



WITTGENSTEIN  
AND LAW

## SYLLABUS. *WITTGENSTEIN AND LAW* (7.5 ECTS, SPRING SEMESTER 2021, Apr. 27<sup>th</sup> – May 28<sup>th</sup>)

### Basic information

This course, offered by the Uppsala University Law Faculty, is 7.5 university points (7.5 ECTS credits). It is an optional course at advanced level in the studies for the degree of *juris doktor*. The language of instruction will be English (unless all attending students should happen to be native Swedish speakers). The teacher responsible and doing all of the teaching is professor Joel Samuelsson. The course is pass or fail.

### General idea

Austrian philosopher *Ludwig Wittgenstein* (1889-1951) has had a tremendous impact on modern thought and on modern culture in general. (Particularly so within the Anglosphere.) Of course, the cultural phenomenon we know as Law is not exempt from his influence. Anyone bent on understanding Law *as* a cultural phenomenon will, sooner or later, find Wittgenstein waiting, somewhere along the path. As legal scholars, we have reason to take an interest in Wittgenstein, simply in order to get to know ourselves better (and *getting to know oneself* is, and has been since the very beginning, really what being a scholar is all about).

Wittgenstein carries a unique standing in the history of ideas. Some consider him the most important philosopher since Immanuel Kant. In all likelihood, Wittgenstein's standing is not unmerited. All the fuss should be about *something*. There are causes, reasons, and among them, to be sure, is the spirit and pregnant style of Wittgenstein's thought. His critique is forceful, unrelenting and pure. Within the humanities, whatever you study, studying Wittgenstein's *technique* as well might be a good idea.

For these reasons the course "Wittgenstein and Law" is designed to establish a connection between Wittgenstein's thought, on one hand, and the individual research carried out by the individual participant, on the other. (Thinking is a *personal* matter. That is, at least, a central tenet of Wittgenstein's.)

## Aim and learning outcomes

The aim is to make Wittgenstein *accessible* to the individual participant – as a point of reference (historical understanding, of Law as a cultural phenomenon) and as a possible normative ideal (method).

Only so much can be achieved in five weeks' time, but still, there it is.

Expressed as a matter of "learning outcomes":

At the end of the course students shall, to some extent, have familiarized themselves with Wittgenstein, in particular with the Wittgenstein of the "Investigations".

This includes familiarity with basic notions -such as "form of life", "grammar" and "family resemblance" – and arguments – e.g. "the private language argument", but also familiarity with techniques and with what might, for want of a better word, be called the *spirit* of Wittgenstein's text.

Students shall be able to put what they have learned in these respects into practical use, when doing legal science.

They shall be able to explain and discuss what Wittgenstein has to do with the law.

They shall have the tools to carry their studies on the topic further, if they so please.

And they shall have the courage to approach other texts belonging to the canon of Western thought.

## Execution

In practice, taking this course means three things:

- a) reading,
- b) writing and
- c) attending seminars.

Required *reading* as per the list detailed below. Included are two original works by Wittgenstein as well as two introductions, both lightweight, one more so than the other. In addition, there will be printed hand outs and articles made available during the course.

The *writing* assignment will be to submit an essay consisting of 2 000 words, discussing what, if anything, Wittgenstein has to do with the doctoral thesis supposedly under production by the submitting participant in question. This essay will be the sole form of examination used during the course. Pass or fail only. Essays are to be submitted before midnight, Midsummer's Eve (June 25<sup>th</sup>).

On the *seminars* (and the workshop)... There will be ten events scheduled, two each week – nine seminars and one workshop. As for the content, the preliminary outline provided below will give you some idea.

Typically, in preparation, some task or other – detailed in the seminar description – will need to be dealt with. Attendance is compulsory (one free pass, though).

The reading you do should inform your writing, as should the seminar discussions.

### Reading list

- Wittgenstein, L, *Philosophical Investigations*, 4<sup>th</sup> ed, Hacker, P M S, Schulte, E (eds), John Wiley & Sons 2009, 592 pp.
- Wittgenstein, L, *Tractatus Logico-Philosophicus*, Routledge 2013, 144 pp.
- Monk, R, *How to Read Wittgenstein*, GRANTA BOOKS 2005, 128 pp.
- Heaton, J, *Introducing Wittgenstein*, Icon Books 2009, 176 pp.



### Seminar content. Preliminary outline

#### 1) *May the Force be with you! Introduction*

An introductory lecture sort of seminar using the seminal decision of the House of Lords in the so-called *Investors-case* (*Investors Compensation Scheme Ltd v West Bromwich Building Society* [1997] UKHL 28) (one of the most cited cases of English contract law) and the famous Mos Eisley Cantina-scene of the film *Star Wars* (1977) to make the connection between Wittgenstein and Law.

2) *This time it's personal. Basics*

A seminar covering some of the distinguishing features of Wittgenstein's style of thought and technique.

3) *Overcoming oneself. Tractatus and the Investigations*

A seminar discussing the relationship between Wittgenstein's two most well-known texts. Special emphasis on the prefaces.

4) *Standing on the shoulders. Wittgenstein and Kant*

A seminar designed to highlight the way in which the work of Wittgenstein is "German through and through" (his own expression), using a comparison with selected parts of Kant's *Critique of Pure Reason* and *Prolegomena*.

5) *First steps. Reading the Investigations (half day workshop (full day?))*

Exegesis. We try to get to know our way around the Investigations, starting with § 1.

6) *As far as it goes. Wittgenstein on following rules*

*Prima facie* of special importance to lawyers, Wittgenstein well known discussion on "rule-following" is set into context and examined.

7) *A private language?*

Impossible to avoid, the so-called "private language argument" is here singled out for study. The aim will be to convey a notion of the *point* of the argument (whether or not this aim is realistic, it will be worth the effort).

8) *2+2=5. What is interpretation?*

This seminar is centred on the distinction between 'Deutung' and 'Urteil' which is typically lost in translation (into English) – much to the detriment of the discussion on interpretation and Wittgenstein in Anglo-American legal philosophy.

9) *I don't know what I'm thinking. A drop of grammar*

The point of departure of this seminar is the seemingly gnomic remarks of § 315 of the second part of the Investigations. The point here is potentially of the utmost importance for the understanding of the objective/subjective-divide central to most legal disciplines.

10) *Show and tell. Nothing is hidden*

We finish off with a look at what is perhaps the most opaque aspect of Wittgenstein's thought, namely the distinction between explanation and demonstration, between 'sagen' (saying) and 'zeigen' (showing).

Preliminary schedule

Five weeks - nine seminars, two hours each, one longer workshop. Tuesdays and Fridays (as a rule) at ten, starting Apr 27<sup>th</sup>.