

Juridicism

Syllabus

Course Number: GPHI 5515

Day: Tue

Time: 6:00 p.m.-7:50 p.m.

Location: 6 East 16th Street, Room 609

Professor: Daniel Loick

Email: LoickD@newschool.edu

Office hours: Tue 4:00-6:00 p.m. (or by appointment)

Office location: D1115A (6 East 16th St)

Course Description:

The term ‘juridicism’ refers to a problematic dominance of the law within Western cultural traditions. Citing juridicism means to claim that the legal form fundamentally colonizes the way in which we relate to ourselves, to others, and to the world so that our (inter-) subjectivity becomes deformed, distorted or deficient. Problematizing juridicism – a task that has only been performed very rudimentary by several rather disparate philosophical positions – is not so much about a critique of the injustice of law, for example, concerning the gap between positive and natural law or between law and morality, but addresses rather more fundamental, namely ethical, epistemological and/or ontological damages. The seminar will assemble, compare and evaluate the criticisms of juridicism that can be found in different philosophical traditions. We will read and discuss texts by Hegel, Marx, Nietzsche, Heidegger, Deleuze, Agamben, Esposito, Hamacher and Honneth, among others.

Course Requirements:

1. Readings: Thorough reading of all assigned primary and secondary texts.
2. Weekly Questions (10%): Post two questions on Canvas you have about one of the assigned texts. The questions are due by 3:00 p.m. the day of class.
3. Class presentation (20%): One class presentation about the primary reading for one session. A class presentation includes either a handout or a PowerPoint presentation, outlining the core claims and the argumentative structure of the text(s). The presentation in class can be 10-15 minutes max (!). You might consider incorporating your class presentation into your final term paper.
4. Final term paper (70%): 15-20 pages, due May 31st (per email attachment!) Please send in an abstract for your paper by April 30th or earlier (1 page). The abstract should state your topic, a tentative hypothesis and a preliminary structure of the paper. I will comment on your abstract either during office hours or via email. I am also happy to comment on preliminary drafts of your paper if you submit it by April 30th. Please consult the University’s Academic Honesty and Integrity policy and the Intellectual Property Rights policy (<http://www.newschool.edu/policies/>).

Learning outcomes:

At the end of the seminar, you should

- a) have become familiar with some of the classical texts in continental social philosophy;
- b) have gained an overview of different accounts in the critical theory of rights;
- c) have gained a differentiated understanding of the conceptual cluster around “juridicism” and its philosophical implications;
- d) be able to identify cases of (philosophical and social) juridicism and evaluate them using the critical framework acquired in this seminar;
- e) have improved your analytical and hermeneutical skills.

Course Material:

All assigned primary and secondary texts will be uploaded to Canvas.

Class Schedule

January 26th

Introduction and Overview

February 2nd

Hegelian Foundations I

Primary Reading:

- Hegel, G.W.F. (1948): “The Spirit of Christianity and its Fate”, in *On Christianity: Early Theological Writings*, trans. T.M. Knox, Chicago: University of Chicago, pp.182-301

Secondary Reading:

- Bernstein, Jay (2003): “Love and Law. Hegel’s Critique of Morality”, in *Social Research*, Summer 2003.

Further Reading:

- Hamacher, Werner (1989): *pleroma: Reading in Hegel*, Stanford: Stanford University Press
- Loick, Daniel (2014): “Terribly Upright. Hegel’s Critique of Juridicism”, in *Philosophy & Social Criticism*, 8.2014
- Yovel, Yirmiyahu (1998): *Dark Riddle. Hegel, Nietzsche, and the Jews*, University Park: Pennsylvania State University Press

February 9th

Hegelian Foundations II

Primary Reading:

- Hegel, G.W.F. (2001): „The Roman World, Section I“, in *Lectures on the Philosophy of History*, trans. John Sibree, New York: Batoche Books, pp. 296-324
- Hegel, G.W.F. (2010): “The State of Legality”, in *Phenomenology of Spirit*, trans. Terry Pinkard: <http://terrypinkard.weebly.com/phenomenology-of-spirit-page.html>, pp. 421-427

Secondary Reading:

- Bernasconi, Robert (1991): “Persons and Masks: The Phenomenology of Spirit and its Laws”, in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds): *Hegel and Legal Theory*, London/New York: Routledge.

