



European Academy of Legal Theory

**Needs Analysis Report  
on  
Jurisprudence (Legal Theory/Legal Philosophy) in  
European Higher Legal Education  
in Preparation for the  
LLP Erasmus Multilateral Project Application  
of the AMELIE Project Consortium**

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## I. Introduction:

### 1. Legal Theory in Legal Education in the European Higher Education Area

We live in complicated times. Transnational markets, complex multi-level political structures, and a tarnished economy demand high flexibility and in-depth knowledge of today's young legal professionals. It is not true anymore that a law degree automatically guarantees great job prospects and a good salary;<sup>1</sup> a basic legal education is merely the foundation upon which an individual, broader profile must be built. Especially in Europe, the borders of legal systems become more and more blurred; a jurist cannot afford to be an expert only in her own national law anymore. In this highly competitive environment, a legal theory programme might be perceived as an anachronistic luxury, as a personal extravagance without profit value. However, the opposite is true. In Europe, legal professionals have to master a vast amount of legal material. They have to be familiar with their own national legal orders, the EU Acquis, and at least display a basic knowledge about the functioning of common law/civil law systems. Additionally, they need a core understanding of other member states' legal systems, because concepts such as "common core principles and values" are often used on the European level. Apart from that, transnational business is growing fast, and there is a considerable increase in migration and mobility.

It is impossible to teach every relevant legal rule and regulation to a student in the course of a regular law school programme. Thus, it is a certainty that students will be confronted with unknown legal material in their future professions. Hence, it is essential that students learn how to *deal with the law*, rather than knowing the letter of the law. At the rate that specific legal expertise has to be acquired without external guidance by a law teacher, the understanding of core principles and methods of legal thinking will become more important. Local legal approaches cannot be translated arbitrarily to other legal contexts. At the same time, it is impossible to memorize every possible legal concept within Europe. In other words: It is not true anymore that a legal education should teach a student "where to look for a certain information," since this would imply that once a student knows the core structure of *one* legal system, any specific information can be used smoothly within the framework of that structure (like feeding a matrix with different pieces of information). However, in an environment where a multitude of different approaches exist, this modus operandi is not applicable anymore. The structures themselves vary greatly. Even if a young legal professional from the U.K. opens the German Constitution, he might not know how to process the information in front of him –

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<sup>1</sup> As shown by this report:

[http://www.nytimes.com/2011/01/09/business/09law.html?\\_r=2&pagewanted=1&ref=homepage&src=me](http://www.nytimes.com/2011/01/09/business/09law.html?_r=2&pagewanted=1&ref=homepage&src=me) (accessed March 24, 2011)

simply because the U.K. doesn't have a written constitution. Therefore, a legal education that is up to today's challenges has to teach as student *what* to look for in the first place, and *how to put the results in context*.

Unfortunately, many European law schools haven't kept up with recent international developments in the legal arena. Whereas in the U.S., legal theory has a prominent place in any law school programme (see below!), and is included in most subjects, European law programmes have frequently endorsed the trend of cutting back on teaching legal theory. First of all, this presents a huge professional disadvantage for European jurists, since as a result, they are excluded from many of the most creative and influential academic legal discourses world-wide. This also leads to a lack of publications in internationally renowned law journals and books, and thus, to a huge decrease in academic competitiveness. Apart from that, ignoring legal theory is a pragmatic shot in the foot, since legal theory is not just a personal pleasure for escapists and ivory-tower intellectuals – it is, rather, the reflection of different concepts of and approaches to law; it is the basic link that holds all legal orders together. In the U.S., including legal theory in most law school subjects is a real necessity, due to the diverse legal systems of its several states. Take family law as an example: it is impossible to teach all of the (greatly varying) details of adoption law in Nevada, Massachusetts, Alabama, New York, California, and all the other states. Thus, instead of focussing on black letter law, the ideas behind the different approaches are explained, providing the students with a methodology to classify the specific laws and to put them in context. The reflection of what a jurist does is more important than having a broad knowledge of the specifics of a legal system – because this reflection is exactly what allows her to further and develop her knowledge on her own. This is particularly true in the European context. Law students who want to work on a European level have to understand law in a comprehensive manner, being at least aware of the basic legal theories and approaches. An ambitious, competitive European legal education has to re-consider the importance it allots to legal theory. At the moment, however, there is no Legal Theory Master Programme on a European scale.

The AMELIE Consortium wants to contribute to closing this gap. In the following section, we have evaluated the need for and the benefits of a European Master in Legal Theory, based on an informal needs assessment questionnaire. We have also given an overview of the prominent place that legal theory occupies in the Anglo-Saxon region, concluding that it adds considerably to the consistent academic hegemony of U.S. law schools.

## **2. The International Debate**

### **2.1. Introducing the Problem**

A brief sketch of the international debate around the status of legal theory in law curricula speaks for itself. *First*, it shows that there is a definite lack in the curricular structure of most European law school programmes when it comes to legal theory. This

is the niche that AMELIE aims to address. *Second*, it makes clear that the Europe-wide neglect to foster theory driven research in a systematic manner considerably adds to the fact that Continental-European schools are perceived as lagging behind their international counterparts (especially when compared to Anglo-Saxon law schools). *Third*, incorporating insights from other disciplines, such as social sciences or public policy studies, into legal curricula is a development which European law schools have generally failed to deal with.

In the U.S., the massive diversification of law school curricula has led to a lively debate about the pros and cons of legal scholarship. For two decades, interdisciplinarity and theoretical discourse have been actively promoted at graduate and postgraduate levels alike. (Hollander 2007) In other words: Whereas in the U.S. and (more recently) in the U.K., study programmes of the type that AMELIE is advancing are integral parts of law school curricula, European law schools are still in the stage of grappling with the question whether there is a need to establish such programmes at all. Thus, it is not surprising that Anglo-Saxon law schools can regularly establish themselves as the vanguard of new legal developments and ideas, since they assign such an important place to theoretical approaches and the encouragement of “out of the box thinking.”

Although there are some innovations at the level of individual law schools in a number of European states (as we will outline in this report), there is still no common European scheme enabling students to master novel challenges in an increasingly complex world.

