



UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

SYLLABUS DEL CORSO

Filosofia del Diritto - M-Z

2425-2-A5810006-MZ

Learning objectives

The educational objectives of the course of *Philosophy of Law M-Z* consist in the acquisition of the fundamental categories and methodological skills to develop a critical, rigorous and systematic reflection on the fundamental theoretical and philosophical problems relating to law and legal phenomena. Students will learn to distinguish and compare the main theoretical models of law, to reflect on the conditions of possibility of legal phenomena, to deal rigorously with the problem of the relationship between law and justice, to recognise antinomies, to distinguish different types of legal rules, with particular reference to the theory of constitutive rules.

Contents

What is law? In what sense can we say that legal norms, while not having material existence, nevertheless have an objective existence? What is the status of the science of law? What is the relationship between law and justice? What are legal norms and what types of norms exist? What relations exist between the norms of the same system? These are some of the main questions that will be addressed in the *Philosophy of Law M-Z* course.

The course will be divided into three main parts.

The *first part* will be devoted to a reflection on the problem of justice and the relationship between law and morality: the main conceptions of justice will be examined, the philosophical presuppositions of relativistic philosophies of justice will be explicated, three criteria for the evaluation of norms will be distinguished, and the theoretical presuppositions of the theory of natural law, legal positivism and legal realism will be reconstructed.

The *second part* will focus on Hans Kelsen's project of constructing the pure theory of law and on the investigation of law as a normative social phenomenon through the distinction between the principle of causality and the principle of imputation and the conception of the norm as a scheme for interpreting legal facts. Kelsen's theory of the basic norm will be examined and further reflection will be developed on the possibility of evaluating and promoting the creation of law in the light of a system of norms of justice.

Finally, the *third part* will be devoted to the theory of the legal norm. Linguistic and non-linguistic conceptions of the legal norm will be compared, also through a reflection on the phenomenon of customary norms, and a typology of rules based also on the phenomenon of the constitutivity of rules will be proposed.

Detailed program

1. The problem of justice
 - 1.1. Metaphysical-religious conceptions of justice
 - 1.2. Pseudo-rationalistic conceptions of justice
 - 1.3. Hans Kelsen's relativistic philosophy of justice
 - 1.4. The relationship between law and justice
 - 1.5. Three criteria for evaluating norms: justice, validity, and effectiveness
 - 1.6. Natural law, legal positivism and legal realism

2. Law as a normative social phenomenon and the re-founding of legal science in Hans Kelsen
 - 2.1. The project of a pure theory of law and the distinction between law and morality
 - 2.2. The conditions of possibility of law
 - 2.3. The principle of causality and the principle of imputation in the interpretation of human behaviour
 - 2.4. Sanction and revenge
 - 2.5. Natural fact and legal meaning: the norm as a scheme of interpretation
 - 2.6. Objective legal meaning and subjective legal meaning: objective knowledge of a subjective reality
 - 2.7. The norm as meaning of an act of creation and the theory of the fundamental norm
 - 2.8. Normativity without absolutes
 - 2.9. The possibility of a moral evaluation of law
 - 2.10. Political acting and nomotrophic acting

3. Theories and philosophies of the norm
 - 3.1. The legal norm as an objective entity
 - 3.2. The legal norm as a linguistic entity
 - 3.3. The problem of the interpretation of norms
 - 3.4. Beyond the linguistic conception of norms: normative states-of-things, deontic noemata and deontic objects
 - 3.5. The making and unmaking of norms: nomotrophic acting between revenge, forgiveness and restorative justice
 - 3.6. Nomotrophic acting and the genesis of custom
 - 3.7. For a typology of norms: the constitutive rules
 - 3.8. Relations between norms: metanorms, gaps, antinomies

Prerequisites

The *Philosophy of Law M-Z* course does not have any particular prerequisites, except for a general knowledge of basic legal concepts, which will in any case be discussed in class.

Fundamental philosophical notions for the acquisition of the course's learning objectives will be provided and discussed during the course.

Teaching methods

The course, which will take place in the *second semester*, will consist in 36 lessons of 2 hours each. During the lessons there will be alternating phases of *didactic delivery* and phases of *interactive teaching* aimed at promoting

critical reflection and the active participation of the students through the model of argumentative debate of Socratic matrix. At least 2 of the 24 lessons will include a part carried out in *flipped classroom mode*: two groups of students chosen on a voluntary basis will be asked to carry out the critical reading of a short text at home and then present it and discuss it in the classroom with their classmates.