Further Reading:

- Desmond, William (1989): “Hegel, Legal Status, and Otherness”, in *Cardozo Law Review*, 1988/89
- Honneth, Axel (2010): *The Pathologies of Individual Freedom. Hegel’s Social Theory*. Princeton: Princeton University Press.
- Loick, Daniel (2015): “’Expression of Contempt’. Hegel’s Critique of Legal Freedom”, in *Law & Critique*, 2.2015

February 16th

Genealogical Radicalizations: Marx

Primary Reading:

- Marx, Karl (1978): "On the Jewish Question", in Tucker, Robert (ed.): *The Marx-Engels-Reader*, London/New York: Norton, pp. 26-52

Secondary Reading:

- Brown, Wendy (1995): „Rights and Losses“, in *States of Injury: Power and Freedom in Late Modernity*, Princeton: Princeton UP, pp. 96-134

Further Reading:

- Cornell, Drucilla (1984): "Should a Marxist Believe in Rights?", in *Praxis International*, 1.1984.
- Lukes, Steven (1981): "Can a Marxist Believe in Human Rights?"; in *Praxis International*, 4.1981.
- McBride, William L. (1984): "Rights and the Marxian Tradition", in *Praxis International*, 1.1984.

February 23rd

Genealogical Radicalizations: Nietzsche

Primary Reading:

- Nietzsche, Friedrich (2007): "Second Essay: 'Guilt', 'bad conscience', and related matters", in *On the Genealogy of Morals*, trans. Carole Diethe, Cambridge: Cambridge University Press, pp. 35-67

Secondary Reading:

- Schütz, Anton (2008): „Nietzsche between Jews and Jurists“, in: Peter Goodrich and Francis J. Mootz (eds.): *Nietzsche and Law*, Burlington: Ashgate

Further Reading:

- Acampora, Christa Davis (2006): "On Sovereignty and Overhumanity. Why It Matters How we Read Genealogy II:2", in Christa Davis Acampora (ed.): *Nietzsche's On the Genealogy of Morals. Critical Essays*, Lanham et al.: Rowman & Littlefield
- Valverde, Mariana (2005): "Pain, Memory, and the Creation of the Liberal Legal Subject", in: Mariana Valverde and Peter Goodrich (eds.): *Nietzsche and Legal Theory. Half-Written Laws*, London/New York: Routledge

March 1st

Genealogical Radicalizations: Heidegger

Primary Reading:

- Heidegger, Martin (1992): *Parmenides*, transl. André Schuwer & Richard Rojcewicz, Bloomington: Indiana University Press, §§ 2 & 3, pp. 17-58

Secondary Reading:

- Heller, Agnes (1997): "Parmenides and the Battle of Stalingrad", in *Graduate Faculty Philosophy Journal*, Nr. 19, pp. 247-262

Further Reading:

- Fóti, Véronique M. (1992): “Aletheia and Oblivion’s Field: On Heidegger’s Parmenides Lectures”, in Arleen B. Dallery and Charles E. Scott (eds.): *Ethics and Danger: Essays on Heidegger and Continental Thought*, New York: State University of New York Press
- Spanos, William V. (1993): *Heidegger and Criticism. Retrieving the Cultural Politics of Destruction*, Minneapolis: Minnesota University Press.

March 8th

Truth and Juridicism

Primary Reading:

- Foucault, Michel (2001): “Truth and Juridical Forms”, in *The Essential Works of Foucault: Power*, trans. Robert Hurley and others, New York: The New Press, pp. 1-90

Secondary Reading:

- Foucault, Michel (2015): *The Punitive Society*, chapter tbd

Further Reading:

- Hunt, Alan and Gary Wickham (1994): *Foucault and Law: Towards a Sociology of Law as Governance*, London/Boulder

March 15th

Critique of Judgment

Primary Reading:

- Gilles Deleuze (1998): “To Have Done With Judgment”, in *Essays Critical and Clinical*, trans. Daniel W. Smith and Michael A. Greco, London and New York: Verso, pp. 126-135.

Secondary Reading:

- Patton, Paul (2012): “Immanence, Transcendence, and the Creation of Rights”, in Laurent de Sutter and Kyle McGee (eds.): *Deleuze and Law*, Edinburgh: Edinburgh University Press

Further Reading:

- Dale, Catherine (2002): “Cruel: Antonin Artaud and Gilles Deleuze”, in Brian Massumi (ed.): *A Shock to Thought. Expression After Deleuze and Guattari*, London/New York: Routledge.
- Lefebvre, Alexandre (2008): *The Image of Law. Deleuze, Bergson, Spinoza*, Stanford: Stanford University Press.
- Mussawir, Edward (2011): *Jurisdiction in Deleuze. The Expression and Representation of Law*, London/New York: Routledge.

