**Philosophy of Law and Society**

**Lecturers:** Prof. Zoltán Fleck, Dr. Balázs Fekete, Dr. Csaba Győry (Department for Theory of Law & Society)

zfleck@ajk.elte.hu

**Course description**

The course focuses on theoretical issues of modern society and its regulation, based on some classic texts and concepts students critically see contemporary social and legal dilemmas. They formulate and articulate their own arguments on debated tasks by the help of theoretical positions. The course address theoretical texts from contextual perspective, giving opportunities for evaluating the historical, cultural and social environment of theories. During the second part of the course students get acquainted with issues of East-Central European socio-legal systems and use theoretical concepts for the analysis.

**Learning outcomes**

Students should be able to:

* Understand theories and differentiate among different positions on hard questions;
* Create and defend their own positions in active disputes based on informed opinion;
* Evaluate the usefulness and joy of reading and discussing theories;
* Accept the plurality of disciplinary positions and the values of extra-legal aspects of legal regulation.

**Learning activities**

Classes are based on strong interactivity and involvement. Short lectures, common text interpretations, student lectures.

**Schedule and literatures**

Class 1. Introduction: Central Europe as a distinct historical and legal phenomenon (Balázs Fekete)

Class introduction, discussion of the syllabus, course requirements; mapping the world’s legal orders, main units of comparative law taxonomy; Central Europe as a historical region in Europe, the main features of modern Central European historical development (modernisation, Western and Eastern influences, the political tradition of autocracy); Central Europe on the world map of legal orders

Reading:

Ugo Mattei, ‘Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems’ (1997) 45 *The American Journal of Comparative Law* 5–44.

László Péter, ‘Central Europe and its Reading into the Past’ (1999) 6 *European Review of History* 101–111.

Recommended reading:

Jenő Szűcs, ‘The Three Historical Regions of Europe’ (1983) 29 *Acta Historica Academiae Scientiarum Hungaricae* 131–184.

George Schöpflin: ‘The Political Traditions of East Europe’ (1990) 119 *Daedalus* 55–90.

Class 2. Basic concepts: legal positivism and its legacy in Central Europe (Balázs Fekete)

Definitions of legal positivism by Hart and Kelsen; the idea of moderate legal positivism vs a radical understanding of legal positivism; role and positions of morals in legal positivist theories, a post-positivist criticism of modern legal positivism by Dworkin; the idea of socialist legal positivism as exposed by Marxist theorist, the survival of socialist legal positivism following 1989

Reading:

Herbert Hart, ‘The New Challenge to Legal Positivism (1979)’ (2016) 36 *Oxford Journal of Legal Studies* 459–475.

Ronald Dworkin, ‘Hart’s Postscript and the Character of Political Philosophy (2004) 24 *Oxford Journal of Legal Studies* 1–37. (spec: 1–5 and 9–12.)

Recommended Reading:

John Gardner, ‘Legal Positivism: 5 ½ Myths’ (2001) 46 *American Journal of Jurisprudence* 199–228.

Class 3. Basic concepts: natural law theories and their legacy in Central Europe (Balázs Fekete)

Main differences between premodern and modern natural law theories; Bobbio’s approach of natural law as a concept of logic, and the various possible relationships between natural law and positive law; natural law as understood by Radbruch, natural law as understood by Finnis; the “invisible constitution” as a formal reappearance of natural law in the post-transitory Hungarian legal scholarship

Reading:

John Finnis, ‘Natural Law Theory: Its Past and Its Present’ (2012) 57 *American Journal of Jurisprudence* 81–102.

Gustav Radbruch, ‘Statutory Lawlessness and Supra-Statutory Law (1946)’ (2006) 26 *Oxford Journal of Legal Studies* 1–11.

Recommended reading:

Lon Fuller, ‘Positivism and Fidelity to Law--A Reply to Professor Hart’ (1957) 71 *Harvard Law Review* 630–672.

Class 4. Basic concepts: legal culture and its use in understanding Central European legal orders (Balázs Fekete)

The idea of culture and civilization in German Romantic thinking; the concept of legal culture as defined by Lawrence M. Friedman; the various uses of legal culture in contemporary legal scholarship; the positive and negative myth of rule of law, the legal cultures of Central Europe as compared to Western European legal cultures: informalism, the predominance of the political, the lack of rights culture

Reading:

David Nelken, ‘Comparative Legal Research and Legal Culture: Facts, Approaches and Values’ (2016) 12 *Annual Review of Social Sciences* 45–62.

Marina Kurkchiyan**,** ‘The Illegitimacy of Law in Post-Soviet Societies’ in Denis J Galligan, Marina Kurkchiyan (eds), *Law and Informal Practices. The Post-Communist Experience.* (Oxford, Oxford University Press, 2003) 24–46.

Recommended reading:

John L. Gibson, Gregory A. Caldeira, ‘The Legal Cultures of Europe’ (1996) 30 *Law and Society Review* 55–85.

Class 5. Socio-legal perspectives (Zoltán Fleck)

The third branch of theoretical developments of legal theory: sociological theories, concepts and methodologies (roots and basic assumptions). Modern socio-legal theories, contemporary issues.