Attendance at classes is strongly recommended: given the interdisciplinary nature of the topics covered, reflections and conceptual categories not always familiar in the context of legal studies will be introduced during the course, which will make it easier to understand the reference texts and the topics of the course syllabus, and which will encourage, in particular, more in-depth reflection on the topics covered. In any case, in order to facilitate the attainment of the training objectives by any *working students*, up to 4 additional 2-hour lessons may be organised on request, to be held remotely in synchronous mode in the evenings or during non-working days.

For students from other academic courses, the possibility of agreeing with the lecturer on a partially differentiated programme according to the area of study to which they belong is envisaged.

Assessment methods

The learning assessment will consist of an interview on the topics covered in class and the reference texts indicated in the following section of the syllabus. In particular, the knowledge acquired, the ability to appropriately use the relevant vocabulary and conceptual categories, and the development of an adequate awareness of the theoretical and practical issues connected with law will be assessed. The elaboration of an autonomous critical reflection based on rigorous and relevant arguments with respect to the topics addressed will be emphasised.

Although the overall programme and the educational objectives of the course do not differ for attending and non-attending students, it is possible to choose whether to prepare the exam according to one of the two following modes:

(i) the first mode, *recommended for attending students*, consists in preparing for the exam by making use of the explanations and discussions carried out in class and the parts of the reference texts that will be indicated and discussed during the course;

(ii) the second method, *recommended for non-attending students*, consists in preparing for the exam using the reference texts that are indicated for non-frequenting students in the following section of the syllabus.

Please note that in both cases the critical reading of the texts is considered an essential moment for the achievement of the training objectives of the course.

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 the parts of the following texts that will be detailed during the course of the lectures:

1. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. Second edition. Macerata, Quodlibet, 2021. The sections to be studied will be indicated during classes;
2. Paolo Di Lucia e Lorenzo Passerini Glazel, Hans Kelsen. *Giustizia, diritto e realtà sociale*. Milano, Raffaello Cortina Editore, 2024. The sections to be studied will be indicated during classes;

3. Giuseppe Lorini/Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012. The sections to be studied will be indicated during classes;
4. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà*. Saggio di filosofia del diritto. Milano, LED, 2020. The sections to be studied will be indicated during classes.

Textbooks and reading materials for *non-attending students*

The program for *non-attending students* does not differ from the program for attending students. However, in order to allow also non-attending students an adequate understanding of the course topics and the achievement of the expected learning objectives, the bibliography for non-attending students is detailed as follows:

1. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993, only the following sections: First part, chap. II.; second part, chapp. II. e III.;
2. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione. Macerata, Quodlibet, 2021, part I. (Elementi di teoria pura del diritto), both lectures, and part II. (Che cos'è la giustizia?);
3. Paolo Di Lucia e Lorenzo Passerini Glazel, Hans Kelsen. *Giustizia, diritto e realtà sociale*. Milano, Raffaello Cortina Editore, 2024;
4. Giuseppe Lorini/Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012, only the following essays:
Part I (Ontologia delle norme), 1. Norberto Bobbio, *La norma come proposizione prescrittiva*, pp. 7-17; 7. Amedeo G. Conte, *Norma: cinque referenti*, pp. 57-65;
Part II. (Tipologia delle norme: il fenomeno delle regole costitutive): 3. John R. Searle, *Regole regolative vs. regole costitutive*, pp. 93-97; 4. Gaetano Carcaterra, *Norme costitutive*, pp. 99-105; 5. Amedeo Giovanni Conte, *Regole eidetico-costitutive e regole anankastico-costitutive*, pp. 107-117; 6. Giampaolo M. Azzoni, *Regole ipotetico-costitutive*, pp. 119-136;
Part III.: 3. John R. Searle, *Fatti bruti vs. fatti istituzionali*, pp. 161-164;
Part IV.: 2. Hans Kelsen, *Norma fondamentale*, pp. 195-202; 3. Herbert L. A. Hart, *Norma di riconoscimento*, pp. 203-207; 4. Eduardo García Máynez, *Validità in senso positivo vs. validità in senso axiologico*, pp. 209-219; 5. Amedeo Giovanni Conte, *Paradigmatica della validità*, pp. 221-234;
Part V.: 3. Leon Petra?ycki, *La concezione psicologista della norma*, pp. 263-273; 4. Theodor Geiger, *Norma sussistente vs. enunciato normativo*, pp. 275-282;
5. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà*. Saggio di filosofia del diritto. Milano, LED, 2020 (escluso il capitolo 3.).

Sustainable Development Goals

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