

# Syllabus of the course: **Philosophy of Law**

## **1 Course Description**

This is elective course, based on knowledge and competences which were provided by the following disciplines:

- Philosophy
- Political Science
- General Sociology

The following knowledge and competences are needed to study the discipline:

- The basic skills of philosophical analysis
- The basic knowledge of the foundations of law both logical and normative
- The knowledge of the basics of international and domestic legislation

## **2 Learning objectives.**

The students are supposed to become professed in the knowledge of the major existent theories of the philosophy of law, to develop the skills of philosophical analysis of the major issues of law.

## **3 Course Plan**

<b>№</b>	<b>Topic</b>
1.	Philosophy, Ethics and Law
2.	Natural Law Theory
3.	Classical Legal Positivism
4.	Modern legal positivism
5.	Ronald Dworkin. Moral Integrity of Law
6.	Legal Realism
7.	Historical and anthropological jurisprudence
8.	Critical legal theory
9.	Feminist Jurisprudence
10.	Crime and Punishment
11.	Philosophy of International Law
12.	Theories of justice

### **1. Philosophy, Ethics and Law**

The nature of jurisprudence. Descriptive, critical and normative legal theory. The rational techniques of philosophy and the sphere of law. The clarification of concepts and reexamination of values. Analytical jurisprudence and Normative jurisprudence. Rational criticism and its application to the sphere of law. Conceptions of Philosophy and various branches of Philosophy. Ethics and ethical theories. Ethical skepticism and relativism. Deontological Theories. Consequentialism. Virtue ethics. Contemporary

theories in ethics. Moral problems. Ethics and Morality. The concept of law. The sphere of law. Moral and legal regulation of actions. Social institutions and normative regulation of social life. Descriptive law and prescriptive law. The problem of moral fidelity and allegiance. Implications of jurisprudence for political, economic and social theory.

### **Required readings:**

Wacks, R. *Understanding jurisprudence: an introduction to legal theory* / R. Wacks. – Oxford; New York: Oxford University Press, 2012. (34 W11 in HSE library)

### **Optional readings:**

Wellman, C. *An Approach to Rights: Studies in the Philosophy of Law and Morals* / C. Wellman. – Dordrecht: Kluwer Academic Publishers, 1997. (34 W50 in HSE library)

Hoffe, O. *Political justice: foundations for a critical philosophy of law and the state* / O. Hoffe; Translated by J. C. Cohen. – Cambridge; Malden: Polity Press, 2007. (32 H73 in HSE library)

Murphy, J. G. *Retribution Reconsidered: More Essays in the Philosophy of Law* / J. G. Murphy. – Dordrecht: Kluwer Academic Publishers, 1992. (34 M96 in HSE library)

*The Law in Philosophical Perspectives: My Philosophy of Law* / Ed. by L. J. Wintgens. – Dordrecht: Kluwer Academic Publishers, 1999. (34 L41 in HSE library).

*The Oxford handbook of jurisprudence and philosophy of law* / Ed. by J. Coleman, S. Shapiro. – Oxford: Oxford University Press, 2004. (34 O-97 in HSE library).

*The philosophy of law* / Ed. by R. M. Dworkin. – Oxford: Oxford University Press, 1977. (34 P57 in HSE library).

Freeman, M. D. A. *Lloyd's introduction to jurisprudence* / M. D. A. Freeman. – 9th ed. – London: Thomson Reuters: Sweet & Maxwell, 2014. (34 F88 in HSE library)

*Multicultural jurisprudence: comparative perspectives on the cultural defense* / Ed. by M.- C. Foblets, A. D. Renteln. – Oxford; Portland: Hart Publishing, 2010. (34 M94 in HSE library)

McCoubrey, H. *Textbook on jurisprudence* / H. McCoubrey, N. D. White. – 3rd ed. – Oxford; New York: Oxford University Press, 1999. (34 M44 in HSE library)