The crux of the debate is the alleged double nature of law schools: They have been labeled as “creature[s] of two domains” (Collier, 2002), meaning that legal studies are “part of the legal profession” – preparing generations of lawyers to be gatekeepers and transmitters of practical legal knowledge – and at the same time, “part of a university,” with an “uncertain intellectual and political relationship to other disciplines.” (Vick, 2004) Whereas law as practice dates back to the Middle Ages, law as scholarship is connected to the development of modern state structures. Until today, there is still no consensus about the “true” nature of law.

In the early 1960s, scholars in the U.S. started an influential discourse about the function and the meaning of law. Until then, the American legal scene was commonly viewed as “remarkably free from ideological strife” (Posner, 1987). Law was seen as the playground of technocrats who found value-free, objective solutions to any legal problem; it was common to perceive law as a kind of “social engineering,” with lawyers as the engineers. The general belief was that “just as society had left the design of bridges to civil engineers, so it could leave the design of its legal institutions to lawyers.” (Posner, 1987) But in the late 1950s, alternative perceptions which understood law to be more than a mere technical instrument began to emerge. This can be qualified as a huge development in legal thought. To continue the metaphor: when civil engineers started to disagree fundamentally about wind resistance, society had to show caution in entrusting the design of bridges entirely to them. Similarly, when lawyers started to disagree about the basic aims, nature and consequences of law, society had to show caution in entrusting

the design of legal solutions to legal technocrats. The age of politicization thus opened windows of opportunity for questioning legal practice through theoretical and interdisciplinary scholarship.

## **2.2. Influential Legal Theories of the Last 50 Years**

In the 1920s, the paradigm which became known as “legal realism” was already advancing propositions dismissive of the traditional view of “law as an autonomous discipline” – as enshrined by the Harvard tradition through its main representative Christopher Columbus Langdell (1870). Legal realists drew on the claim that law’s basic “truth” might be “merely the provisional, pragmatic consensus of those legal actors who are perceived at any given time to be supported by the highest forms of authority within the legal system of the state” (Cotterrell, 1992). The new research questions substituted the idea that the study of legal doctrine by itself was sufficient to understand law comprehensively, to reveal the effects of law and legal institutions on society, or to define the public values which law is allegedly meant to express

At about the same time, the importance of including interdisciplinary methods into legal analysis became evident, questioning the traditional, purely law-oriented case study method. The Law and Economics Movement, which enjoys particular success in the United States (represented mainly by law and philosophy scholar Richard A. Posner), started as a progressive movement aiming to adjust the legal skills in view of latest developments. It employs methods and theories borrowed from economics (such as rational choice and statistical techniques) to make up for perceived shortcomings of traditional methods of legal analysis.

In the 1960s, the necessity to look beyond legal doctrine and the case method in the U.S. revived some of the controversial discussions of the 1920s and 30s about the function and role of law. First critical reactions against opening law to interdisciplinary approaches and theoretical examination came from within the legal academic community itself, as was to be expected. Generally, academic disciplines have been compared to “tribes wishing to protect their territories, preserve their traditions, and perpetuate their way of life into posterity.” (See T. Becher, *Academic Tribes and Territories: Intellectual Enquiry and the Cultures of Disciplines*, 1989) The intellectual tension between so-called “practical lawyers” (Edwards, 1993) – namely the “black-letter law academics” as defenders of traditional modes of legal analysis – and defenders of new and interdisciplinary legal theories which borrowed ideas and techniques from other relevant disciplines, is for instance reflected in the 1990s debate between the United States Federal Judge Edwards and law professor Richard A. Posner: “While interdisciplinarians perceive doctrinalists to be intellectually rigid, inflexible and inward looking, many doctrinalists regard interdisciplinary research as amateurish dabbling with theories and methods the researchers do not fully understand.” (Priest 1993, Vick 2004) These two schools of thought – “the doctrinalists” and “the interdisciplinarians” – continue to disagree even nowadays. (Priest 1993, Vick 2004)

Posner gives five reasons for why the above mentioned approaches responded to a real need in society in the 1960s, despite the massive criticism that they have

encountered: “First, the political consensus associated with the ‘end of ideology’ has shattered. In part, this entanglement is due to the aggressiveness with which the Supreme Court has created constitutional rights in politically controversial areas, such as abortion (and other matters involving sex), reapportionment, political patronage, and school and prison conditions. In part, it is due to the expansion of government generally, which has brought more and more subjects, often intensely political ones, into the courts – subjects such as poverty, campaign financing, environmental protection, and the plight of disabled people. Second, coinciding with the decline of political consensus, there was a boom in disciplines that are complementary to law: the contemporary movement in legal scholarship known as ‘critical legal studies.’ Third, confidence in the ability of lawyers on their own to put right the major problems of the legal system has collapsed, partly due to the rise of other disciplines to positions where they can rival the law’s claim to privileged insight into its subject matter. Moreover, all sorts of reforms engineered by lawyers, appear to have been miscarried. Fourth, there is a continuing rise in the prestige and authority of scientific and other exact modes of inquiry in general. Last, the increasing importance of statutes and of the Constitution, compared to common law, as sources of law, which would be of no significance if lawyers had good tools for interpreting legislative texts; sad to say, they do not.” (Posner 1993)

Following this line of thought, it was the Critical Legal Studies Movement which became especially prominent in the 1980s, by engaging in a systematic dialogue with ideas from history, sociology, anthropology, cultural studies and literary theory (Vick, 2004). One of the basic ideas behind this paradigm claims that if we accept that legal rules are instruments of social policy and expressions of public values, then examining the societal effects of these rules – as well as their underlying values – are legitimate subjects of inquiry by legal academics. (Vick, 2004)

According to two of the most notable representatives of the movement in present day US, Harvard professors Duncan Kennedy and Roberto Unger, Critical Legal Studies (CLS) are both “a network”<sup>2</sup> of people waging “a battle against formalism”<sup>3</sup> and the “academic scholarship”<sup>4</sup> it has produced as a consequence. CLS deconstructs the myth which portrays jurists as apolitical figures. “We have denounced them wherever we have found them, and we have found them everywhere.”<sup>5</sup> CLS representatives prove wrong the conception according to which theory has no impact on “real world issues.” According to their argument, “practical lawyers” defend, under the illusion of objectivity, a status quo which actually favours elites and current power structures, *de facto* excluding the disenfranchised and minorities.

