542-51
- April 11:** **Sentencing I: discretionary sentencing**
K Stith & J Cabranes, *Fear of Judging*, pp.78-85, 168-71
A du Bois-Pedain, “In Defense of Substantial Sentencing Discretion,” pp.22-46
McGautha v California, pp.186-96, 203-208
- April 18:** **Sentencing II: guidelines sentencing**
H Fry, *Hello World*, ch. 3
C Yang, “Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing,” parts 1, 5-6
England and Wales Sentencing Commission – Theft Offences guideline