## **2. Natural Law Theory**

The origins of natural law theory in philosophy of Plato and Aristotle. Absolute values. Intuitive apprehension of values. The role of reason. Justice and its inherent connection with law. Human nature as the source of law and justice. Cicero. Roman Law. The relations of law and morality, morality and nature. The systematic statement of natural law theory in philosophy of Thomas Aquinas. Eternal law, natural law, divine law and positive law. Inherent inspiration to good. Life, knowledge, procreation, society, and reasonable conduct as basic good. The priority of good to the right. Mala in se. The principle of proportionality. Double effect. Lex iniusta non est lex. Corruption of law. Thomas Hobbes. John Lock. Jean-Jacques Rousseau. Hugo Grotius. Declaration des droits de l'homme et du citoyen. The traces of the Natural Law Theory in the Just War Theory. The limitations of natural law theory. The decline of the Natural Law in the 18<sup>th</sup> century. The critique of Bentham and Alf Ross.

The contemporary revival of natural law. Nurnberg war trial. Crime against Humanity. The post-war recognition of human rights and their expression in declarations such as the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Declaration of Delhi on the Rule of Law of 1959. The theory of John Finnis and the tradition of analytic jurisprudence. "Natural Law and Natural Rights" as a major restatement of classical natural law theory. The neo-Thomism. The special logic of defining goodness. Primary and secondary principles of natural law. Seven 'basic forms of human flourishing' and nine 'basic requirements of practical reasonableness'. The requirement of the community. Conception of natural rights. The account of law. Hard and soft natural law. The recent critique of Finnis. Lon Fuller and his idea of The Internal Morality of Law.

### **Required readings:**

Wacks, R. *Understanding jurisprudence: an introduction to legal theory* / R. Wacks. – Oxford; New York: Oxford University Press, 2012. (34 W11 in HSE library)

### **Optional readings:**

Murphy, M. C. *Natural law in jurisprudence and politics* / M. C. Murphy. – Cambridge: Cambridge University Press, 2009. (34 M96in HSE library).

*The Cambridge companion to natural law jurisprudence* / Ed. by G. Duke, R. P. George. – Cambridge; New York: Cambridge University Press, 2017. (34 C17 in HSE library).

*The Cambridge companion to natural law jurisprudence* / Ed. by G. Duke, R. P. George. – Cambridge; New York: Cambridge University Press, 2017. (34 C17 in HSE library).

Cicero, M. T. *On the republic; and, On the laws* / M. T. Cicero; Translated with introduction and notes by D. Fott. – Ithaca; London: Cornell University Press, 2014. (1 C58 in HSE library).

Aristotle. *The Nicomachean Ethics* / Translated by H. Rackham. Cambridge; London: Harvard University Press, 2003 (17 A74 in HSE Library)

Hobbes, T. *Leviathan* / T. Hobbes; Ed. by R. Tuck. – Rev. student ed. – Cambridge: Cambridge University Press, 2004. – 519 c. – (Cambridge texts in the history of political thought). (32 H71 in HSE library).

Finnis, John. *Natural Law and Natural Rights*, 2nd edn. Oxford: Oxford University Press, 2011. URL <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=975421&query=Finnis>. - ProQuest Ebook central. - Academic Complete

## **3. Classical Legal Positivism. Jeremy Bentham and John Austin.**

The idea of positivism. The major stages of positivism. The combination of empiricism and rationalism. The idea that a legal system is a 'closed logical system. The separation of law as it laid down from what is should be morally. The method of suspending moral judgement. The classical school of English legal positivism. Jeremy Bentham. Demystification of common law. Bentham as Luther of jurisprudence. Major legislative reforms of the English law of evidence of 1843, 1851, and 1898 inspired by Bentham. Natural law and private opinion in disguise. The "dog" law. The principle of publicity. Codification of law. Two parts of law: the directive part which announces the conduct to be done and the incitative part. John Austin's critique of natural law theory. "Laws properly so called". Laws 'improperly so called'. The distinction of analytical and normative jurisprudence. The role of utilitarianism. The command theory of law. Austin's 'gunman' theory of authority. The concept of sanctions. The concept of sovereignty. Four features of a command (wish, sanction, expression of a wish, generality and identifiable political superior, or sovereign). Sanctions.

### **Required readings::**

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch.3. Classical Legal Positivism. (34 W11 in HSE library)

### **Optional readings:**

Bentham, J. *An introduction to the principles of morals and legislation: the collected works* / J. Bentham; Ed. by J. H. Burns, H. L. A. Hart; Introduction by F. Rosen. – Oxford: Clarendon Press, 2005. (17 B43 in HSE library)

Austin, John. *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence*. London: Weidenfeld & Nicolson, 1954.