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<sup>2</sup> Clark, J. Gerard: *A Conversation with Duncan Kennedy, the Advocate*, the Suffolk University Law School Journal, Spring 1994

<sup>3</sup> Unger, Roberto Mangabeira: *Criticism of Legal Thought*, in *The Critical Legal Analysis Movement*, Harvard University Press, 1986, available online at <http://www.law.harvard.edu/faculty/unger/english/movemnt.php>

<sup>4</sup> *Idem*, Clark, 1994

<sup>5</sup> *Idem*, Unger, 1986

The existence of this lively discourse alone is proof of a creative and influential academic legal scene which is able to formulate original ideas and bring about a richness of legal approaches. Elite institutions world-wide require their prospective graduates to be familiar with these theories and approaches (Bollinger 1993, Hollander 2007), since it only makes sense to assess diverging view points like these in the context of progressive theoretical thought and empirical observations. However, programmes which would induce and endorse such debates are still missing on the European level. This fact might well contribute to the fortification of Anglo-Saxon law schools as the uncontested forerunner in legal thinking.

Significant practical value lies in interdisciplinary approaches. For instance, “[i]n family law, interdisciplinary studies are not a distraction from, but a critical part of, modern lawyering. It would be futile to isolate legal doctrine and practice from psychology, economics, sociology, religion, and history because family law doctrine itself speaks in terms of children’s ‘best interest,’ the ‘primary caretaker’ presumption, the ‘psychological parent,’ ‘equitable distribution’ of assets at divorce, and it identifies historic ‘tradition’ as the constitutional touchstone. How can literacy in these disciplines detract from the training of practicing lawyers when the overwhelming majority of CPS, divorce, and custody cases are resolved outside the courtroom through counseling, negotiation, and mediation? Interdisciplinary studies are my students’ professional training.” (Bennet Woodhouse, 1992)

As much of a challenge as it may present to the purity of doctrinal discipline, interdisciplinarity also offers serious strategic advantages: “in purely pragmatic terms interdisciplinarity offers an opportunity for product differentiation in an increasingly competitive academic environment: an ‘interdisciplinary perspective’ may help a researcher place his or her work with a more prestigious academic journal or publishing house. Interdisciplinary research is perceived to be popular with research funding bodies, and for legal academics in particular it provides access to research grants of a magnitude not usually available for ‘pure’ legal research.” (Vick, 2004)

In a nutshell, no rephrasing would better sum up the purpose of AMELIE as the words of Richard A. Posner, an important advocate for opening law to theory and interdisciplinarity in the U.S.: “The law schools need to encourage the branch of academic law that I call ‘Legal Theory,’ viewed as an endeavor distinct from doctrinal analysis, clinical education, and the other traditional, practice oriented branches of legal training and scholarship. By Legal Theory, I mean the study of the law not as a means of acquiring conventional professional competence but ‘from the outside,’ using the methods of scientific and humanistic inquiry to enlarge our knowledge of the legal system. There should be departments of law, where students can pursue doctoral programmes in Legal Theory, or alternatively programmes that meld college, law school, and doctoral training in another discipline into an integrated course of study taking less than the minimum of ten years after high school that such a programme would currently require. Three years of college, two years of law school, and three years of doctoral study should, if these stages of training are integrated, equip a student to contribute creatively to the understanding and improvement of the legal system of the twenty-first century. I

hope I will not be understood to be suggesting either that instruction and research in Legal Theory replace doctrinal analysis, or that Legal Theory be equated with, or even be thought to include, the advocacy of new constitutional rights. [...] Furthermore, the type of ‘advocacy’ scholarship in which political sallies are concealed in formalistic legal discourse - a staple of modern law review writing - should be replaced by a more candid literature on the political merits of contested legal doctrines. In this literature, as yet almost unknown, the author would acknowledge the point at which authoritative legal materials run out, and justify the leap of faith necessary to bridge the gap between those materials and his conclusion.” (Posner, 1993).

## **II. Legal Theory and Legal Philosophy in Current Law Curricula:**

### **1. In Domestic Basic Law Degree Programmes (Austria, Belgium, Sweden, Switzerland, Poland)**

#### **A. General Conditions:**

##### Austria:

Three out of the six law schools in Austria have a specific department dedicated to the subject of legal theory and/or philosophy of law. At the University of Vienna, there is the Institute for Legal Philosophy, Law of Religion, and Cultural Law, in Graz, the Institute for Legal Philosophy, Legal Sociology and Legal Informatics and in Salzburg, the Department of Legal and Social Philosophy and Political Theory. As of today, the law schools in Linz and in Innsbruck do not have any specific department on this particular subject.

##### Belgium:

Belgium has a long academic tradition in the field of legal theory, in both teaching and research. However, the following analysis shows that although legal theory research is increasingly important, the teaching of legal theory has declined, especially at the level of advanced education. Analyzing the curricula of the French and Flemish universities alike, we can safely conclude that currently there is no independent master in legal theory in Belgium today. Indeed, the gap left by the “European Master of Legal Theory” (joint master degree by the Katholieke Universiteit Brussel and the Faculté Universitaire Saint Louis has not yet been filled.

As for the Flemish universities, the Vrij Universiteit Brussel (VUB) does not include legal theory as part of its undergraduate programme (Bachelor in Laws). Nonetheless, the VUB offers the course of legal theory as an elective in several of its master programmes; however, there is no independent Master of Legal Theory. The Katholieke Universiteit Leuven (KUL) does not include the course of legal theory as part of the Bachelor of Laws programme. The KUL offers an elective course on European

legal theory taught by Prof. René Foqué as part of its master programme in laws. The Antwerpen Universiteit does not offer any course on legal theory. However, the University hosts the Centre for Law and Cosmopolitan Value<sup>6</sup> which undertakes leading research on the field on legal theory in Belgium. The University of Ghent does not offer a specialized course on legal theory, although it offers courses like “Legal Philosophy,” “Legal Ethics,” etc. This university counts Professor Van Hoecke among its faculty, one of the most prominent legal theorists in Europe.