March 22nd

Spring Break, no class

March 29th

Personality

Primary Reading:

- Weil, Simone (1986): “Human Personality”, in *Simone Weil. An Anthology*, New York: Grove Press, pp. 69-98
- Esposito, Roberto (2012): “Person, Human, Thing”, in *Third Person*, Cambridge: Polity Press, pp. 64-103

Secondary Reading:

- Campbell, Timothy (2008): “Bios, Immunity, Life. The Thought of Roberto Esposito”, in Roberto Esposito: *Bios. Biopolitics and Philosophy*. Minneapolis: University of Minnesota Press, pp. vii-xlii.

April 5th

Human Rights I

Primary Reading:

- Agamben, Giorgio (2000): “Beyond Human Rights” in *Means Without Ends*, Minneapolis: University of Minnesota Press
- Arendt, Hannah (1975): “The Perplexities of the Rights of Man”, in *The Origins of Totalitarianism*, San Diego: Harcourt, pp. 290-302

Secondary Reading:

- Rancière, Jacques (2004): “Who is the Subject of the Rights of Man?”, in *The South Atlantic Quarterly* 103 2/3.

Further Reading:

- Douzinas, Costas and Conor Gearty (eds.) (2014): *The Meanings of Rights. The Philosophy and Social Theory of Human Rights*, Cambridge: Cambridge University Press.

April 12th

Human Rights II

Guest: Werner Hamacher

Primary Reading:

- Hamacher, Werner (2004): “The Right to Have Rights. Four-and-a-Half Remarks”, trans. Kirk Wetters, in *South Atlantic Quarterly*, No. 103, pp. 343-356
- Hamacher, Werner (2006): “The Right Not to Use Rights: Human Rights and the Structure of Judgments”, trans. Tobias Boes, in Hent de Vries and Lawrence E. Sullivan (eds.), *Political Theologies – Public Religions in a Post-Secular World*, New York: Fordham University Press, pp. 671-690.

April 19th

Feminist Critique of the Law

Primary Reading:

- Brown, Wendy (2002): “Suffering the Paradoxes of Rights”, in Wendy Brown, Janet Halley (eds.): *Left Legalism / Left Critique*, Durham: Duke University Press, pp. 420-434
- MacKinnon, Catherine (1989): „Toward Feminist Jurisprudence“, in *Toward a Feminist Theory of the State*, Cambridge: Cambridge UP, pp. 237-250

Secondary Reading:

- Ford, Richard T. (1992), „Beyond Difference“, in Brown/Halley, *Left Legalism / Left Critique*, pp. 38-79

Further Reading:

- Smart, Carol (1989): *Feminism and the Power of Law*, London/New York: Routledge.

April 26th

Juridification as Colonization

Primary Reading:

- Habermas, Jürgen (1987): “Tendencies toward juridification”, in *Theory of Communicative Action, vol.2: Lifeworld and System: A Critique of Functionalist Reason*, trans. Thomas McCarthy, Boston: Beacon, pp. 356-373

Secondary Reading:

- Fraser, Nancy (1990): “What's Critical about Critical Theory? The Case on Habermas and Gender”, in *Unruly Practices. Power, Discourse and Gender in Contemporary Social Theory*, Cambridge: Polity.
- Teubner, Gunther (1987): “Juridification – Concepts, Aspects, Limits, Solutions“, in *Juridification of Social Spheres: A Comparative Analysis in the Areas of Labor, Corporate, Antitrust and Social Welfare Law*, Berlin: deGruyter, pp. 3-48

Further Reading:

- Deflem, Mathieu (2013): “The Legal Theory of Jürgen Habermas”, in Reza Banakar and Max Travers (eds.): *Law and Social Theory*, Oxford: Hart

May 3^d

Pathologies of Legal Freedom

Guest: Chad Kautzer

Primary Reading:

- Honneth, Axel (2014): “The Limitations of Legal Freedom” and “The Pathologies of Legal Freedom”, in *Freedom's Right. The Social Foundations of Democratic Life*, trans. Ganahl, Joseph, Cambridge: polity press, pp. 81-94
- Kautzer, Chad (2014): “Self-defensive Subjectivity: The Diagnosis of a Social Pathology”, in *Philosophy & Social Criticism* 40(8), pp. 743-756.

Secondary Reading:

- Allen, Amy (2010): “Recognizing Domination: Recognition and Power in Honneth's Critical Theory”, in: *Journal of Power*, 3:1

Further Reading:

- Loick, Daniel (2014): „Juridification and Politics. From the Dilemmas of Juridification to the Paradoxes of Rights“, in *Philosophy & Social Criticism*, 6.2014, pp. 757-778

May 10th

Concluding Discussion