Hart, H. L. A. *Essays on Bentham: studies in jurisprudence and political theory* / H. L. A. Hart. – Oxford: Clarendon Press, 2001. (34 H31 in HSE Library)

## 4. Modern legal positivism

Contemporary legal positivism. Its three theses: The separability thesis. The pedigree thesis, The discretion thesis. Hans Kelsen and his “pure” theory of law. Kantian background. The separation of *sein* and *sollen*. Law as a system of norms. The idea of “Grundnorm”. Its highest level of generality. Lasting effectiveness of the basic norm and its assumed validity. The formal nature of the basic norm. Value-free account of law. Essential individualism of legal positivism. The ideological link with early capitalism. Neutral idea of validity. Monopolization of force as the only function of law. Value relativism. Sanctions. Law’s coercion. Objectively valid norm vs. subjective validity. Hierarchy of norms. The critique of Raz and Harris. H.L.A.Hart. “The Concept of Law”. Humean background. The usage of linguistic techniques. The critique of Austin. “Gunman Writ Large”. The acknowledgement of the ‘core of indisputable truth in the doctrines of natural law’ Minimum content of natural law. Law as a system of rules. Primary rules and secondary rules. The rules of recognition, change and adjudication. “Minimum content theory” of natural law in later legal positivism. The discretion of the judge is to fill in the gaps between the legal rules.

### Required readings:

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch.4. Modern legal positivism. (34 W11 in HSE library)

### Optional readings:

Hart, H. L. A. *Essays in jurisprudence and philosophy* / H. L. A. Hart. – Oxford: Clarendon Press, 2001. (34 H31 in HSE library)

Kelsen, H. *General Theory of Law and State* / H. Kelsen; Translated by A. Wedberg. – Union: The Lawbook Exchange, Ltd., 2000. (34 K31 in HSE library)

Kelsen, H. *Pure theory of law* / H. Kelsen; Translated by M. Knight. – Gloucester: Peter Smith, 1989. (34 K31 in HSE library)

*The legacy of H.L.A. Hart: legal, political, and moral philosophy* / et al.; Ed. by M. H. Kramer, C. Grant, B. Colburn. – Oxford; New York: Oxford University Press, 2008. (34 L49 in HSE library)

## 5. Ronald Dworkin. Moral Integrity of Law

The criticism of Hart’s model of rules. *Riggs v. Palmer case. Henningsen v. Bloomfield Motors Inc. case*. An assault on legal positivism. The critique of the model of rules. Non-rule standards in law. The difference of legal principles and rules. The integration of law and morality. The unity of value. The possibility to go beyond rules and apply to principles and policies in legal cases. Appeal to moral principles as the central part of judicial decision making. Rights as trumps on the goals of policy. Judge as an author in the chain of common law. The concept of the ideal judge. (Hercules). Law as interpretive concept. The system of social justice. The ideal of equality.

### Required readings:

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch.5. Dworkin and the moral integrity of law. (34 W11 in HSE library)

### Optional readings:

Dworkin, R. *A matter of principle* / R. Dworkin. – Oxford: Clarendon Press, 2001. (1 D97 in HSE library)

Dworkin, R. *Law's empire* / R. Dworkin. – Oxford: Hart Publishing, 1998. (34 D97 in HSE library).

Dworkin, R. *Taking rights seriously* / R. Dworkin. – London [etc.]: Bloomsbury, 2013. (34 D97 in HSE library)

## 6. Legal realism

American and Scandinavian branches of legal realism. The rejection of ponderous metaphysics and absolute values. Law is what the judge do. Realism as technology. American realism. Oliver Wendell Holmes, Karl N Llewellyn, and Jerome Frank. “The life of the law has not been logic”. The possibility of ‘free play’ and the discretion of a judge. Law as prediction of what courts will decide. Llewellyn’s realist manifesto. Holmes and the device of the ‘bad man’. Llewellyn: law as a ‘technology’ rather than a philosophy. Grand style and the formal style of judicial opinions. Jerome Frank and his radical realism. Alf Ross. The nonexistence of justice. Hägerström. Legal norms as fantasies of the mind. Olivecrona’s Law as a matter of Fact. Psychological approach to legal theory

### Required readings:

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch.6. Legal realism. (34 W11 in HSE library).