#### Sweden:

Sweden has a robust academic tradition in the field of legal theory, in both teaching and research. There are three law schools in Sweden (Uppsala, Stockholm, Lund), as well as three departments of law (Umeå, Göteborg, Örebro) which offer a full law degree. None of these departments or schools has a specific institute dedicated to the subject of legal theory and/or philosophy of law (in Swedish, “Allmän rättslära”, literally translated as “general theory of law”). At the moment, there are no professorial chairs devoted exclusively to legal theory and/or legal philosophy; however, two out of six schools/departments (Uppsala, and Lund) have a professor in legal theory and/or philosophy of law. At the moment, about 10-15 persons (L.L.D. students not included) are specifically employed by the schools/departments as lecturers, senior lecturers, associate professors, and professors in legal theory and/or philosophy of law. Moreover, around 10 L.L.D. Students are writing their doctoral dissertation on the topic of legal theory or philosophy of law.

Three Swedish law schools and three law departments are offering a compulsory and autonomous basic course on legal theory/philosophy. Therefore, a student cannot graduate in Sweden without attending at least one basic course on the subject.

At the postgraduate level, Swedish universities are offering many LL.M. and master programmes on wide range of topics but none concerns specifically with legal theory or philosophy of law. The Universities of Lund and Uppsala are the ones that are most active on the subject, and their various research projects underline the importance of legal theory both for the students and the legal scholars

#### Switzerland:

Due to the Bologna Process, the situation of teaching legal theory within the curricula of legal education at the Swiss universities (Basel, Bern, Fribourg, Geneva, Lausanne, Lucerne, Neuchâtel, St. Gallen, Zurich) changed fundamentally in recent years. Whereas in the former study-system, legal theory was mostly an essential and compulsory part of the legal education curricula, the reform and the implementation of the three-cycle Bologna structure (bachelor-master-doctorate) lessened the weight of the foundations of law in general, and of legal theory in particular. It follows from the above that a legal studies candidate in Switzerland can graduate without attending courses in legal theory at all. The abasement of teaching legal theory in Swiss university curricula is accompanied by a diminished importance of legal theory in the field of legal research. Institutes for legal theory do not exist at all, and chairs of legal theory can only be found at the Universities of St. Gallen, Zurich and Lucerne.

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<sup>6</sup> For more information, visit: <http://www.lcv.ua.ac.be/> (last accessed 24 March, 2011)

### Poland:

There are 16 law schools at public universities in Poland where currently over 50000 students are studying law. Each public law school has at least one specific department, institute or chair dedicated solely to meta juridical subjects: 1) At the Jagiellonian University in Krakow, there are the Chair in Legal Theory and the Chair in Philosophy of Law and Legal Ethics; 2) At University of Warsaw, there is the Chair in Philosophy of Law and State; 3) at the Adam Mickiewicz University in Poznan, there is the Chair in Theory and Philosophy of Law; 4) at the University of Gdansk, there is the Chair in Theory and Philosophy of Law and State; 5) at the University of Rzeszow, there is the Institute of Legal Theory and Juridical and Political Doctrines; 6) at the University of Bialystok, there is the Department in State and Law Theory; 7) at the University of Szczecin, there is the Chair in Theory and Philosophy of Law; 8) at the University of Lodz, there is the Chair in Theory and Philosophy of Law; 9) at the University of Wroclaw, there is the Chair in Theory and Philosophy of Law; 10) at the Silesia University, there is the Chair in Theory and Philosophy of Law; 11) at the Nicolai Copernicus University in Torun, there is the Chair in Theory of State and Law; 12) in the Cardinal Stefan Wyszyński University in Warsaw, there is the Chair in Theory and Philosophy of Law; 13) at the University of Opole, there is the Institute of Theory and Philosophy of Law; 14) at the Maria Curie Skłodowska University in Lublin, there is the Institute of History and Theory of State and Law; 15) at the Catholic University of Lublin, there is the Chair in Theory and Philosophy of Law; 16) at the University of Warmia and Mazury in Olsztyn, there is the Chair in Theory and Philosophy of Law and State.

All Polish public universities offer compulsory and elective courses on legal theory/philosophy and other meta juridical subjects. Therefore, a student of law cannot graduate without attending at least some basic courses on the subject. Although the importance of legal theory remains high, new impulses are needed to keep this position in the future. It also needs to be stressed that Polish universities offer many LL.M. and postgraduate programmes on different legal topics, but none of them is solely dedicated to the subject of legal theory/philosophy. Specific activities in this field, such as summer programmes or specific courses for postgraduates, are still missing in curricula of schools of Law in Poland.

## **B. Study Programmes:**

### → Compulsory Courses:

#### Austria:

In Austria, the Law schools generally ask for a compulsory introductory course on legal theory/philosophy of law. In Graz, the course “Legal Theory and Legal Methods” counts for 4.5 Credits and in Salzburg, the course “Legal Philosophy” counts for 3 Credits. In Vienna, there is a rather prominent course called “Introduction to Legal Sciences and Legal Methods” for a total value of 18 Credits. One third of this course is dedicated to legal philosophy. In Linz, there is a course and a seminar on the subject of

legal philosophy and in Innsbruck, there is a four credits course on legal philosophy which is mandatory during the third part of the studies.

#### Belgium:

The Facultés Universitaires Saint Louis used to offer, jointly with Katholieke Universiteit Brussel, the only master in legal theory in Belgium. After the termination of the “European Master in Legal Theory” in 2009, there is no advanced education on legal theory at FUSL. However, FUSL offers a compulsory seminar on legal theory with several elective orientations in the second year of the Bachelor in Laws. Renowned scholar François Ost is part of the FUSL faculty, one of the most prominent legal theorists in Europe.

#### Sweden:

In Sweden, all the Law Schools and Departments of Law offer a compulsory course on legal theory/philosophy of law which must be taken in order to gain the law degree (in Swedish, *Juristexamen*). In Stockholm, the course “Allmän rättslära” counts for 10.5 hp and is offered in the fourth year of the legal education. In Lund, philosophy of law is taught during the first semester together with constitutional law. Philosophy of law counts for 10.5 hp (and constitutional law for 19.5 hp). In Göteborg, the course “Allmän rättslära” encompasses legal philosophy and legal theory, but also sociology of law and history of ideas. The course counts for 15 hp. In Umeå, the course “Allmän rättslära” is part of the course “Jurisprudence and Legal History,” and “Allmän rättslära” is half of that, i.e. 7.5 hp. The course is given in the fourth year of the legal education. In Uppsala, students can take a 5-week course (7.5 credits) in jurisprudence, either in Swedish or in English.

