

**National Research University – Higher School of Economics**  
Department of Practical Philosophy  
**Syllabus of the course: “Philosophy of Law”**  
Master’s program “History, Theory and Philosophy of Law”

**Government of the Russian Federation**

**National Research University Higher School of Economics**

Department of Philosophy

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

Author of the syllabus: Boris Kashnikov, Doctor of Philosophy, Professor.

Approved by the School of Philosophy  
day/month/year «\_\_»\_\_\_\_\_ 2017

Head of the School:  
Vladimir Porus

Moscow, 2017

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*This syllabus cannot be used by other university departments and other higher education institutions without the explicit permission of the department of Practical Philosophy.*

## 1 Scope of Use

The current program outlines the requirements for students’ knowledge and skills and the content of the course.

The syllabus is developed for the department, responsible for teaching the course, professors and teaching assistants, students of the master’s program ‘Political Analysis and Public Policy’.

This syllabus meets the standards required by:

Standards of National Research University Higher School of Economics of Federal Masters’ Degree Program Philosophy (030100.68)

Curriculum of the master’s program ‘History, Theory and Philosophy of Law’ as of 2014.

## 2 Objectives of the course

- The students are getting some basic skills of ethical analysis of conflicts, war, massive violence and global security. The analysis will be based of both descriptive and prescriptive approach.
- They are getting some positive knowledge related to this much disputed sphere.
- They are supposed to work out some firm and everlasting values related to the sphere of war and violence, which they will be capable to justify and develop.

## 3 Supposed results.

The students are supposed to adopt the following competences:

System competencies

| <b>Code (RUS)</b> | <b>Code (ENG)</b> | <b>Competence description</b>  |
|-------------------|-------------------|--|
| <b>CK-1</b>       | <b>SC-1</b>       | Ability to analyze and improve familiar research methods and professional skills                               |
| <b>CK-2</b>       | <b>SC-2</b>       | Ability to generate concepts and theoretical models, to test new methods and tools for professional activities |
| <b>CK-3</b>       | <b>SC-3</b>       | Ability to learn new research methods and approaches on his/her own, to evolve professionally                  |
| <b>CK-8</b>       | <b>SC-8</b>       | Ability to carry out research and other professional activities in an international environment                |

Professional competencies

| <b>Code (RUS)</b> | <b>Code (ENG)</b> | <b>Competence description</b>                        |
|-------------------|-------------------|--|
| <b>ПК-1</b>       | <b>PC-1</b>       | Ability to organize research and analytical teamwork |

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|              |              |  |
|--------------|--------------|--|
| <b>ПК-2</b>  | <b>PC-2</b>  | Ability to use organizational and managerial skills in her/his research and social projects, consulting activities, analytical work.   |
| <b>ПК-3</b>  | <b>PC-3</b>  | Ability to freely use foreign languages for professional communication   |
| <b>ПК-4</b>  | <b>PC-4</b>  | Ability to communicate effectively with different audiences, to deliver her/his message clearly and to tailor it depending on the audience’s age, education, attitude to the speaker, etc. |
| <b>ПК-5</b>  | <b>PC-5</b>  | Ability to report the work results and present them according to required standards  |
| <b>ПК-6</b>  | <b>PC-6</b>  | Ability to prepare analytical materials (reviews, notes, reports, recommendations, etc) and policy proposals for decision-makers.  |
| <b>ПК-8</b>  | <b>PC-8</b>  | Ability to analyze political, economic and sociological data using different qualitative and quantitative methods.   |
| <b>ПК-9</b>  | <b>PC-9</b>  | Ability to use deep knowledge of legal and ethical standards in assessing the impact of his/her professional decisions, especially when working on important social issues.                |
| <b>ПК-10</b> | <b>PC-10</b> | Ability to apply knowledge of contemporary research methods, to interpret the results of research and to present them in an ethical manner   |

Personal and social competencies

| <b>Code (RUS)</b> | <b>Code (ENG)</b> | <b>Competence description</b>  |
|-------------------|-------------------|--|
| <b>ПК-11</b>      | <b>PC-11</b>      | Ability to define and spread legal and ethical standards in her/his professional and social activities.          |
| <b>ПК-12</b>      | <b>PC-12</b>      | Ability to leverage social and multicultural differences to solve problems in professional and social activities |
| <b>ПК-16</b>      | <b>PC-16</b>      | Ability to address ideological, social and personal challenges and issues  |
| <b>ПК-17</b>      | <b>PC-17</b>      | Ability to act according to the principles of social responsibility in her/his professional activity             |

#### 4 Role of the discipline within the structure of Master program

This course is 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 in terms of law and its application
- The basic knowledge of the foundations of law both logical and normative
- The knowledge of the basics of international and domestic legislation