### Optional readings:

Holmes, O. W. *Collected Legal Papers*. London: Constable & Co, 1920.

Llewellyn, Karl N. *The Bramble Bush*. New York: Oceana: 1930.

Llewellyn, Karl N. *Jurisprudence: Realism in Theory and Practice*. Chicago, Ill and London: University of Chicago Press, 1962.

Llewellyn, Karl N. and Hoebel, E. *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. Norman, Okla: University of Oklahoma Press, 1941.

Llewellyn, Karl N. *The Common Law Tradition: Deciding Appeals*. Boston, Mass: Little, Brown & Co, 1960.

Olivecrona, Karl, *Law as Fact*. London Humphrey Milford, 1939.

Twining, William, *Karl Llewellyn and the Realist Movement*. London: Weidenfeld & Nicholson, 1973.

Ross, Alf, *On Law and Justice*, transl Margaret Dutton. London: Stevens & Sons, 1958.

Ross, Alf, *Directives and Norms*. London: Routledge & Kegan Paul, 1968.

## 7. Historical and anthropological jurisprudence

Historical jurisprudence. Law as the result of historical development. The specificity of the Western law. Civil Law and Common Law. Culture, custom, and tradition at the very heart of the exposition of the concept of law. Friedrich Karl von Savigny. Law is located in the spirit of the people: the Volksgeist. The protest against codification of law. Lawmaking is only one of the sources of law. The critique. Henry Maine. Evolutionary account of law. Six phases of the development of law. Common ownership was the earliest form of title. The critique of the natural law. Anthropological jurisprudence. ‘Law’ in tribal societies. Bronislaw Malinowski. Reciprocity as the pattern of law. Hoebel. “The Law of Primitive Man: A Study in Comparative Legal Dynamics Law of Primitive Man”. Gluckman. The study of the Barotse of Northern Rhodesia. Bohannan. The analysis of the Tiv of Nigeria. Legal pluralism.

### Required readings:

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch.8. Historical and anthropological jurisprudence. (34 W11 in HSE library)

### Optional readings:

*Europe's Other: European Law Between Modernity and Postmodernity* / Ed. by P. Fitzpatrick, J. H. Bergeron. – Aldershot: Ashgate, 1998. (4 E91 in HSE library)

Hoebel, E. *The Law of Primitive Man: A Study in Comparative Legal Dynamics*. Cambridge, Mass: Harvard University Press, 1967. URL: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/reader.action?docID=3300214> – ЭБС ProQuest Ebook Central - Academic Complete.

Bohannan, Paul. *Justice and Judgment Among the Tiv*. (Oxford: Oxford University Press, 1957).

Fitzpatrick, Peter. *Law and State in Papua New Guinea*. London: Academic Press, 1980.

- Gluckman, Max. *The Judicial Process among the Barotse of Northern Rhodesia*. Manchester: University of Manchester Press, 1955.
- Kahn, Paul W. *The Cultural Study of Law: Reconstructing Legal Scholarship*. Chicago, Ill: University of Chicago Press, 1999.
- Maine, H.S. *Ancient Law*. London: Dent edn, 1917.
- Malinowski. B. *Crime and Custom in Savage Society*. London: Rowman & Littlefield, 1926.
- Stein, Peter, *Legal Evolution: The Story of an Idea*. New York: Cambridge University Press, 1980.

## 8. Critical and Postmodern legal theory.

The attack on the idea of neutral principles of law and morality. The influence of the philosophy of Nietzsche. The inversion of values. The function of public values as validation and maintenance of oppression. Marxist critique of the substantive doctrines of the law. interdisciplinary approach of critical legal studies. The Politics of Law. The denial of law as a system. Four of Critical Legal Studies principles (indeterminacy, antiformalism, contradiction, and marginality). Deconstruction of the legal thought. Antiformalism and skepticism. Postmodernist legal theory. Habermas, Foucault and Derrida. Jean-François Lyotard on 'The Postmodern Condition'. Redundancy of metanarratives. Four types of subjectivity. Onslaught on the Enlightenment and rationalism including analytical tradition. The death of the subject. Jacques Lacan. The idea of 'deconstruction'. Skeptical attitude to the idea of rights.