#### Poland:

In Poland, all law schools ask for a compulsory introductory course to jurisprudence (“Wstęp do prawoznawstwa”), though the amount of ECTS for the course varies at each university. For example, at the University of Rzeszow it counts for 7 ECTS; at the University of Gdansk for 7 + 4 ECTS; at the University of Szczecin for 8 ECTS; at the University of Lodz for 6 ECTS; at the University of Warsaw for 10 ECTS; at the University of Wroclaw for 7 ECTS; at Silesia University for 8 ECTS; at the Nicolai Copernicus University in Torun for 7 ECTS; and at the Jagiellonian University for 9 ECTS.

#### → Elective Courses:

#### Austria:

Some schools offer wider choices of elective courses than others. For example, the University of Graz offers various elective courses, seminars and practical courses related to legal and social philosophy. It seems, however, that the Universities of Innsbruck and Linz do not offer any elective courses on the specific topic. Generally speaking, the number of elective courses available on the subject of legal theory/philosophy of law is rather limited in the five law schools in Austria.

### Belgium:

The French-speaking universities in Belgium continue to offer the course of legal theory as an elective course at the master level (M1 & M2). In the Université Libre de Bruxelles, the course is taught by Professor Benoît Frydman and is a non-compulsory course for students following both public and private law masters. The course registers a high number of enrolled (50) and visiting (15) students each year. Although the teaching of legal theory remains limited, the ULB has one of the most recognized research teams in legal theory in Europe at the Centre Perelman the Philosophie du Droit. Similarly, the Université Catholique de Louvain offers the elective course of legal theory as part of its "Master en Droit. This course is a joint lecture by Prof. Xavier Rousseaux and Alain Wijffels ("Histoire du Droit et de la Justice"); Jean de Munck and Baudouin Dupret ("Sociologie du Droit"); and Jacques Lenoble ("Philosophie du Droit").

### Sweden:

Some schools and/or departments offer wider choices of elective courses than others. For example, in Göteborg elective courses in jurisprudence on the master level will probably be offered from the year 2012 onwards. In Uppsala, the students can choose advanced courses in legal reasoning ("Modern Approaches to Legal Reasoning," 10 weeks, 15 credits); law and psychology (10 weeks, 15 credits, only in Swedish) and on the interplay between law and morality ("Morality, Law, and the Courts," 20 weeks, 30 credits). Generally speaking, the number of elective courses available on the subject of legal theory/philosophy of law is rather limited in the law schools and departments in Sweden.

### Switzerland:

As of today, most universities in Switzerland do not offer autonomous legal theory courses at the bachelor level at all (with the exception of: St. Gallen & Zurich), but have established classical legal theory topics within the legal philosophy courses (e.g. Basel, Geneva, Neuchâtel, Fribourg). It is of utmost importance that none of these universities classifies legal theory as a compulsory part of the bachelor curriculum. The students can mainly choose a certain amount of courses out of the broad foundations of the law curriculum pool (history of law, philosophy of law, sociology of law, Roman law, gender studies et al.). The only exception on a bachelor-level is the University of Lucerne, where legal theory is an essential part of the compulsory course called "Foundations of Law," as well as of the course called "Legal Methodology."

### Poland:

All schools of law also offer a wide choice of elective courses related to meta-judicial subjects. For example: at the University of Rzeszow, there are courses such as "Theory and Philosophy of Law" (6 ECTS), "Legal Logic" (7 ECTS), and "Sociology of Law" (4 ECTS); at the University of Gdansk, there are courses like "Legal Logic" (4 ECTS) and "Theory of State and Law" (6 ECTS+ 3 ECTS); at the University of Szczecin, courses include "Legal Logic" (9 ECTS), "Philosophy of Law" (4 ECTS) and "Theory of Law" (6 ECTS); at the University of Lodz, courses include "Legal Logic" (6 ECTS), "Theory and Philosophy of Law" (8 ECTS) and "Sociology" (6 ECTS); at Warsaw University, courses include "Legal Sociology" (6 ECTS), "Legal Logic" (10 ECTS),

“Philosophy of Law” (6 ECTS), and “History of Philosophy” (4 ECTS); at the University of Wrocław, courses include “Legal Logic” (7 ECTS) and “Theory and Philosophy of Law” (4 ECTS); at the Silesia University, courses include “Legal Logic” (10 ECTS) and “Theory and Philosophy of Law” (10 ECTS); at the Nicolai Copernicus University in Torun, courses include “Legal Logic” (7 ECTS), “Legal Ethics” (3 ECTS) and “Theory of Law” (6 ECTS); at the Jagiellonian University, courses include “Legal Argumentation” (6 ECTS), “Legal Ethics and Bioethics” (6 ECTS), “Philosophy of “Interpretation” (6 ECTS), “Legal Theory” (6 RCTS) and “Introduction to Economic Analysis of Law” (4 ECTS); etc. Generally speaking, the number of elective courses available on the subject of legal theory/philosophy of law/sociology of law is high, and the classes are generally on a high level.

## **2 In Current Special Legal Theory/Philosophy Degree Programmes:**

### **A. In the European Higher Education Area (Selected Countries, Including All Partner Countries):**

--> Graduate/Postgraduate Programmes:

#### Austria:

The only possibility to follow a study programme (partly) related to Legal Philosophy in Austria is the regular 2-year (120 ECTS) master programme “Political, Economic and Legal Philosophy / Philosophie der Politik, Ökonomie und des Rechts” offered by the University of Graz. This is a full time regular master programme (2<sup>nd</sup> study cycle according to the Bologna system) for regular students after bachelor level (180 ECTS as entrance requirement) and is therefore not meant for interdisciplinary continuous education of lawyers (who have to follow a 4- or 5-year one- or two-cycle basic master degree programme in law, and it is unlikely that they enter another 2<sup>nd</sup> cycle master degree in order to prepare for a PhD in law or for continuous education). Although this recent initiative of the University of Graz is a highly valuable one and conforms to the interdisciplinary intentions of AMELIE, the target groups to which the programmes are addresses are different ones.

