UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

SYLLABUS DEL CORSO

Filosofia del Diritto - M-Z

2526-2-A5810006-MZ

Learning objectives

The learning objectives of the Philosophy of Law (M–Z) course are:

• knowledge of the main legal-philosophical theories and critical understanding of the fundamental theoretical and philosophical issues concerning law, including the relationship between law and justice, the nature of norms and legal acts, and the distinction between different types of norms;
• acquisition of the ability to develop an autonomous and rigorous critical reflection on legal phenomena by using the acquired conceptual categories appropriately;
• acquisition of the ability to develop an autonomous and rigorous critical reflection on legal phenomena by using the acquired conceptual categories appropriately;
• development of adequate ability to analyze and present content, theses, and arguments clearly and rigorously through critical reading of texts and the use of appropriate conceptual-theoretical lexicon;
• development of an adequate ability to pursue independent learning and further reflection on other philosophical issues related to law and legal phenomena, through the critical reading of philosophical-legal texts.

Contents

What is law? In what sense can it be said that legal norms, though lacking material existence, nevertheless possess objective existence? What is the status of the science of law? What are the relationships between law and justice? What are legal norms and which types exist? What relationships exist between norms within a legal system?
These are some of the main questions addressed in the Philosophy of Law (M-Z) course. The course is divided into four main parts:

• First Part: Distinction between the questions of the jurist ("Quid iuris?") and those of the philosopher ("Quid ius?") about law; differentiation of three criteria for evaluating norms—justice, validity, efficacy; examination of the main philosophical conceptions of law: natural law theory, legal positivism, and legal realism.

• Second Part: Reflection on the problem of justice and the relationship between law and morality; analysis of the main types of theories of justice; exploration of the philosophical presuppositions of relativistic philosophies of justice.
• Third Part: Focus on Hans Kelsen's project of constructing a pure theory of law and on the investigation of law as a social normative phenomenon, emphasizing the distinction between the principle of causality and the principle of imputation, and the concept of the norm as an interpretive schema for legal facts. Examination of Kelsen's theory of the basic norm and further reflection on the possibility of evaluating and promoting the creation of law in light of a system of norms of justice.
• Fourth Part: Examination of the theory of the legal norm; comparison of linguistic and non-linguistic conceptions of the legal norm, also through reflection on the phenomenon of customary norms; typology of norms based on the notion of constitutive rule.

Detailed program

1. The main philosophical conceptions of law
1.1. Quid ius? and Quid iuris?: questions of the philosopher and jurist about law
1.2. Three criteria for evaluating norms: justice, validity, efficacy
1.3. Natural law, legal positivism, and legal realism

2. The problem of justice
2.1. Socrates and the problem of justice
2.2. The relationships between law and justice
2.3. Answers to the problem of justice in Plato
2.4. Metaphysical-religious and pseudo-rationalistic conceptions of justice
2.5. Hans Kelsen's relativistic philosophy of justice

3. Law as a normative social phenomenon and the refoundation of legal science in Hans Kelsen
3.1. The project of a pure theory of law and the distinction between law and morality
3.2. The conditions of possibility of law
3.3. Principle of causality and principle of imputation in interpreting human behavior
3.4. Revenge and sanction
3.5. Natural fact and legal meaning: the norm as a scheme of interpretation
3.6. Objective legal meaning and subjective legal meaning: objective knowledge of a subjective reality
3.7. The norm as meaning of an act of normative creation and the theory of the basic norm
3.8. Normativity without absolutes
3.9. The possibility of a moral evaluation of law
3.10. Politics of law and nomotrophic acting

4. Theories and philosophies of the norm
4.1. The legal norm as an objective entity
4.2. The legal norm as a linguistic entity
4.3. The problem of interpretation of norms
4.4. Beyond the linguistic conception of norms: normative states-of-affairs, deontic noemata, and deontic objects
4.5. The making and unmaking of norms: nomotrophic acting between revenge, forgiveness, and restorative justice
4.6. Nomotrophic acting and the genesis of custom
4.7. For a typology of norms: constitutive rules
4.8. Relationships between norms: metanorms, gaps, antinomies

Prerequisites

The *Philosophy of Law M-Z* course does not require particular prerequisites except for a general knowledge of basic legal concepts, which will be reviewed during lessons.
The fundamental philosophical notions necessary to achieve the course objectives will be provided and discussed throughout the course.