#### 5 Course Plan

| №             | Topic  | Total hours | Work in the class |          | Independent study |
|---------------|--|-------------|-------------------|----------|-------------------|
|               |  |             | Lectures          | Seminars |                   |
| 1.            | Philosophy, Ethics and Law                   |             | 2                 |          | 2                 |
| 2.            | Natural Law Theory                           |             | 2                 | 2        | 2                 |
| 3.            | Classical Legal Positivism                   |             | 2                 | 2        | 2                 |
| 4.            | Modern legal positivism                      |             | 2                 | 2        | 2                 |
| 5.            | Ronald Dworkin. Moral Integrity of Law       |             | 2                 | 2        | 2                 |
| 6.            | Legal Realism                                |             | 2                 | 2        | 2                 |
| 7.            | Historical and anthropological jurisprudence |             | 2                 | 2        | 2                 |
| 8.            | Critical legal theory                        |             | 2                 | 2        | 2                 |
| 9.            | Feminist Jurisprudence                       |             | 2                 | 2        | 2                 |
| 10.           | Crime and Punishment                         |             | 2                 | 2        | 2                 |
| 11.           | Philosophy of International Law              |             | 2                 |          | 2                 |
| 12.           | Theories of justice                          |             | 2                 | 2        | 2                 |
| <b>Total:</b> |  |             | 24                | 20       | 24                |

#### 6 Requirements and Grading

| Type of grading | Type of work | 1 year |   | Parameters  |
|-----------------|--------------|--------|---|---|
|                 |              |        | 4 |   |
| Current         | Essay Paper  |        | 2 | 10 thousand characters by the end second week of studies is due |
|                 |              |        |   | Research paper on one of the topics. 20 thousand                |

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|         |          |  |  |
|---------|----------|--|--|
|         |          |  | 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.                          |

### 6.1 Course Evaluation Criteria

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.

## 7 Course Description. The content of the course.

### 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:

Murphy, Jeffrie G. and Coleman, Jules, L. *Philosophy of Law. An Introduction to Jurisprudence*. Boulder, San Francisco and London: Westview Press, 1990. Chapter 1. The Nature of Law.

#### Optional readings:

Hart, H.L. (1954) *Definition and Theory in Jurisprudence* 70 *Law Quarterly Review* 37, reprinted in his *Essays in Jurisprudence and Philosophy*.

Blackburn, Simon. *Being Good. A Short Introduction to Ethics*. Oxford: Oxford University Press, 2002.  
Christie, George and Martin, Patrick (eds), *Jurisprudence: Texts and Readings on the Philosophy of Law*. (St Paul, Minn: West Publishing, 2008).  
Hayman, Levitt, and Delgado. Richard. *Jurisprudence, Classical and Contemporary: From Natural Law to Postmodernism*. St Paul, Minn: West Publishing, 2002.  
Feinberg, Joel and Coleman, Jules (eds), *Philosophy of Law*. 7th edn. Belmont, Calif: Wadsworth/Thomson Learning, 2003.  
Harris, J.W. *Legal Philosophies*. London: Butterworths, 1997.  
Twining, William. *Law in Context: Enlarging a Discipline*. Oxford: Clarendon Press, 1997.

## 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, Raymond. *Understanding Jurisprudence. An Introduction to Legal Theory*. Third edition. Oxford: Oxford University Press, 2012. Ch.2. Natural Law Theory.

### **Optional readings:**

Finnis, John. *Natural Law and Natural Rights*, 2nd edn. Oxford: Oxford University Press, 2011.  
Hittinger, Russell. *A Critique of the New Natural Law*. Notre Dame, Ind: University of Notre Dame Press, 1987.  
Fuller, Lon. *The Morality of Law*, revised edn. New Haven, Conn and London: Yale University Press, 1969.  
Fuller, Lon. *In Defense of Natural Law*. Oxford: Oxford University Press, 1999.

Aquinas, St Thomas. *Summa Theologiae* in Selected Political Writings, transl. J.G. Dawson, ed A. Passerin D’Entrèves. Oxford: Basil Blackwell, 1970, reprint of 1959 edn.

Aristotle. *Nicomachean Ethics*, transl. H. Rackham. London: William Heinemann, 1938. (Loeb Classical Library).

Cicero, M.T., *De Re Publica*, transl C.W. Keyes. London: William Heinemann, 1928. (Loeb Classical Library).

Feinberg, Joel. *Harm to Others: The Moral Limits of the Criminal Law*. Oxford: Oxford University Press, 1984.

Hobbes, Thomas. *Leviathan*, ed. M Oakeshott (Oxford: Basil Blackwell, 1960).

Rawls, John. *A Theory of Justice*. Harmondsworth: Penguin, 1973.

Hume, David. *A Treatise of Human Nature*, ed. L.A. Selby Bigge, 3rd edn. revised by P.H. Nidditch. Oxford: Clarendon Press, 1978.