Reading:

Reza Banakar: Sociological Jurisprudence, in: Banakar, Travers (eds.): *An Introduction to Law and Social Theory*, Hart, 2002

Roger Cotterrell: Law in Social Theory and Social Theory in the Study of Law, in: Austin Sarat (Ed.): *The Blackwell Companion to Law and Society*, Blackwell, 2004

Recommended Reading:

Frank Munger: Mapping Law and Society, in Sarat, Constable, Engel, Hans, Lawrence (eds.): *Crossing Boundaries. Traditions and Transformations in Law and Society Research*, Northwestern University Press, 1998

Class 6. Critical theories, critical approaches (Zoltán Fleck)

Critical Legal Studies and its legacy play an important role from the 1960’s, the marxist theoretical elements and the CLS left significant traces on the contemporary legal theories.

Reading:

Jírí Pribán: Sharing the Paradigms? Critical Legal Studies and the Sociology of Law, in: Banakar, Travers (eds.): *An Introduction to Law and Social Theory*, Hart, 2002

Alan Hunt: Law, State, and Class Struggle, in: Hunt: *Explorations in Law and Society*, Routledge, 1993

Recommended Reading:

Roberto Mangabeira Unger: The Critical Legal Studies Movement. Another Time, A Greater Task, Verso, 2015

Class 7. Critical studies in CEE countries (Zoltán Fleck)

The partial revival of critical perspectives in post-communist countries gave impetus on theoretical and empirical studies. Whether it remains on the perifery or could challenge the mainstreams?

Reading: Rafal Manko, Cosmin Cercel, Adam Sulikowski (eds.): Law and Critique in Central Europe. Questioning the Past, Resisting the Present, Counterpress, 2016

Recommended Reading:

Carol Greenhous, Elizabeth Merz, Kay Warren (eds.): Ethnography in Unstable Places, Duke University Press, 2002

Class 8. Methodologies of Socio-legal Studies (Zoltán Fleck)

Methodological consequences and routes in sociological and critical analysis of law

Reading: Reza Banakar and Max Travers: Law, Sociology and Method, in: Banakar and Travers (eds.): *Theory and Method in Socio-Legal Research*, Hart, 2005

Halliday, Simon - Schmidt, Patrick(eds.): *Conducting Law and Society Research. Reflections on Methods and Practices*, Cambridge University Press, 2009

Recommended Reading:

E Christodoulidis, R Dukes & M Goldoni (eds) *Research Handbook on Critical Legal Theory,* Edward Elgar Publishing, 2019

Class 9. Law and Economics as a Legal Theory: the Basics (Csaba Győry)

Law and economics as a normative theory of law. The basic tenets of law and economics. The concept of efficiency. Efficiency as a moral value. The Coase Theorem. Efficiency and distributive justice.

Required reading:

Cooter, Robert, Ulen, Thomas (2011): *Law and Economics*. Adison-Wesley. pp. 1-11; 70-112.

Recommended reading:

Dworkin, Ronald (1980): *Is Wealth a value?* The Journal of Legal Studies, Vol. 9, No. 2, Change in the Common Law: Legal and Economic Perspectives. pp. 191-226

Class 10. Law and Economics as an Epistemology (Csaba Győry)

The roots of law and economics in American legal theory and practice. Law and economics and legal positivism. Law and economics and doctrinal legal thought.

Required reading:

Grechenig, Kristoffel R. and Gelter, Martin (2008): *The Transatlantic Divergence in Legal Thought: American Law and Economics vs. German Doctrinalism*. Hastings International and Comparative Law Review, Vol. 31, No. 1, pp. 295-360

Class 11. Exporting law to Eastern Europe 1. The legal origins thesis: law and economics meets functionalist comparative law.

The legal origins thesis as a theory of the efficiency of US legal institutions. Legal origins thesis and law and development. Differing conceptualizations of the relationship between law and the economy. Legal export to emerging markets.

Required reading:

Porta, R., Lopez‐de‐Silanes, F., Shleifer, A., & Vishny, R. (1998). *Law and Finance*. Journal of Political Economy*,* *106*(6), 1113-1155.

Milhaupt, Curtis J. And Pistor, Katharina (2008): *Law and Capitalism. What Corporate Crises Reveal about legal Systems and Economic Development around the world*. University of Chicago Press, pp. 17-47; 149-229.

Class 12. Exporting law to Eastern Europe 2. The Global Hegemony of US Law. Law and Economics as Legitimation of Neoliberalism

Required reading:

Mattei, Ugo; Nader, Laura (2009): *Plunder. When the Rule of Law is Illegal. Blackwell Publishing. pp.*  81-100; 196-217.

Kelemen, R. Daniel; Sibbitt, Eric (2004): The Globalization of American Law. [International Organization](https://www.cambridge.org/core/journals/international-organization) , [Volume 58](https://www.cambridge.org/core/journals/international-organization/volume/8E45AA8899D38D917D0E631D309F0C87) , [Issue 1](https://www.cambridge.org/core/journals/international-organization/issue/B5209F75B56A3827DF7E41AD38E548D9) , February 2004 , pp. 103 – 136.

**Assessment**

Individual or group project (30), Presentation - 70%