### Required readings:

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch. 13. Critical legal theory. (34 W11 in HSE library)

### Optional readings:

- Foucault, M. *Discipline and punish: the birth of the prison* / M. Foucault; Translated by A. Sheridan. – London: Penguin Books, 1991. (34 F81 in HSE library).
- David Kairys (ed). *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982)
- Roberto Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (London: Collier–Macmillan, 1977.
- Ward, Ian. *An Introduction to Critical Legal Theory*. London: Cavendish, 1998.
- Goodrich, Peter. *Reading the Law: A Critical Introduction to Legal Method and Techniques*. (Oxford: Basil Blackwell, 1986.
- Goodrich, Peter. *Languages of Law*. London: Weidenfeld & Nicolson, 1990.
- Douzinas, Costas. *The End of Human Rights* (Oxford: Hart Publishing, 2000.
- Foucault, Michel. *The Order of Things: An Archaeology of Human Sciences*. New York: Pantheon, 1973.
- Lacan, J. *The Four Fundamental Concepts of Psychoanalysis*, transl. A.Sheridan. London: Penguin, 1979.
- Lyotard, Jean-François. *The Postmodern Condition: A Report on Knowledge*. Manchester: Manchester University Press, 1984.
- MacIntyre, Alasdair, *After Virtue: A Study in Moral Theory*. London: Duckworth, 1982.
- Patterson, Dennis (ed). *Postmodernism and Law*. Aldershot: Dartmouth, 1994.

## 9. Feminist Jurisprudence

Major strands of feminism: Liberal feminism, Radical feminism, Postmodern feminism, Difference feminism. The concern with equality and the concern with difference as major character traits. Public–private division. The presumed gender blindness of legal theory. The political nature of feminism. 'The personal is political' Suppression and exploitation of women as the major sources of the movement. The practical nature of feminist philosophy and comprehension of justice. The facts of subjugation of women all over the world. The tacit bias against women in dominant legal culture. Exploitative power and law of patriarchal society. The case of rape and utmost resistance requirement. Law as reflecting the male point of view. The ethics of care against the ethics of justice. The possibility of woman's morality and a special

virtue of care. Gilligan's critique of moral psychology of Colberg. Rights as formal, hierarchical, and patriarchal. Critical evaluation of feminism. Its utopianism and radicalism.

### **Required readings:**

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch. 14. Feminist and critical race theory. (34 W11 in HSE library)

### **Optional readings:**

Hannam, J. *Feminism*. Harlow [etc.]: Pearson Education, 2012. (316 H22 in HSE library).

Logan, A. *Feminism and criminal justice: a historical perspective*. New York: Palgrave Macmillan, 2008. (34 L85 in HSE library).

Young, I. M. *Justice and the politics of difference*. Princeton : Princeton University Press, 1990. (32 Y70 in HSE library)

Gilligan, C. *In a different voice: psychological theory and women's development*. Cambridge; London: Harvard University Press, 2003. (15 G45 in HSE library).

Walters, Margaret. *Feminism. A very Short Introduction*. Oxford: Oxford University Press, 2005. URL: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=422777&query=> – ЭБС ProQuest Ebook Central - Academic Complete.

Smart, Carol, *Feminism and the Power of Law*. London: Routledge, 1989. URL:

<https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=168805&query=> – ЭБС ProQuest Ebook Central - Academic Complete.

Baer, Judith A. *Our Lives Before the Law : Constructing a Feminist Jurisprudence*. Princeton: Princeton University Press, 1999. URL: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/search.action?op=advance&fullTitle=%22Feminist%20Jurisprudence%22&query=> ЭБС ProQuest Ebook Central - Academic Complete.

## **10. Crime and Punishment**

Punishment as inevitable violation of fundamental rights of a person. The justification for the criminal law. Criminalization and compensation, the case of Robert Nozick. Deterrence model of punishment.

