

<b>Program: Master Academic Studies</b>
<b>Course title: THEORIES OF SUBJECTIVE RIGHTS</b>
<b>Teachers: Miodrag Jovanovic</b>
<b>Course status: optional</b>
<b>Number of ECTS: 10</b>
<b>Requirements:</b>
<p><b>Aims of the course:</b> The aim of the course is that doctoral students become acquainted with various theoretical approaches to the study of subjective rights. Apart from the historical development of different theoretical views on the concept of subjective right and their classification (Georg Jellinek, Wesley Hohfeld), the focus will be on the major school of thoughts, such as Herbert Hart's 'choice theory' and Joseph Raz's 'interest theory'. In addition, students will be introduced to different dimensions of the study of subjective rights – normative, analytic and empirical (Jules Coleman, Robert Alexy). In the last part, we will be dealing with the justifiability of treating human rights as a special class of subjective rights, as well with some new concepts, such as collective rights</p>
<p><b>Course result:</b> After taking this course and passing the exam, students will be capable of forming analytical judgments regarding which of the theories of subjective rights prevails in the given positive legal order; they will be able to critically assess normative justification for the adoption of different theoretical models; finally, they will be equipped for a comparative analysis of pros and cons of the existing theories in different fields of law (public and private)</p>
<p><b>Course content:</b> In the first part of the course, students will be introduced to dilemmas regarding the adequate dating of the concept of subjective rights – for instance, whether this concept can be tied to the Roman law concept of <i>obligatio</i>, or it is a more recent conceptual framework, dating back to 14<sup>th</sup> or 15<sup>th</sup> century. In the next step, students will become acquainted with the early theories about the nature of subjective rights in both Anglo-Saxon literature (Austin's 'will theory'; Bentham's 'benefit theory') and German literature (Windscheid's 'Willenstheorie' and Jhering's 'Interesstheorie'). Then, the emphasis will be put on the contemporary versions of these theories, Hart's 'choice theory', as well as 'interest theory', which is commonly attributed to Raz and MacCormick. Furthermore, students will be introduced to the most well-known classifications of subjective rights, those of Georg Jellinek and Wesley Hohfeld and their application in the areas of public and private law. This part will be concluded with the systematic treatment of the topic of subjective rights, offered by Alexy, as well as by Coleman and Kraus. Finally, we will venture upon Kelsen's deconstruction of the concept of subjective right within his Pure Theory of Law. In the last part of the course, we will be dealing with the justifiability of treating human rights as a special class of subjective rights, both in constitutional law and in international human rights law. Furthermore, we will discuss the possibility of theoretical foundations of new conceptual frameworks, such as collective rights – rights held by collectives – and their relation with the existing individual, especially human rights.</p>
<p><b>Literature:</b></p> <p><u>Mandatory:</u></p> <p>Alexy, Robert, <i>A Theory of Constitutional Rights</i> (translated by Julian Rivers) (Oxford University Press, 2010)</p> <p>Coleman, Jules and Kraus, Jody, 'Rethinking the Theory of Legal Rights', <i>The Yale Law Journal</i> 7 (1986) 95: 1335–71.</p> <p>Hart, Herbert L. A., 'Bentham on Legal Rights', in A. W. B. Simpson (ed.), <i>Oxford Essays in Jurisprudence</i> (second series) (Oxford: Clarendon Press, 1973), pp. 171–201.</p> <p>'The Ascription of Responsibilities and Rights', <i>Proceedings of the Aristotelian Society</i>, New Series (1949) 49: 171–94.</p> <p>Hohfeld, Wesley N., <i>Fundamental Legal Conceptions</i> (New Haven: Yale University Press, 1964).</p> <p>Jovanović, Miodrag, <i>Collective Rights – A Legal Theory</i> (Cambridge: Cambridge University Press, 2012)</p> <p>Kelzen, Hans, <i>Opšta teorija prava i države</i>, (Beograd, Pravni fakultet Univerziteta u Beogradu, Centar za publikacije, 1998).</p> <p>Raz, Joseph, 'Legal Rights', <i>Oxford Journal of Legal Studies</i> 1 (1984) 4: 1–21.</p>

'Rights and Politics', Indiana Law Journal 1 (1995) 71: 27–44.  
 The Morality of Freedom (Oxford: Clarendon Press, 1986).

**Optional:**

Bobbio, Norberto, The Age of Rights (Cambridge: Polity Press, 1996)

Dinstein, Yoram, 'Collective Human Rights of Peoples and Minorities', International and Comparative Law Quarterly 1 (1976) 25: 102–20.

Freeman, Michael, 'Are There Collective Human Rights?', Political Studies, (1995) 43: 25–40.

MacCormick, Neil, 'Rights in Legislation', in P. M. S. Hacker and Joseph Raz (eds.), Law, Morality and Society – Essays in Honour of H. L. A. Hart (Oxford: Clarendon Press, 1977), pp. 189–209.

Pavićević, Đorđe, Ljudska prava: preispitivanje ideje (Beograd: Službeni glasnik, 2011)

<b>Number of lectures – active classes</b>	<b>Theoretical classes:</b>	<b>Practical classes :</b>	
<b>Instruction method:</b> Consultations and individual research work			
<b>Grading system (maximum number of points 100)</b>			
<b>Pre-exam obligations</b>	points	<b>Final Exam</b>	points
Activities during lectures	<b>30</b>	<b>70</b>	
Activities during practical classes			
Tests			
Seminar classes			