



UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

General Theory and Methods of Law - M-Z

2324-1-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 the 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 articulated in 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.

Students may choose whether to prepare for the exam by making use of the recommended bibliography *for attending students*, which will be indicated during the course of the lectures, or the recommended bibliography *for non-attending students*. In the *first case* they will have to demonstrate that they have acquired an adequate and complete knowledge of the topics covered in lectures and in the texts indicated during the lectures. In the *second case* they will have to demonstrate that they have acquired adequate and complete knowledge of the topics covered in the texts indicated in the bibliography recommended for non-frequenting students.

There are no written tests or intermediate tests.

Textbooks and Reading Materials

Textbooks and reading materials recommended 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 recommended bibliography for non-attending students is detailed as follows:

1. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993 (first part: chapters 1. and 2.; second part: chapters 1., 2., 3.).
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; 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: Norberto Bobbio, *La norma come proposizione prescrittiva*; Theodor Geiger, *Norma sussistente vs. enunciato normativo*, pp. 275-282; Ota Weinberger, *Norma come pensiero vs. norma come realtà*, pp. 27-35; Amedeo G. Conte, *Norma: cinque referenti*, pp. 57-65; John R. Searle, *Regole regolative vs. regole costitutive*, pp. 93-97; John R. Searle, *Fatti bruti vs. fatti istituzionali*, pp. 161-164; Amedeo G.

- Conte, Regole eidetico-costitutive e regole anankastico-costitutive, pp. 107-117; Giampaolo M. Azzoni, Regole ipotetico-costitutive, pp. 119-136.).
5. Lorenzo Passerini Glazel, Le realtà della norma, le norme come realtà. Saggio di filosofia del diritto. Milano, LED, 2020 (only chapters 1. and 2.).

Sustainable Development Goals

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