

Dr Krzysztof Koźmiński  
Assistant professor  
Institute of Theory of State and Law  
Faculty of Law and Administration  
University of Warsaw

## **Legisprudence and European Tradition of Legislation**

### **Lecture Syllabus**

**Prerequisites:** Students attending the lecture should have a basic knowledge in European legal history, especially in the history of public law, as well as in contemporary constitutional law of their own country. At least basic knowledge of the world's political systems is also desirable.

**Short description:** The aim of the lecture is to provide knowledge about the contemporary faces of law-making, the functioning of the institutions that make up normative acts and the role of citizens in this process. During the lecture will be discussed, among others, the following issues: legislative techniques and methods of legislation, regulatory impact assessment (*ex ante* and *ex post*), the role of rule of law principle during law-making process, phenomenon of codification and decodification, globalization of law, crisis of law and phenomenon of juridization, impact of legal informatics on the contemporary law, role of experts in the legislative process, lobbying and influence of pressure groups, idea of better regulation.

**Full description:**

**1. Idea of *ius scripta*** (concepts of: Thomas Hobbes, Jean-Jacques Rousseau, Jeremy Bentham, John Stuart Mill vs. critics: Friedrich Karl von Savigny, Leon Petrażycki, Roscoe Pound, Carl Schmitt, Chaim Perelman)

**2. Common foundations of the European legisprudence and national traditions of lawmaking** (the evolution of national traditions of law-making, differences and similarities as against foreign solutions, continental and Anglo-Saxon tradition of law-making, *acquis communautaire* and European Law, the phenomena of convergence, the old and new forms of the systematization of law: electronic law)

**3. Legal language and legislative technique** (legal definitions, words and forms of legal provisions; the form of normative act and detailed technical questions: macro- and microcomposition of an act, formulation of reasons appended to draft bills)

**4. Legislative planning** (the necessity of rational legislative planning, the role of legislative services in the legislative process, better regulation: procedures, institutions and experiences; law & economics suggestions and disappointments)

**5. The Polish legislative technique against the European background – tradition and experiences** (Leon Petrażycki idea politics of law, the rational legislator, ideas put forward by the Lwów-Warsaw school of thought, methods and solutions typical of the Polish legislative

technique, the challenge of unification and codification of law after a 123-year long partition, foreign inspirations, selected concepts of: Juliusz Makarewicz, Waclaw Makowski, Kazimierz Opałek, Adam Podgórecki, Stanisław Ehrlich, Bronisław and Jerzy Wróblewski, Zygmunt Ziemiński)

**Aims of the course:**

At the end of the course students should be able to:

- understand and explain the differences between continental and Anglo-Saxon tradition of law-making;
- discuss differences in the philosophical approach to law-making;
- critically evaluate the actual model of law-making;
- identify the dangers and risks associated with the democratization of the lawmaking process;
- to know contemporary social conditions of the law-making process, alternative forms of its creation, organization, expert support, and the role of lobbyists and interest groups;
- explain the causes of the imperfection of the law in European countries, and the conditions that should be met for the law to be created of good quality;
- gaining knowledge about the directions of changes taking place in the legislation under the influence of globalization processes ;
- interpret and understand regulations devoted legislative technique.

**Basic literature:**

**(selected fragments will be provided by the lecturer)**

- L. Wittgenstein (ed.), *Legisprudence. A New Theoretical Approach to Legislation*, Hart Publishing, Oxford-Portland 2002;
- B. Morgan, K. Yeung, *An Introduction to Law and Regulation. Text and Materials*, Cambridge University Press, Cambridge 2007;
- J. Waldrom, *Dignity of Legislation*, Cambridge University Press, Cambridge 1999;
- A. Podgórecki, *Unrecognized Father of Sociology of Law: Leon Petrażycki. Reflections based on Jan Gorecki's "Sociology and Jurisprudence of Leon Petrażycki"*, Law & Society Review, vol. 15 (1980/81), pp. 183–202;
- S. Ehrlich, *Pluralism on and off Course*, Oxford-New York-Toronto-Sydney-Paris-Frankfurt 1982, Pergamon Press.