

Level of Studies: <i>Master Academic Studies</i>
Course Title: LAW AND MORALITY
Teacher: Prof. Radmila Vasić, PhD
Course status: optional – <i>Law and Theory</i> module, <i>Theory and Law</i> submodule
Number of ECTS: 10
Requirements: /
Aims of the course: 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. Two opposing, and, it could be said, conventional attitudes will emerge: the regard of law for moral values, in the jusnaturalistic perspective, and the indifference of the ‘command under threat’ towards moral good, in the juspositivistic conceptions.
Course results: Introducing students to basic issues in the relations between the concepts of law and morality and the enabling of students to comprehend the dynamics of this relation in the legal practice and in the social relations in general.
<p>Course content:</p> <p>1. <i>Introductory topics</i> Conceptual demarcation of law and morality Legal obligatoriness and legal obligation Moral obligatoriness and moral obligation Complying with legal and moral obligations</p> <p>2. <i>Legal positivism</i> Separation of law and morality Bentham’s utilitarianism and law as codified commands Law as commands of a sovereign in Austin’s jurisprudence Hart’s critique of positivistic separation of law and morality</p> <p>3. <i>Post-positivism</i> Constitutional theories (Dworkin, Alexy, Nino) Natural law theories (Fuller, Finnis)</p> <p>4. <i>Moral and legal criteria as determining dimensions of the legal community</i> 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 onto specific questions and areas</p>
<p>Literature</p> <p>Basic:</p> <p>H. Perelman, <i>Pravo, moral i filozofija</i> [Law, Morals and Philosophy], Nolit, Belgrade, 1983 (chapter 15, 199-206);</p> <p>H. Hart, <i>Pojam prava</i> [The Concept of Law], Faculty of Law, University of Belgrade and Official Gazette, Belgrade, 2013 (Pravda i moral [Justice and Morals], 213-241; Pravo i moral [Law and Morals], 243-268)</p> <p>H. Hart, <i>Ogledi iz filozofije prava</i> [Tests in the Matter of Philosophy of Law], Plato, Belgrade, 2003 (Pozitivizam i razdvajanje prava i morala [Positivism and the Separation of Law and Morals], 54-98);</p> <p>L. L. Fuller, <i>The Morality of Law</i>, Yale University Press, New Haven and London, 1964 (chapters I and II, 3-94)</p> <p>A. Kaufman, <i>Pravo i razumevanje prava. Osnovni problemi hermeneutičke filozofije prava</i> [Law and Understanding Law. Fundamental Problems in the Hermeneutic Philosophy of Law], Gutenbergova galaksija Belgrade-Valjevo, 1998 (O problemu protivrečnosti u ocenama između prava i morala [On the Issue of Opposition</p>

in the Evaluations between Law and Morality], 175-197);

J. Raz, *The Morality of Freedom*, Clarendon Press, London, 1988;

R. Dvorkin, *Carstvo prava* [Law's Empire], CID, Podgorica, 2003.

Supplementary:

R. D. Lukić, *Sociologija morala* [Sociology of Morals], SASA, Belgrade, 1974 (Pojam i razvoj sociologije morala [The Notion and Development of Sociology of Morals], 3-93);

R. Vasić, *Pravna država i tranzicija. Teorijski model i kontekstualno uslovljavanje* [Rule of Law and Transition. A Theoretical Model and Context Conditionality], Belgrade, 2004 (Pravna priroda i funkcija lustracije. Prilog pojmu /pravne/ odgovornosti [Legal Nature and Function of Lustration. Contribution to the notion of /legal/ responsibility], 102-135);

R. Vasić, *Radomir D. Lukić: mogućnosti zasnivanja sociologije morala* [Radomir D. Lukić: The Possibility of Establishing a Sociology of Morality]. In: *Sto godina sociologije u Srbiji, Sociološki pregled*, year XLVI (2012), No. 2 (special edition), Belgrade, 2012, 393-413.

Number of lectures – active classes				Other classes
Theoretical classes:15	Practical classes:	Other forms of instruction:	Research paper:	
Instruction methods: theoretical classes, consultations				
Grading system (maximum number of points 100)				
Pre-exam obligations	points	Final exam		points
Activities during lectures	20	Written exam		
Activities during practical classes		Oral exam		60
Tests			
Seminar classes	20			