

Level of Studies: <i>Doctoral Academic Studies</i>
Course Title: LAW AND MORALITY
Teacher: Prof. Radmila Vasić, PhD
Course status: optional for the Narrow scientific field <i>Theory of State and Law, Sociology of Law and Philosophy of Law</i>
Number of ECTS: 10
Requirements:
<p>Aims of the course</p> <p>Law students encounter the philosophical and theoretical legal issues to a limited extent and with varying degrees of thoroughness. In particular, the opting for the so-called Bologna Process in legal education has led to the prevalence of the understanding of the nature of law as a technique for directing and controlling social processes, and the structure of law as a logical and linguistic phenomenon, the understanding of legislative provisions as unquestionable patterns of behaviour of legal entities (and officials), the understanding of the application and interpretation of law as logical deduction justified per se, if not the only one possible and therefore the perception of the legal profession not as a profession but rather as a skill. This reduction of the phenomenon of law cannot be justified by any valid reason. The legal science as a discipline belongs to the humanities, therefore, law cannot be perceived (only) as a man-made powerful technology which enables communal life in society. The fact that law is made 'by the people' and 'for the people' imposes the obligation to perceive and study it in its entirety and complexity and taking into account its interconnections with other elements of the social order, human nature and the shared culture. In that context, comprehending the relations between law and morality seems inevitable.</p>
<p>Course result</p> <p>The course aims at offering, first of all, a short recapitulation of fundamental questions and conventional responses in the problem field of the relationship between law and morality in the manner of the western legal theory and philosophy of law, showing theoretical results as organically stemming from condensed historical experience of society. Those questions certainly include, and presuppose, determining the specific essence of law and morality, the binding character of the two normative systems, i.e. their rules, and also the determining of differences and similarities between them as regards obligatoriness. The last decades of the XX century were marked by a crisis in the recognition of the three dominant theoretical paradigms – positivism, jusnaturalism and legal realism, in the sense that, on the one hand, clear demarcation lines were being erased – and so the reliability of categorisation (classification) as well, and on the other hand, conceptions emerged which did not correspond to the mentioned thinking patterns either in terms of complying with them or in terms of renouncing them, but which offered new and different assumptions as to the understanding of law, to which students need to be introduced. On the other hand, when the mentioned discussion is translated from the world of ideas into the actual life of law, it can be noticed that in the concrete, current life of a legal community, moral and legal questions might also simultaneously emerge, and do emerge simultaneously. Whatever the responses – compatible or opposing, they always reconfirm the interconnectedness of law and morality, proving that 'human matters' cannot be judged from a single normative and interpretive premise. Certain examples will be used to demonstrate to the students the complexity and tension in the relationship between the legal and the moral viewpoint, the legal norm and moral principles, the legal security and the autonomy of conscience, offering the possibility to the students to make their own conclusions regarding that relationship.</p>
<p>Course content</p> <p>I. Introductory topics, Conceptual demarcation of law and morality, Legal obligatoriness and legal obligation, Moral obligatoriness and moral obligation, Complying with legal and moral obligations; II. Legal positivism, Separation of law and morals, Bentham's utilitarianism and law as codified commands, Law as the commands of a sovereign in Austin's jurisprudence, Hart's critique of positivistic separation of law and morals; III. Post-positivism, Constitutional theories (Dworkin, Alexy, Nino), Natural law theories (Fuller, Finnis); IV. Moral reasoning and legal regulation, Moral content of legal principles, Ethical dimension of legal concepts, Incompatibility or the opposing character of the concepts' content from the ethical and the legal perspective, Moral and legal valuation of human acts – Application of ethical and legal reasoning on specific questions and areas.</p>
<p>Recommended Literature</p> <p><i>Uvod u etiku</i> [Introduction to Ethics], edited by Piter Singer, Izdavačka knjižarnica Zorana Stojanovića, Sremski Karlovci-Novı Sad, 2004. G. Faso, <i>Istorija filozofije prava</i> [History of the Philosophy of Law], CID, Podgorica,</p>

2007. G. Radbruch, *Filozofija prava* [The Philosophy of Law], Nolit, Belgrade, 1980. Aristotel, *Nikomahova etika* [Nicomachean Ethics], Kultura, Belgrade, 1970, I. Kant, *Metafizika morala* [Metaphysics of Morals], Izdavačka knjižarnica Zorana Stojanovića, Sremski Karlovci-Novı Sad, 1993, *Zasnıvanje metafizike morala* [Groundwork for the Metaphysics of Morals], Dereta, Beograd, 2008. R. Lukić, *Sociologija morala* [Sociology of Morals], Zavod za udžbenike i nastavna sredstva, Belgrade, 1995. Đ. Del Vekio, *Pravo, pravda i država* [Law, Justice and State], Plato, Belgrade, 1998. A. Ross, *On Law and Justice*, The Lawbook Exchange, Ltd, Clark, New Jersey, 2004. D. Babić, *Pravo i moral* [Law and Morals], Faculty of Law, University of Belgrade, Belgrade, 1984. L. Petražicki, *Teorija prava i morala* [Theory of Law and Morality], CID, Podgorica, 1999. R. Pound, *Law and Morals*, August M. Kelley, New York, 1969. R. Dvorkin, *Carstvo Prava* [Law's Empire], CID, Podgorica, 2003; *Freedom's Law. The Moral Reading of American Constitution*, Cambridge-Mas., 1996; *Sovereign Virtue. The Theory and Practice of Equality*, Cambridge-Mas., 2000. L.L. Fuller, *The Morality of Law*, Yale University Press, New Haven and London 1964; *The Law in Quest of Itself*, Beacon Press, Boston, 1966; *Legal Fictions*, Stanford University Press, Stanford, 1967. J.M. Finnis, *Natural Law and Natural Rights*, Oxford, 1980; *Fundamentals of Ethics*, Oxford, 1983. C. S. Nino, *The Ethics of Human Rights*, Oxford, 1991. H.L.A. Hart, *Ogledi iz filozofije prava* [Tests in the Matter of Philosophy of Law], Plato, Belgrade, 2003. H. Perelman, *Pravo, moral i filozofija* [Law, Morals and Philosophy], Nolit, Belgrade, 1983. A. Kaufman, *Pravo i razumevanje prava* [Law and Understanding Law], Gutenbergova galaksija, Belgrade-Valjevo, 1998. J. Bentham, *The Collected Works of Jeremy Bentham*, London-Oxford, 1968; *An Introduction to the Principles of Morals and Legislation*, Harrison, Oxford, 1948; *The Limits of Jurisprudence Defined*, Everett, New York, 1945. J. Austin, *The Province of Jurisprudence Determined. The Uses of the Study of Jurisprudence*, Indianapolis, 1998; *The Province of Jurisprudence Determined*, edited by W.E. Rumble, Cambridge, 1995. R. Alexy, „Relations Between Law and Morality“, *Ratio Juris*, 1989, „Justification and Application of Norms“, *Ratio Juris*, 1993. J. Habermas, *Justification and Application. Remarks on Discourse Ethics*, Cambridge, 1993. T. Živanović, „Osnovni problemi etike“ [Fundamental Issues in Ethics]. In: *Preobražaji ideje prava. Jedan vek pravne filozofije na Pravnom fakultetu u Beogradu (1841-1941)*, edited by Danilo Basta, Faculty of Law, University of Belgrade, Belgrade, 1991.

Number of lectures – active classes	Theoretical classes: 75	Research paper:
Instruction methods: theoretical classes, consultations.		
Grading system (maximum number of points 100)		
Activities during the semester: 30 points		
Oral exam: 70 points		