



UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

SYLLABUS DEL CORSO

Teoria Generale e Metodi del Diritto - M-Z

2223-1-E1401A084-MZ

Learning objectives

The course *General Theory and Methods of Law M-Z* is intended to provide students with the theoretical categories and fundamental methodological skills to develop a critical, rigorous and systematic knowledge of the law as a whole and of individual legal subjects in their specificities. It particularly aims also at fostering a more conscious ability to analyse and interpret norms on a practical level and to work correctly with legal institutions.

Contents

What is law? The course *General Theory and Methods of Law M-Z* will begin with a critical reflection on law as a specifically human phenomenon and on the role of legal science in the determination of legal phenomena. It will then examine the major conceptions of law (natural law, legal positivism, legal realism, constitutionalism) in the light of three possible criteria for the evaluation of norms: justice, validity, effectiveness.

But what exactly are norms? And what is the relationship between norms and legislative texts? In the central phase of the course, the possible relations between norms and language will be critically investigated, and the practical scope of some of the main distinctions between different types of norms (prescriptive norms, norms of competence, constitutive rules, etc.) will be highlighted.

Since norms, in the sphere of law, present themselves as elements of a normative system or order, the main problems of the theory of the legal order will be examined next, with a focus on the possible ways in which the phenomena of antinomies and legal gaps can be dealt with in legal practice, and with a reflection on the increasingly topical problem of the interaction between different normative systems.

Finally, also with a view to a greater practice-oriented awareness of law, the main theories of legal interpretation and the most common interpretative arguments will be examined.

Detailed program

The course will be divided into five main parts.

The *first part* will be devoted to an introductory reflection on law as an institutional phenomenon characteristic of the human species and on the fundamental assumptions of the science of law as a social science dealing with norms. The distinction between brute facts and institutional facts will be introduced and the distinction between society and nature, in correlation with the distinction between the principle of causality and the principle of retribution, will be investigated, also through some anthropological readings.

The *second part* will be devoted to an examination of three possible criteria for evaluating a norm (justice, validity, efficacy) and to the reconstruction of three major conceptions of law (natural law, legal positivism, legal realism) in the light of the importance given to each of the three criteria. Modern constitutionalist theories, which place the protection of certain fundamental rights at the heart of law, will also be examined, and some critical and methodological insights into the concept of effectiveness will be proposed.

The *third part* will be devoted to a series of critical reflections on the concept of “norm” starting from the investigation of the relations between norms and language, through the investigation of forms of normativity not necessarily dependent on language, to the examination of some fundamental distinctions between different types of rules for the purposes of a more conscious interpretation of norms in legal practice.

The *fourth part* will be devoted to the theory of the legal system and to the problems of the unity, coherence, completeness and plurality of legal systems, with a special focus on Hans Kelsen’s theory of the hierarchical structure of the legal system, on the phenomena of antinomies and legal gaps, and on the relations between legal systems, also in the context of international law.

The *fifth part* will be devoted to the acquisition of a fundamental theoretical-methodological awareness of the interpretation of legal norms, with reference to the main theories of interpretation and the main interpretative arguments.

Prerequisites

The course *General Theory and Methods of Law M-Z* does not require any particular prerequisite: the theoretical and methodological notions necessary for the acquisition of the course’s learning objectives will be provided and discussed during the lectures.

Teaching methods

The lessons will be face-to-face lectures but will be marked by discussion and dialogue with the students in order to foster the acquisition of the expected knowledge and skills through an autonomous re-elaboration of the contents. During the lectures, some texts will be shared and examined, which on the one hand will constitute the starting point for the identification of the main theoretical and methodological problems arising in the investigation of legal phenomena, and on the other hand will provide the cue to fully understand the relevance and scope of the fundamental categories of the general theory of law.

The lectures will be in Italian.

For those students who are interested, there is the possibility of analysing and discussing in class a short text, to be agreed upon with the lecturer.

Assessment methods

The assessment of learning will consist of a final oral interview on the topics covered in class, which will aim to ascertain and evaluate:

- (i) the awareness of the theoretical and methodological issues related to the study and practice of law,
- (ii) the acquisition of the fundamental conceptual categories to deal with them in a rigorous and relevant manner,
- (iii) the ability to reflect independently on the topics of the programme and to construct rigorous critical arguments.

There are no written tests or intermediate tests.

Textbooks and Reading Materials

Textbooks and reading materials for attending students

The bibliography for attending students will include some essays and chapters from the volumes indicated below, but will be defined in detail at the end of the course also depending on the readings covered during the lectures:

1. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993.
2. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione. Macerata, Quodlibet, 2021.
3. Amedeo G. Conte / Paolo Di Lucia / Luigi Ferrajoli / Mario Jori, *Filosofia del diritto*. Seconda edizione ampliata. Milano, Raffaello Cortina, 2013.
4. Giuseppe Lorini / Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012.
5. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà*. Saggio di filosofia del diritto. Milano, LED, 2020.

Textbooks and reading materials for non-attending students

In order to allow non-attending students an adequate understanding of the course topics, the bibliography for non-attending students is detailed as follows:

1. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993.
2. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione. Macerata, Quodlibet, 2021 (only §§ 1.-5. e 7. of the first lecture).
3. Amedeo G. Conte / Paolo Di Lucia / Luigi Ferrajoli / Mario Jori, *Filosofia del diritto*. Seconda edizione ampliata. Milano, Raffaello Cortina, 2013 (only the following essays: *Introduzione* by Paolo Di Lucia; *Concetti giuridici fondamentali* by Wesley N. Hohfeld; *La sociologia del diritto* by Eugen Ehrlich; *Realismo giuridico* by Jerome N. Frank; *Dottrina pura del diritto* by Hans Kelsen; *Ingiustizia legale e diritto sovralegale* by Gustav Radbruch; *Norme primarie, norme secondarie, norma di riconoscimento* by Herbert L. A. Hart).
4. Giuseppe Lorini / Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012 (only the following essays: part I.: 2. *Enunciato deontico, dovere sussistente, pensiero giuridico* by Gerhard Ledig; *Norma: cinque referenti* by Amedeo G. Conte; part II: 3. *Regole regolative vs. regole costitutive* by John R. Searle; *Regole eidetico-costitutive e regole anankastico-costitutive* by Amedeo G. Conte; parte V: 4. *Norma sussistente vs. enunciato normativo* by Theodor Geiger; *Nomotropismo* by Amedeo G. Conte).
5. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà*. Saggio di filosofia del diritto. Milano, LED, 2020 (only chapters 1., 2. e 5.).

Further information

Students with specific interests related to the course topics (and in particular students enrolled in Degree Courses not provided by the Department of Law) may replace part of the common programme with other specific texts to be agreed upon in advance with the lecturer, with the option of presenting their contents in class.

For students who have attended the course, or who have in any case taken the examination with profit, the possibility of agreeing on a written report for the acquisition of credits for other training activities is envisaged, in accordance with the University regulations and the Degree Course regulations.

Sustainable Development Goals

QUALITY EDUCATION | REDUCED INEQUALITIES | PEACE, JUSTICE AND STRONG INSTITUTIONS