Simmonds, Nigel, *Law as a Moral Idea*. Oxford: Oxford University Press, 2007.

### **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.

#### **Optional readings:**

Aquinas, St. Thomas. *Summa Theologiae* in Selected Political Writings, transl. JG Dawson, ed. A. Passerin D’Entrèves. Oxford: Basil Blackwell, 1970, reprint of 1959 edn.

Aristotle. *Nicomachean Ethics*, transl. H. Rackham. London: William Heinemann, 1938. (Loeb Classical Library).

Cicero, M.T., *De Re Publica*, transl. C.W. Keyes. London: William Heinemann, 1928. (Loeb Classical Library).

Bentham, Jeremy. *An Introduction to the Principles and Morals and Legislation*, ed. J.H Burns and H.L. Hart. London: Athlone Press, 1970. (The Collected Works of Jeremy Bentham, ed JH Burns)

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

George, Robert P (ed). *The Autonomy of Law: Essays on Legal Positivism*. Oxford: Clarendon Press, 1995.

Hart, H.L. *Essays on Bentham: Studies on Jurisprudence and Political Theory*. Oxford: Clarendon Press, 1982.



## 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.

### Optional readings:

Campbell, Tom. *The Legal Theory of Ethical Positivism*. Aldershot: Dartmouth, 1996.

Fuller, Lon. *The Morality of Law*. New Haven, Conn and London: Yale University Press, 1969.

Hart, H L. *The Concept of Law*. Oxford: Clarendon Press, 1961.

Hart, H L. *Essays on Bentham: Studies on Jurisprudence and Political Theory*. Oxford: Clarendon Press, 1982.

Hart, H L. *Essays in Jurisprudence and Philosophy*. Oxford: Clarendon Press, 1983.

Kelsen, Hans. *General Theory of Law and State*, transl. Anders Wedberg. Cambridge, Mass: Harvard University Press, 1949.

Kelsen, Hans. *General Theory of Norms*, transl. M. Hartney. Oxford: Clarendon Press, 1991.

Kelsen, Hans. *What is Justice? Justice, Law and Politics in the Mirror of Science*. Berkeley and Los Angeles: University of California Press, 1957.

Kelsen, Hans. *Pure Theory of Law*, transl. Max Knight. Berkeley and Los Angeles: University of California Press, 1967.

Kramer, Matthew. *In Defense of Legal Positivism: Law Without Trimmings*. Oxford: Oxford University Press, 1999.

Raz, Joseph. *Between Authority and Interpretation: On the Theory of Law and Practical Reason*. Oxford: Oxford University Press, 2009.

## 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

**Optional readings:**

Dworkin, Ronald. *Taking Rights Seriously, new impression with a reply to critics*. London: Duckworth, 1978.  
Dworkin, Ronald. *A Matter of Principle*. Cambridge, Mass and London: Harvard University Press, 1985.  
Dworkin, Ronald. *Law’s Empire*. Cambridge, Mass and London: Belknap Press, 1986.  
Dworkin, Ronald. *Justice in Robes*. Cambridge, Mass and London: Harvard University Press, 2006.  
Dworkin, Ronald. *Justice for Hedgehogs*. Cambridge, Mass and London: Harvard University Press, 2011.  
Kramer, Matthew H. *In Defense of Legal Positivism: Law Without Trimmings*. Oxford: Oxford University Press, 1999.

## 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.

**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.

### Optional readings:

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.  
Hoebel, E. *The Law of Primitive Man: A Study in Comparative Legal Dynamics*. Cambridge, Mass: Harvard University Press, 1954.  
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.

### Optional readings:

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).

- 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.
- Goodrich, Peter. *Languages of Law*. London: Weidenfeld & Nicolson, 1990.
- 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.

### Optional readings:

- Walters, Margaret. *Feminism. A very Short Introduction*. Oxford: Oxford University Press, 2005.
- Rosemary P. Tong. *Feminist Thought. A More Comprehensive Introduction*. Davidson: Westview Press, 1998.
- Bubeck, Denise. *Care, Gender and Justice*. Oxford: Clarendon Press, 1995.
- Young, Iris. *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press, 1990.
- Gilligan, Carole. *In a Different Voice: Psychological Theory and Woman’s Development*. Cambridge, Mass.: Harvard University Press, 1982
- Smart, Carol, *Feminism and the Power of Law*. London: Routledge, 1989.
- MacKinnon, Catharine. *Towards a Feminist Theory of the State*. Cambridge, Mass: Harvard University Press, 1989.
- Naffine, Ngaire. *Law and the Sexes: Explorations in Feminist Jurisprudence*. London: Allen & Unwin, 1990.
- Rhode, Deborah. *Justice and Gender: Sex Discrimination and the Law*. Cambridge, Mass: Harvard University Press, 1989.
- Smart, Patricia, *Feminist Jurisprudence*. Oxford: Clarendon Press, 1993.