Punishment of the innocent. Scapegoating. Utilitarian approach to punishment. Retributivist approach to punishment. Kantian perspective. The ideal of punishment as the avoidance of parasitism and free riding. Mental states, excuses and strict liability. The theory of culpability and responsibility. The idea of agency, choice and intention. Sophocles drama "Oedipus Rex". Contemporary systems of criminal responsibility. Intention, purpose, knowledge, recklessness and negligence. Malice aforethought. Mental states of the wrongdoer and responsibility. Mens rea (guilty mind). Commission of the offense.

### **Required readings:**

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch. 12. Why punish? (34 W11 in HSE library)

### **Optional readings:**

Foucault, M. *Discipline and punish: the birth of the prison* / M. Foucault; Translated by A. Sheridan. – London: Penguin Books, 1991. (34 F81 in HSE library).

Scanlon, T.M. *What we owe to each other* / T.M. Scanlon. – Cambridge; London: Belknap Press: Harvard University Press, 2000. (17 S30 in HSE library)

Feinberg, Joel. *Doing and Deserving*. Princeton, NJ: Princeton University Press, 1970.

Grupp, S.E. *Theories of Punishment*. Bloomington, Ind: Indiana University Press, 1971.

Johnstone, Gerry. *Restorative Justice: Ideas, Values, Debates*. London: Routledge, 2001.

Semple, Janet. *Bentham's Prison: A Study of the Panopticon Penitentiary*. Oxford: Clarendon Press, 1993.

Walker, Nigel. *Why Punish?* Oxford: Oxford University Press, 1991.

## 11. Philosophy of International Law

The law of peoples and the possibility of international justice. International law as a primitive legal system (Kelzen). National Self-defense. War. The conditions of Jus ad Bellum. Just wars? The conditions of Jus in Bello. The moral status of combatants. Non combatants in war. The status of terrorism. Terrorism, torture and just war. Jus Post Bellum.

### Required readings:

Samantha Besson, and John Tasioulas. *The Philosophy of International Law*. New York: Oxford University Press, 2010. URL: <https://ebookcentral.proquest.com/lib/hselibrary-> – ЭБС ProQuest Ebook Central.

### Optional readings:

Richard Ned Lebow. *The Tragic Vision of Politics : Ethics, Interests and Orders*. Cambridge: Cambridge University Press, 2003. URL: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/reader.action?docID=218189> – ЭБС ProQuest Ebook Central

Anthony Carty. *Philosophy of International Law*. Edinburg: Edinburhg University Press, 2007. URL: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=334901&query=Philosophy+of+international+law> – ЭБС ProQuest Ebook Central.

## 12. Theories of justice

Language, Logic and Meaning of Justice. Utilitarian Theory of Justice. The Theory of Justice of John Rawls. The Justice of Political Liberalism. Libertarian Theory of Justice by Robert Nozick. Justice by Agreement by David Gauthier. Marx's Theory of Justice. Feminism and Justice. Communitarian Critique of Justice. The Russian Historical Discourse of Justice.

### Required readings:

Wacks, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch. 10. Theories of Justice. (34 W11 in HSE library).

### Optional readings:

*Social justice: from Hume to Walzer* / Ed. by D. Boucher, P. Kelly. – London: Routledge, 1998. (330.8 S70 in HSE library)

John Rawls. *A Theory of Justice*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 1971. (34 R28 in HSE Library).

Mandle, J. Rawls's "A theory of justice": an introduction / J. Mandle. – Cambridge [etc.]: Cambridge University Press, 2009. (1 M24 in HSE Library).

Forst, R. *The right to justification: elements of a constructivist theory of justice* / R. Forst; Translated by J. Flynn. – New York: Columbia University Press, 2012. (17 F76 in HSE Library).

Leavitt, N. *The foreign policy of John Rawls and Amartya Sen* / N. Leavitt. – Lanham [etc.]: Lexington Books, 2013. (32 L44 in HSE Library).

Lehning, P. B. *John Rawls: an introduction* / P. B. Lehning. – Cambridge: Cambridge University Press, 2009. (1 L50 in HSE Library).

*Habermas and Rawls: disputing the political* / Ed. by J. G. Finlayson, F. Freyenhagen; With help from J. Gledhill. – London; New York: Routledge, 2013. (1 H11 in HSE Library).