#### Belgium:

In 2009, the cooperation between the European Association for the Teaching of Legal Theory, the Facultés Universitaires Saint-Louis, and the Katholieke Universiteit Brussel, ended. Therefore, the respective master programme previously offered in Brussels has expired.

#### Sweden:

There are no postgraduate programmes in Sweden devoted specifically to legal theory

and philosophy of law. In Göteborg, new postgraduate programmes will be introduced in 2011, and legal philosophy/theory will be an integrated part in one of these programmes. In Lund, master level courses in philosophy of law are given each semester. In addition, the law school in Lund also offers master level courses in law and economics.

#### Switzerland:

The tendency of weakening the position of teaching legal theory in Switzerland within the legal education curricula is even more obvious on the master level: in general, the students are free to choose their curriculum within all offered courses of the law school. Legal theory on the master level is electively offered by almost all Swiss universities (exception: Basel, Neuchâtel & Geneva). With the implementation of so called “mentions” or “master profiles” and the ongoing standardisation of these profiles, the schools factually abate the freedom to choose by establishing a certain compulsory curriculum on the master level. Within these mainly practice-oriented profiles, legal theory courses do not play a role at all. Exceptions are the University of Lausanne and the University of Lucerne. They both offer a master-curriculum with special mention of the foundations of law (Lucerne: “Grundlagenorientierte Tätigkeit;” Lausanne “mention théorie juridique”), where the attending of legal theory courses is mandatory.

Within the third-cycle law education in Switzerland, legal theory courses are almost inexistent (due to the missing establishment of compulsory graduate schools). The doctorate-programme of the University of St. Gallen is the only exception. In the mandatory course-phase, the law school offers a course in the foundations of law every term (legal and political philosophy, history of law, legal theory et al.), and one course in the field of methodology of law (legal hermeneutics, comparative law et al.). The offered LL.M or MAS-programmes are practice-orientated without considering legal theory courses in depth.

#### Poland:

There are several postgraduate programmes in law offered by different universities; however, none of them concern meta juridical issues, or legal theory and legal philosophy in particular.

#### --> Special Activities:

##### Summer Courses:

#### Austria:

For the moment, there is no summer school planned on the specific subject of legal theory/philosophy in Austria.

#### Belgium:

The European Academy for Legal Theory in Brussels has been organizing the Summer University in Legal Theory on a yearly basis.

Sweden:

For the moment, there is no summer school planned on the particular subject of legal theory/philosophy in Sweden.

Poland:

At the moment, there is no summer school planned on the particular subject of legal theory/philosophy in Poland.

b). Research Projects

Austria:

It seems that the Institute for Legal Philosophy, Law of Religion and Law of Culture in Vienna and the Institute for Legal Philosophy, Legal Sociology and Legal Informatics in Graz are quite active, running different research projects on various topics related to legal theory/philosophy of law.

In Vienna, questions regarding the notion and the nature of law, the different sources of law, the problems of the validity of law and the relation between law and morals are of special importance to the research work of the Institute for Legal Philosophy. The work of the Institute on legal theory concentrates mainly on the linguistic aspects of law, the methodology of law, the jurisprudence and the philosophical and legal hermeneutics. In Graz, the teachers of the Institute of Legal Philosophy cover various topics regarding legal interpretation and objectivity, denationalization of the law (in legal theory); history and philosophical foundations of criminology; and applied ethics with a focus on bio-ethical questions (in legal philosophy).

Belgium:

Although the Universite Catholique de Louvain does not offer a full “Master in Legal Theory,” they possess an active research centre on the field.<sup>7</sup>

Sweden:

The legal theory groups in Stockholm, Uppsala, Lund, and Göteborg are quite active. They are undertaking different research projects, mostly at senior level, on various topics related to legal theory/philosophy of law. For example, one project in Stockholm examines the use of other disciplines (mainly psychology and psychiatry) in evaluating legal issues; another project focuses on the challenges of globalization with regards to legal thinking (mainly in the field of transnational corporate law). In Uppsala, the researchers in the field of jurisprudence are engaged in projects of their own, ranging from traditional inquiries into the nature of law to studies of legal decision making in light of the findings of cognitive science. In Lund, the research group in philosophy of law consists of one professor, one associate professor, four assistant professors and two doctorate students. The research group is mainly devoted to research concerning legal argumentation. In Göteborg, there are one postgraduate project and several senior research projects applying contemporary legal and other theories.

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<sup>7</sup> For more information, visit: <http://www.uclouvain.be/cpdr.html> (last accessed 24 March 2011)

### Poland:

The chairs and institutes of legal theory and legal philosophy in Poland are very active and run many research projects related to legal theory/philosophy of law. The scope and variety of research projects conducted currently at public universities in Poland cover a vast amount of issues related to legal theory and legal philosophy. At the Jagiellonian University, research programmes deal with questions related to bio-jurisprudence, law and game theory, law and economics, law and ICT, legal methodology, logical foundations of jurisprudence, legal argumentation, normativity, and global justice. Traditionally, the research focus includes also sociological aspects of law, legal informatics, sociolinguistic analysis of law and legal hermeneutics.

## **B. In Non Partner Countries:**

→ Continental Europe: France, Spain, Italy, Hungary

### Hungary:

In Hungary, the Andrásy Gyula German Language University of Budapest and the Central European University (CEU) offer substantial courses in legal theory, as follows:

CEU, a research intensive university by default, focused on postgraduate studies, has a rich offer of courses dealing with the study of legal theory, history and philosophy at the postgraduate level, including theories and methods of comparative constitutional law, feminist jurisprudence, freedom of speech in the United States, European perspectives of freedom of speech, theory of fundamental rights, comparative freedom of religion, law and society, civil society law, French constitutional law, human rights politics, identity, gender and human rights, Roma rights, contracts – introduction with focus on common law, history and context, archives, evidence and human rights, EU constitutional law, a Jean Monnet module on European integration, art law, and last but not least, strengthening legal systems and services in transitional and developing societies.

