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# **Introduction to Legal Philosophy**

Chair of Philosophy and Theory of Law, Legal Sociology and  
International Public Law

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# The Problem

The starting point:

Law is mandatory and is enforced, ultimately by physical force

How do we know that the law that is enforced is legitimate?

What are yardsticks for legitimate law?

## What is the content of legal philosophy and theory?

- Descriptive and analytical theory. For example:
  - What is the structure of a fundamental right?
  - What is an «obligation»?
  - What does «validity» a norm mean?
- Explanatory theories. For example:
  - Law is the expression of culture (Is it?)
  - Law is caused by the structure of the economy (Is it?)

- Normative Theory:
- Questions of principle:
  - What is justice?
  - What do we owe to each other?
  - What is the nature, content and justification of human rights?
  - Legitimacy of public authority
  - The normative structure of the international order
  - Theory of private and criminal law
- Concrete questions:
  - What is the content of just law?
  - Is a ban of Burqas legitimate?
  - What rights of privacy are justified?

- The relation of law and morality
- What are the limits of legal insight and knowledge?
  - Epistemology
- What is the stuff normative propositions refer to?
  - Ontology
- Grotius and methodological secularism
- The question of universalism

## The point of theory

- Theoretical insight important for successful practice
- Internationalisation of law
  - Understanding of general structures of law as a key to rise to challenges of internationalisation
- The intrinsic value of insight
- Critical normative yardsticks
- Consciousness of the sense of legal systems as a precondition for the survival of a decent order of law

# Theory of Justice

- The foundations in the thought of antiquity (Socrates, Plato, Aristotle)
  - Justice a matter of insight, not of individual preferences or pleasure
  - Some things are just/unjust or good/evil independently of whether an agent thinks so
  - Content of justice
    - Give to everybody her due
    - Proportional equality
    - The contentious issue
      - The criterion of distribution
      - Performance? Need? Humanity?

- Justice as the foundation of the construction of society
  - Democracy? Oligarchy? Aristocracy? Tyranny
  - Plato's hierarchical vision?
- Justice and goodness and the happy life
  - Socrates: It is better to suffer injustice than to do injustice
  - The intrinsic good of an ethical life
  - The intrinsic good of a legitimate legal order



- Modern theory: John Rawls
  - Two principles of justice
    1. Universal freedom
    2. a) Unequal distribution of material goods just if the worst off profits absolutely
      - b) Equal access to public office

## **A concept of Justice**

1. Equality of standards
2. Equal application of standards
3. Equality as default principle
4. Reasonable determination of criteria of distribution
5. Preservation of equal dignity as human being

# Theory of rights

- Rights and natural law
- Rights and social contract theory
- Enlightenment, practical reason and dignity
- Kant's categorical imperative
- The idea of universalisation:

“Act only in accordance with that maxim through which you can at the same time will that it becomes a universal law”.

- The principle of humanity:

“So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means”.

- The concept of right:

„Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom“.

- One natural subjective right:

„Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only right belonging to every man by virtue of his humanity“.

# Contemporary human rights theory

- Why human rights?
  - Protection of agency and personhood?
  - Interests or needs?
  - Capabilities?
- A promising way forward:
  - A theory of basic universal human goods
    - Life; respect of the person; bodily integrity; freedom; legitimate equality
  - A political theory of realising basic universal human goods
  - Normative principles
    - Justice and solidarity as springs of rights