

Continental Traditions in Jurisprudence

Dr. Rodrigo Garcia Cadore, LL.M.

Summer Semester 2023 Preliminary Overview

INTRODUCTION: Charting the options

Session 1 (16 June 2023): Structure and dynamics of 'Continental Traditions in Jurisprudence' (One session)

PART ONE: Traditions – Historical approaches

I. Ancient/Classical Traditions (Two sessions)

Session 2 (16 June 2023): Symbols of Justice. The foundational opposition: Natural Law vs. Positive Law.

Session 3 (23 June 2023): The rise of the (Roman) legal science.

II. Medieval Traditions (One session)

Session 4 (23 June 2023): Academic study of law: Glossators, Commentators and Praxists.

III. Modern Traditions (Two sessions)

Session 5 (27 June 2023): The German approaches: Positive Law, the idea of a 'Rechtswissenschaft' and the Historical School.

Session 6 (27 June 2023): 'Begriffsjurisprudenz' and the Free Law Movement. The emerging science of the legal process.

PART TWO: The structure of the law – The Pure Theory of Law of the Vienna School

I. The Normative Legal Positivism: A theory of legal Knowledge (One session)

Session 7 (30 June 2023): Legal Positivisms and the Pure Theory of Law.

II. The legal perspective (Two sessions)

Session 8 (30 June 2023): The Legal Norm as an Interpretation Scheme. Law and Violence. Legal Sanctions.

Session 9 (7 July 2023) Law and Morality. The Problem of Justice.

III. Law's Engineering: Legal structures and legal process (Two sessions)

Session 10 (7 July 2023) Legal Statics and Legal Dynamics. The Static Point of View: The Notion of a Legal Right. The Legal Obligation. Deconstructing Dualisms.

Session 11 (14 July 2023): The Dynamic Point of View. The Competence Norm/Legal Empowerment. Legal Hierarchies and Legal Sources. Law Creation and Law Application.

IV. Recurrent Legal Problems (Up to two sessions)

Session 12 (14 July 2023): Legal Interpretation and the Problem of Legal Errors: 'Fehlerkalkül' and 'Rechtskraft'.

CLOSURE/EVALUATION

Session 13 (fourth or fifth week of July 2023): Oral Exams.

Classic works on legal theory

- Hart, H. L. A.:* The Concept of Law (1961) (ger.: Der Begriff des Rechts. Mit einem Postscriptum von 1994, 2011, 395 p.).
- Kelsen, Hans:* Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik (1934) (Studienausgabe der 1. Aufl. 1934, hrsg. von Matthias Jestaedt, 2008, LXVI und 181 p.) (eng.: Introduction to the problems of legal theory, 1997, 216 p.).
- Kelsen, Hans:* Reine Rechtslehre, 2. Aufl., (1960) (Studienausgabe der vollst. 2. Aufl. 1960, hrsg. von Matthias Jestaedt, 2017, ca. 850 p.) (eng.: The Pure Theory of Law, 1967, 368 p.).
- Ross, Alf:* On Law and Justice (1959/2019).

Helpful 'introductory' works

- Kelly, J. M.:* A short history of western legal theory (1992).
- Kletzer, Christoph:* The Idea of a Pure Theory of Law (2018).
- Köpcke, Maris:* Legal Validity: The Fabric of Justice (2019).
- Simmonds, Nigel E.:* Central Issues in Jurisprudence, 5th edition (2018).
- Somek, Alexander:* Knowing what the law is (2021).
- Vesting, Thomas:* Legal Theory (2017).

Further relevant information

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The course materials are available online <https://ilias.uni-freiburg.de/> (Password: Fehlerkalkül2023)

Attendance and grading

Attendance is mandatory and will be checked. Your participation is very much encouraged and will be reflected in your grade. The course will end with an oral exam. You will also be required to write a short essay after the lecture period. The result of the **oral exam** represents **60%** of your final grade; the result of the **written exam** represents, for its turn, **40%**.