UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Philosophy of Law - M-Z

2627-2-LMG01A006-MZ

Learning objectives

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

• **Knowledge and understanding:** Knowledge of the main philosophical-legal theories and critical understanding of the fundamental theoretical and philosophical problems concerning the law, of the relationship between law and justice, of the nature of legal norms and acts, of the distinction between different types of norms, and of the law as a legal system.
• **Applying knowledge and understanding:** Acquisition of an adequate capacity for analysis and synthesis of the theses and arguments contained in the bibliography texts, and the capacity to develop an autonomous, rigorous, and broad-ranging critical reflection on legal phenomena through the pertinent and rigorous use of the acquired conceptual categories, also with reference to concrete cases and current issues.
• **Making judgements:** acquisition of the fundamental methodological categories and skills to develop an autonomous, critical, rigorous, and systematic capacity for judgement on the fundamental theoretical and philosophical problems related to law and legal phenomena, also through the comparison and critique of the theses of different authors.
• **Communication skills:** Development of an adequate capacity to reformulate and present contents, theses, and arguments in a clear and rigorous manner, through a critical reading of texts and the use of a pertinent and appropriate theoretical-conceptual vocabulary.
• **Learning skills:** Development of an adequate capacity to autonomously continue one's learning and reflection path in relation to other philosophical themes and problems concerning law and legal phenomena, through the ability to critically read 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 legal science? What is the relationship between law and justice?

What are legal norms and what types of norms exist? What relationships exist between the norms of 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:

• Part I: 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.
• Part II: 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.
• Part III: 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.
• Part IV: 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 relationship 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 for the 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 the 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. Legal policy and nomotrophic behaviour

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 the 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. Toward a typology of norms: constitutive rules
4.8. Relationships between norms: metanorms, gaps, antinomies

Prerequisites

The course in Philosophy of Law M-Z does not have any specific prerequisites, except for a general knowledge of basic legal concepts, which will nonetheless be revisited and discussed during lectures.
The fundamental philosophical concepts required to achieve the course's educational objectives will be introduced and discussed throughout the course.

Teaching methods

The course, which will take place during the first semester, will consist of 36 lectures of 2 hours each. Lectures will be held in Italian.

Lectures will alternate between frontal instruction (lecture-based teaching) and interactive learning phases, during which highly significant texts will be examined and discussed in class. This is designed to promote critical reflection and active student participation through the Socratic method (Socratic maieutics).
For at least 2 of the 36 lectures, students will be asked to read short essays in advance, followed by presentations and group discussions in class.

Attendance is highly recommended. Given the interdisciplinary nature of the subjects covered, the course will introduce perspectives and conceptual categories that may not always be familiar within legal studies but are essential for a broad-ranging reflection on law. The insights and categories introduced during lectures will facilitate the reading and comprehension of the texts, fostering a deeper understanding of the topics.

To assist working students in achieving the learning objectives, up to 4 supplementary 2-hour lectures may be organized upon request. These will be held remotely in a synchronous format during evening hours or non-working days.

Students from other degree programmes may agree with the instructor on a partially tailored syllabus based on their specific field of study.

Assessment methods

Assessment will consist of an oral examination covering the topics discussed during lectures and the exam readings listed in the subsequent section of this syllabus.
The student's performance will be evaluated in relation to the course's educational objectives, with particular focus on:

• knowledge of the main philosophical-legal theories and the topics covered during lectures and in the bibliography texts;
• critical understanding of the fundamental theoretical and philosophical problems concerning law discussed during lectures and in the bibliography texts;
• capacity to analyze and synthesize the contents, theses, and arguments of the authors and of the bibliography texts, also through the comparison of different authors and the essential reference to the bibliography texts;

• ability to clearly and rigorously present and reconstruct the theses and topics covered during lectures and in the bibliography texts, using a pertinent theoretical-conceptual vocabulary;
• ability to develop an autonomous, rigorous, and systematic critical reflection through the pertinent and rigorous use of the acquired conceptual categories, also with reference to concrete and current examples.

In general, the evaluation of the oral exam will highly value precise and critical references to the bibliography texts, and the development of an autonomous critical reflection on the exam syllabus topics.

Although the overall syllabus and educational objectives of the course do not differ for attending and non-attending students, students can choose to prepare for the exam in one of the following two ways:

(i) the first option, recommended only for attending students (and not advised for those who cannot regularly attend lectures), consists of preparing for the exam by drawing on the explanations and critical discussions from lectures, as well as the analysis of the reference texts that will be indicated during the course;
(ii) the second option, strongly recommended for non-attending students, consists of preparing for the exam using the recommended reference texts for non-attending students, as indicated in the subsequent section of this syllabus.

Please note that in both cases, the critical reading of the texts is considered an essential step for achieving the course's educational objectives, and preparing for the exam relying solely on notes taken by other students does not allow these objectives to be met.

There are no written interim assessments (mid-term exams).

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. Hans Kelsen, *Lineamenti di dottrina pura del diritto*. Torino, Einaudi, 2000.
5. Paolo Di Lucia e Lorenzo Passerini Glazel, *Hans Kelsen. Giustizia, diritto e realtà sociale*. Milano, Raffaello Cortina, 2024;
6. Giuseppe Lorini/Lorenzo Passerini Glazel (eds.), *Filosofie della norma*. Torino, Giappichelli, 2012;
7. 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 (o altra edizione), limitatamente al dialogo (pp. 49-91);
2. Norberto Bobbio, *Teoria generale del diritto*. Torino, Giappichelli, 1993, limitatamente a: Parte prima, cap. II.; parte seconda, capp. II. e III.;
3. Hans Kelsen, *Che cos'è la giustizia? Lezioni americane*. Seconda edizione. Macerata, Quodlibet, 2021, parte I. (*Elementi di teoria pura del diritto*), entrambe le lezioni, e parte 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, limitatamente ai seguenti saggi:
   Parte 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;
   Parte 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;
   Parte III.: 3. John R. Searle, *Fatti bruti vs. fatti istituzionali*, pp. 161-164;
   Parte 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;
   Parte 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 (escluso il capitolo 3.).

Sustainable Development Goals

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