### Italy:

In Italy, La Università degli Studi di Roma hosts the Department of Legal Theory and Legal History. La Università degli Studi di Bari Aldo Moro hosts the Department of Roman Law, History and Theory of Law. La Università degli Studi di Pavia also hosts a similar department. La Università degli Studi di Firenze has an equally rich offer and is home to the Department of Legal Theory and Legal History. La Università di Padova – Facoltà di Giurisprudenza specializes, among others, not only in “History and Philosophy of Law,” but also in “History and Philosophy of Canon Law.” La Università degli Studi Guglielmo Marconi offers a very interesting specialization in “Theory and Methodology of Law.” Last but not least, La Facoltà di Giurisprudenza dell’Università degli Studi Magna Graecia di Catanzaro hosts a department devoted to studying the science and history of law. Other courses on legal theory can be found at other remarkable universities such as Siena or Bocconi.

### Spain:

Legal theory is fairly represented in the autonomous communities in Spain. Illustratively, the Oñati International Institute for the Sociology of Law runs an “International Master Programme in Sociology of Law,” an accredited master programme of the University of the Basque Country and the Università degli Studi di Milano, in accordance with the Bologna Process and summing up 60 postgraduate ECTS. In Madrid, one can subscribe to the Spanish Society of Juridical and Political Philosophy, with strong connections to the international community – as proven by its affiliation to the IVR. In terms of university programmes, the Autonomous University of Madrid, the Carlos III University of Madrid and the University of Alicante contain programmes dedicated to the study of philosophy of law. The University of Barcelona runs the Department of Sociological Theory, Philosophy of Law and Methodology of Social Sciences. The University of Girona also runs programmes dedicated to the study of philosophy of law. The University of Navarra has a structured department dedicated to philosophy of law. The University of Salamanca is home to the Department of History of Law, Philosophy of Law and Philosophy and Morality. At the University of Valencia, one can find the Department of Philosophy of Law, Morality and Politics.

### France:

The law school in Sorbonne (University Paris 1) has just launched the “Master Programme in Constitutional Law and Fundamental Rights,” starting in 2011. The programme emerges out of the need to tackle the main questions concerning constitutionalism (as articulated, for instance, by the employers asked in the needs analysis carried out by the AMELIE Consortium, such as lawyers and public servants) and aims to answer them by applying a comparative perspective. As for already established programmes of potential interest to AMELIE, a master programme focused on contemporary law systems and cultural diversity exists at the University Paris 8 and addresses extremely challenging theoretical questions with regard to pressing public and private law issues. Subjects like “History of International Public Law” or “Law and Cultural Diversity” aim to provide students with a solid basis in legal theory topics. Last but not least, the University Pantheon Assas Paris 2 offers the “Master Programme in History, Philosophy and Sociology of Law” – which speaks volumes about the importance attached to a sound legal theory foundation for future law practitioners.

→ Anglo Saxon Countries: US, UK, Australia – New Zealand, Canada

### US:

That “the mind in the major American law school” (Bollinger, 1993) has shifted towards interdisciplinarity and theory mirrors the outcome of the above mentioned debate from the 90s. “Virtually every field of human knowledge is being mined for what it can contribute to our understanding of the processes of law and of legal issues. [...] **I think our most serious problem in modern legal education – and here I am referring to the teaching and not the research function – is, ironically, that it is not ‘theoretical’ enough.** The source of the problem is the continued dominance of the casebook as the

primary form of educational material in law schools. The fundamental problem facing modern law schools, therefore, is precisely how to combine the coverage of doctrine and the development of skills of critical and careful reasoning, with the integration of the extensive and growing knowledge of related fields that have come to inform so much of the scholarship emanating from the academy, and the role law plays beyond the appellate court.” (Bollinger, 1993) This evaluation is reinforced by taking a brief look at the LL.M. Guide, reviewing the top 100 most popular law schools in the US: Most top law schools follow theoretical and interdisciplinary approaches.

“Interdisciplinary research is perceived to be popular with research funding bodies, and for legal academics in particular it provides access to research grants of a magnitude not usually available for ‘pure’ legal research.” (Vick, 2004)

Notably, New York University (NYU) School of Law ranks first in the top 100 most popular law courses, with an LL.M. in legal theory. The University of California, Berkeley offers a generous choice of courses in legal theory and ethics. Regarding interdisciplinarity, many leading institutions in the field of legal education have chosen subjects such as governance, sociology, economics, and others to complement their legal studies curriculum – such as the law schools of Georgetown University, Chicago University or Harvard University. In 2006, the University of Stanford even went so far as to proclaim “The Stanford Law School 3 D Model” as the new model for legal education, reflecting the switch to interdisciplinarity. Stanford’s innovative program is based on the new demands on modern lawyers, which are fundamentally different from those when the law school curriculum was formed. The commitment of Princeton University to the deals of interdisciplinarity is documented in a comprehensive journal article called “Interdisciplinary Legal Scholarship: What Can We Learn from Princeton’s Long-standing Tradition?” (Hollander, 2007)

Last but not least, the present Dean of Harvard Law School is Martha Minow, a representative of the contemporary Critical Legal Studies movement and thus an important legal theorist, especially in terms of gender law. She wrote some of the most important present-day legal feminist and social justice essays, such as: “Not Only For Myself: Identity, Politics, and Law” (1997), “Making All the Difference: Inclusion, Exclusion, and American Law” (1990), “Law Turning Outward” (Fall 1987), etc.

#### UK:

An LL.M. in legal theory is offered by the King's College London, ranked 2nd in popularity according to the LL.M. Guide reviewing the top 50 law schools in the UK. Queen Mary follows on 3rd place. Its course programme includes an LL.M. in “Legal Theory and History.” Legal theory and history are also part of a specialization track in the international programmes at the University of London, ranked 4th in the index quoted above. The London School of Economics (LSE) also offers an LL.M. in legal theory. The University College London provides for even more diversity by offering two master programmes dealing with legal theory, namely an LL.M. in “Jurisprudence and Legal Theory” and an LL.M. in “Legal History.” In Glasgow University, another institution with a solid legal tradition, students can choose an MSc in “Legal and Political Thought”

as much as a Master of Arts (MA) in “Legal History” (Research) at the University of Reading School of Law. Last but not least, Cambridge University Press hosts the “Legal Theory Journal.”