Teaching methods

The course, to be held in the *first semester*, consists of 36 lessons of 2 hours each. Lessons will be held in Italian.

The lessons will alternate between didactic lecture phases and interactive phases in which significant texts will be examined and discussed in class to foster critical reflection and active student participation through the Socratic maieutic model.
For at least 2 lessons out of 24, short preliminary readings will be assigned, followed by presentations and discussions in class by students.

Attendance is strongly recommended given the interdisciplinary nature of the topics. The course indeed introduces conceptual reflections and categories which might be less familiar within legal studies, easing the understanding of reference texts and program topics, and encouraging deeper reflection on the subjects.

To facilitate learning objectives for working students, up to 4 additional 2-hour lessons may be organized remotely upon actual request, held synchronously in the evenings or on non-working days.

Students from other degree programs may agree with the instructor on a partially differentiated program depending on their study area.

Assessment methods

Learning assessment consists of an oral exam on topics covered in class and the reference texts listed in the syllabus.
Evaluation will focus on the achievement of learning objectives, including:

• knowledge of the main legal-philosophical theories and critical understanding of the fundamental theoretical and philosophical issues concerning law, including the relationship between law and justice, the nature of norms and legal acts, and the distinction between different types of norms;
• acquisition of the ability to develop an autonomous and rigorous critical reflection on legal phenomena by using the acquired conceptual categories appropriately;
• acquisition of the ability to develop an autonomous and rigorous critical reflection on legal phenomena by using the acquired conceptual categories appropriately;
• development of adequate ability to analyze and present content, theses, and arguments clearly and rigorously through critical reading of texts and the use of appropriate conceptual-theoretical vocabulary;
• development of an adequate ability to pursue independent learning and further reflection on other philosophical issues related to law and legal phenomena, through the critical reading of philosophical-legal texts.

The oral exam values the student's ability to produce autonomous critical reflection on the syllabus topics and the reference texts.

Although the overall syllabus and objectives are the same for attending and non-attending students, two preparation modes exist:

(i) For attending students: preparation with the help of explanations, critical discussions, and reference texts indicated during lessons.
(ii) For non-attending students: preparation based on the specific bibliography detailed in the following section of the syllabus.

In both cases, critical reading of texts is essential.

There will be no written or intermediate test.

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. Platone, *Critone*. A cura di Giovanni Reale. Brescia, Morcelliana/Scholè, 2023 (o altra edizione);
2. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993;
3. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione. Macerata, Quodlibet, 2021;
4. Paolo Di Lucia e Lorenzo Passerini Glazel, *Hans Kelsen. Giustizia, diritto e realtà sociale*. Milano, Raffaello Cortina, 2024;
5. Giuseppe Lorini/Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012;
6. 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 enable all students to achieve the course learning objectives, non-attending students may prepare for the examination using the following bibliography (it is recommended to follow the order of reading indicated):

1. Platone, *Critone*. A cura di Giovanni Reale. Brescia, Morcelliana/Scholè, 2023 (or other edition), limited to the dialogues (pp. 49-91);
2. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993, limited to: First part, chapter II.; Seconda part, chapters II. e III.;
3. 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?*);
4. Paolo Di Lucia e Lorenzo Passerini Glazel, *Hans Kelsen. Giustizia, diritto e realtà sociale*. Milano, Raffaello Cortina Editore, 2024;
5. Giuseppe Lorini/Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012, limited to 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; Amedeo Giovanni Conte, *Paradigmatica della validità*, pp. 221-234;
   Part V.: 3. Leon Petra?ycki, *La concezione psicologistica della norma*, pp. 263-273; 4. Theodor Geiger, *Norma sussistente vs. enunciato normativo*, pp. 275-282;
6. Lorenzo Passerini Glazel, *Le realtà della norma, le norme come realtà. Saggio di filosofia del diritto*. Milano,

LED, 2020 (except chapter 3.).

Sustainable Development Goals

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