## 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?

### Optional readings:

Cruft, Rowan and Kramer, Mathew H, and Reiff, Mark R (eds). *Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff*. Oxford: Oxford University Press, 2011.

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

Foucault, Michel, *Discipline and Punish: The Birth of the Prison*. New York: Pantheon, 1977.

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

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

Scanlon, TM. *What We Owe To Each Other*. Cambridge, Mass: Harvard University Press, 1998.

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:

*Moral Constraints on War. Principles and Cases*. Bruno Coppieters and Nick Fotion (eds.) (Boston and Oxford: Lexington Books, 2002). Introduction.

### Optional readings:

Christopher, Paul. *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*. Upper Saddle River, Prentice Hall, 1999.

Grotius, Hugo. *The Law of War and Peace*, translated by Francis W. Kelsey. Indianapolis IN, Bobbs-Merrill Co., New York, 1962.

Hardt, Michael and Negri, Antonio. *Multitude: War and Democracy in the Age of Empire*. New York: the Penguin Press, 2004.

Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, Inc., 1977.

- Johnson, James Turner. *Ideology, Reason and the Limitation of War*. Princeton: Princeton University Press, 1975.
- Bellamy, Christopher. *The Evolution of Modern Land Warfare: Theory and Practice* (London: Routledge, 1990).
- Clark, Wesley. *Waging Modern War*. New York: Public Affairs, 2001.
- Brecher, Bob. *Torture and the Ticking Time Bomb*. Oxford: Blackwell, 2007.
- Gross, Michael. *Moral Dilemmas of Modern War. Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*. Cambridge: Cambridge University Press, 2010.
- Holmes, Robert. *On War and Morality*. Princeton: Princeton University Press, 1989.
- Benoist, Alain de. *Carl Schmitt Today. Terrorism, “Just” War, and the State of Emergency*. London: Arktos, 2013.
- Lebow, Richard N. *Why Nations Fight: The Past and Future of War*. Cambridge: Cambridge University Press, 2010.
- Lebow, Richard N. *Coercion, Cooperation and Ethics*. New York: Routledge, 2006.
- Morgenthau, Hans. *Politics Among Nations*. New York: Knopf, 1948.
- Michael Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, Inc., 1977.
- Bloom, Mia. *Dying to Kill: The Allure of Suicide Terror*. New York: Columbia University Press, 2005.
- Elstain, Jean Bethke. *Just War Against Terror. The Burden of American Power in a Violent World*. New York: Basic Books, 2013.

## 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. Just War Theory. Marxism as a Theory of Justice. Feminism and Justice. Communitarian Critique of Justice. The Russian Historical Discourse of Justice

### Required readings:

Walzer, Michael. *Spheres of Justice. A Defense of Pluralism and Equality*. Basic Books, 1983. Ch.1. Complex Equality.

### Optional readings:

- MacIntyre, Alasdair. *Whose Justice? Which Rationality?* Notre Dame, Indiana: University of Notre Dame Press, 1988.
- Campbell, Tom. *Justice*. London: MacMillan Education, 1988.
- Mill, John Stuart. *Utilitarianism*. Indianapolis. Cambridge: Hackett Publishing Company, 1979.
- Rawls, John. *A Theory of Justice*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 1971.
- Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993.
- Kymlicka, Will. *Contemporary Political Philosophy. An Introduction*. Oxford: Clarendon Press, 1990.
- Raphael, D.D.. *Concepts of Justice*. Oxford: Oxford University Press, 2001.
- Gauthier, David. *Morals by agreement*. Oxford: Clarendon Press, 1986.
- Buchanan, Allen. *Marx and Justice. The Radical Critique of Liberalism*. Totowa, New Jersey: Rowman and Littlefield, 1982.
- Walters, Margaret. *Feminism. A very Short Introduction*. Oxford: Oxford University Press, 2005.
- Tong, Rosemary P. *Feminist Thought. A More Comprehensive Introduction*. Davidson: Westview Press, 1998.
- Bubeck, Denice. *Care, Gender and Justice*. Oxford: Clarendon Press, 1995.
- Young, Iris. *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press, 1990.

Sandel, Michael. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press, 1982.

## **8 Teaching Methods and Recommendations**

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 your topic and start working on the final paper as early as possible.

### **8.1 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.

### **8.2 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.

## **9 Grading**

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.

## **10 The pattern of forming the final grade**

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

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

## **11 Reading and Materials**

### **11.1 Textbooks and Readers**

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

### **11.2 Required Reading and Optional Reading**

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

## **12 Equipment**

Overhead projector will be needed for each lecture.