Australia – New Zealand and Canada:

Australia represents yet another model case through its declared commitment towards institutionalizing the two strand innovation in legal studies: theory and interdisciplinarity. Illustratively, a report commissioned by the Australian Universities Teaching Committee in 2003 with the purpose of monitoring the latest developments in teaching law at a national level, concluded that legal theory and legal ethics became part of compulsory or elective curricula in most law schools. (“The Learning Outcomes and Curriculum Development in Law,” 2003) The concept of an LL.M. in “Advanced Legal Practice,” which places special emphasis on ethics, has been advanced in Australia. The Monash University Law Chambers in Melbourne introduced the “Master of Laws (Advanced Legal Practice),” which focuses on the practical legal skills and professional ethics that tomorrow’s legal practitioners may be expected to possess and follow. Particularly innovative, the University of West Indies – Cave Hill Campus, Faculty of Law in Barbados offers an LL.M. in “Legislative Drafting.” At the University of Saskatchewan, Canada, students planning to obtain an LL.M. degree are required to take a number of three compulsory courses, one of which must be a legal theory course.

### **III. Questionnaires:**

The AMELIE Consortium – currently composed of the following participating universities: Free University of Berlin, Universite Libre de Bruxelles, Jagiellonian University Krakow, Goethe University – Frankfurt am Main, University of Luzern, University of Stockholm and University of Vienna – has commissioned the creation of two questionnaires for the purpose of researching the need for a Master Programme in legal theory among current students and future employers.

The Questionnaire administered to current students contains 13 questions, structured along a varying number of dimensions which had to be ranked in importance on a scale from 1 to 6, A to F respectively, where A represented the highest score and F the lowest. Questions were answered by a total number of 136 students in the partner universities, out of which approximately 9% aspire to pursue an academic/research oriented career, 39% plan to work in law firms, approximately 12% target governmental agencies, 16% international organizations, and roughly 5% NGOs. 12% of the interviewed students want to become business lawyers and, last but not least, close to 1% aim to engage in political science related activities. Special attention was paid to assure that the sample selected be representative, in the sense of reflecting the diversity of all potential study options in the law spectrum. Hence, respondents were specialized in both more traditional areas of law – such as private law, law of commerce, criminal law, environmental law, consumer protection law, finance law, media law, dogmatics and methods of law – as well as in more innovative streams – such as legal theory, legal philosophy, human rights, public

interest law, critical approaches to law, and social law.

For the purpose of improving graduates' employment perspectives, AMELIE will focus on three main skills currently underemphasized in higher legal education, which were ranked by students as follows: approximately 73% of the respondents estimated that understanding basic principles and structure of law is essential; 50% ranked the understanding and the command of different methodologies as essential; and last but not least, 62% considered critical thinking to be essential

The Questionnaire administered to prospective employers contains 15 questions – of relevance for the newly designed AMELIE programme – structured as in the previous case. Various skills which could be achieved by completing a master programme had to be ranked on a scale from 1 to 6 (A to F respectively), where A represented the highest score and F the lowest. Questions were answered by 24 professionals, out of whom roughly 42% worked in a university/research centre, almost 21% in a law firm, 4% in a government agency, 4% in an international organization, and 12% in the business sector. Once more, close attention was given to respecting the diversity criterion among the pool of respondents, which means that the interviewees occupied positions such as: partners, consultants, administrators, lawyers, directors, researchers, lecturers, assistant professors, and junior researchers. Out of the interviewed professionals, more than half have been responsible for supervising staff, thus holding a fair amount of expertise concerning the skills future graduates should possess in order to achieve success in the job market.

When asked to what extent they valued the ability of a prospective employee to understand the principles and structure of law (a primary matter of concern in legal theory), 70% ranked the understanding and the command of different methodologies as essential, whereas 41% thought it was preferable. About 70% also found critical thinking to be essential. Last but not least, AMELIE places central emphasis on equipping its students with excellent legal research skills, ranked as essential by more than 45% of the employers interviewed.

#### **IV. Conclusion:**

The rationale behind setting up the AMELIE Consortium was to continue the “Master Programme in Legal Theory” previously organized by the European Academy of Legal Theory (EALT) in Brussels.

The Consortium decided to undertake this endeavor following its strong belief that the Master Programme equipped its students with essential skills in the extremely dynamic and complex context of globalization. In the EU, these challenges take the shape of an ever growing *Acquis*, requiring familiarity with diverse national legal systems; and the increasing transnationalization of business, contributing to a shift in paradigm from knowing the letter of the law to *learning how to deal with the law*. For a couple of decades, a number of progressive leading law schools in the Anglo-Saxon tradition made a case for placing legal theory and interdisciplinarity on equal footing with the textbook

method. Explicitly, the New York University Law School (NYU), the University of California, Berkeley, Stanford Law School and Princeton University shifted their focus towards redesigning their curricula in the spirit of the above mentioned values. As mentioned above, Harvard Law School even appointed Martha Minow – known, among other things, for her groundbreaking legal theoretical work – as Dean.

The UK has also been keen on implementing the above mentioned developments, as shown by the countless programmes in legal theory at its most prestigious universities, such as the LSE, the University College London, the King's College London, or Glasgow University, to just name a few. Equally important, Cambridge University Press hosts an academic journal dealing exclusively with legal theory issues. In continental Europe, similar programmes exist in Italy, Spain and France; however, there is none at a European level.

In view of testing the awareness and desirability of the above described skills among European students and future employers, the Consortium commissioned two questionnaires administered to a diverse sample of representatives from the two targeted categories. Interestingly enough, as one browses through the results of the given questionnaires, one cannot help but be struck by the importance that both students and practicing professionals assign to knowledge and skills delivered through theoretical programmes of the type that AMELIE proposes. Basically, the data displaces the myth according to which legal theory programmes produce 'impractical lawyers.' On the contrary, when asked what qualities they look for in a future employee, employers place emphasis on familiarity with different legal systems, methods and paradigms, whereas students enumerate adaptability and flexibility as skills of increasing importance. Furthermore, there seems to be a fair correspondence between a number of skills valued highly by students and, at the same time, required or at least preferred by future employees, but which are unaddressed by existing legal theory programmes in higher education. Among them, there are the understanding of basic principles and the structure of law, understanding the command of different methodologies and, last but not least, critical thinking.

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