Mill, J. S. *Utilitarianism* / J. S. Mill; Ed. by R. J. Crisp. – Oxford: Oxford University Press, 2004. (17 M70 in HSE Library).

Young, I. M. *Justice and the politics of difference*. Princeton : Princeton University Press, 1990. (32 Y70 in HSE library)



## 4 Grading system.

Class attendance is required. Unexcused absences will lower the participation grade. Students are expected to regularly do the homework reading and study according to the lists of sources (books, documents, electronic resources) provided by the lecturer. On seminars students are expected to take active part in the discussion and demonstrate good acquaintance with the content of lectures, documents and respective literature. If the student misses more than 20% of class meetings, additional assignment will be provided. The deadlines should be met. In case of the missed deadline the instructor will extract one point off the grade for each day missed. The Essay will be evaluated on the basis of the text written and oral presentation of the main thesis of it. Research paper should contain the analyses of literature on the subject as well as personal attitude to the subject matter. The oral exam by the end of the course will be provided in the form of a conversation of the student with the course instructor on one of the topics of the course.

The current work will be graded based on the effort and quality of the presentations at class. The quality of the essays will be graded too, based on both the quality of the text and the ability to present orally. The quality of the research paper will be evaluated. The final exam will be based on the student presentation of one of the 15 topics of the content of the course.

## 5 Requirements and Grading

Type of grading	Type of work	1 year		Parameters
			3	
Current	Essay Paper		23.02	10 thousand or less characters by the end second week of studies is due
			16.03.	Research paper on one of the topics. 15 thousand or more characters by the end of the terms
	Homework			Weekly homework is due
Midterm				Oral presentation of the main thesis of the essay in class
Final	Exam			Oral exam by the end of the term.

O stands for “grade”. The final grade  $O_{\text{final}}$  will be formed based on the results of the final oral exam ( $O_{\text{exam}}$ ) and accumulated grade ( $O_{\text{acc}}$ ). The accumulated grade ( $O_{\text{acc}}$ ) in its turn is formed of three parts, namely ( research paper ( $O_{\text{paper}}$ ), essay ( $O_{\text{essay}}$ )and current class work work ( $O_{\text{current}}$ ). Current class work will be evaluated based on participation – 20%, activity in the debates – 30%, homework – 30%.

The formula for the accumulated grade is the following

$$O_{\text{acc}} = 0,25 O_{\text{current}} + 0,25 O_{\text{essay}} + 0,5 O_{\text{paper}}$$

The formula for the final grade is the following

$$O_{\text{final}} = 0,5 O_{\text{acc}} + 0,5 O_{\text{exam}}$$

## **6 Methods of Instruction**

The course requires a lot of readings for every weekly class meetings. Two papers are due. The first is a small essay, which shall be written in the first quarter. The second is a research paper, an endeavor in the earnest, which will demand a serious work with the literature. Please, pick up you topic and start working on the final paper as early as possible.

### **6.1 The tentative topics of the essays**

The topic is all the same. Please pick up the theory of Philosophy of Law which sounds more plausible to you and give the explanation to your choice.

### **6.2 The tentative topics of the research papers**

The interrelation of law and morality.  
The contemporary revival of the natural law theory.  
The classical legal positivism. Bentham and Austin.  
Modern Legal positivism. Hart and Kelzen.  
Dworkin and the idea of moral integrity of law. The critical appraisal.  
What legal realism is realistic about?  
Postmodern critique of law.  
Critical legal studies. An overview.  
Theories of legal punishment.  
The morality of international law.  
The possibility of international justice.

Both, the topic of the essay and of the research paper should be coordinated with the course instructor.

The major methods applied in the course is the combination of lectures and practical discussions in the class. The students are supposed to

### **6.3 Textbooks and Readers**

Our primary textbook will be: Wacks, Raymond. Understanding Jurisprudence. An Introduction to Legal Theory. Third edition. Oxford: Oxford University Press, 2012.

### **6.4 Required Reading and Optional Reading**

See the course description, after each topic you will find it

## **7 Special Equipment and Software Support.**

Overhead projector will be needed for each lecture.