



Prof. Christoph B. Graber, PhD

Spring Semester 2019

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## Legal Sociology

**18 June 2019**

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**Duration:** 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 3 pages (including this page) and 6 questions.

### Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	12 points	15 % of total points
Question 2	9 points	11 % of total points
Question 3	8 points	10 % of total points
Question 4	14 points	17 % of total points
Question 5	20 points	25 % of total points
Question 6	18 points	22 % of total points
Total	<hr/> 81 points	<hr/> 100 %

**We wish you a lot of success!**



**Question 1**

Who is the author of the recognition theory of law? What theory and which proponent of it did this author oppose to? Describe these two theories and point out how they oppose each other.

(12 points)

**Question 2**

According to Durkheim, in what kind of society was he living in? What are the main features of this society? What is the ground of cohesion of such a society? Explain.

(9 points)

**Question 3**

What is the common interpretation of Weber's concept of law? To what extent does this interpretation differ from Trubek's interpretation of Weber's concept of law?

(8 points)

**Question 4**

In "The Theory of Communicative Action" Habermas postulated a colonisation of the lifeworld through the law as a medium.

(Total: 14 points)

a) According to Habermas, what are the consequences of this colonisation for core areas of the lifeworld in a welfare state? Who influenced Habermas's view on this topic?

(10 points)

b) What was the critique brought forward against Habermas's conclusions in "The Theory of Communicative Action" from his colleagues?

(1 point)

c) How did Habermas modify his theory in turn?

(3 points)

**Question 5**

(Total: 20 points)

a) In the 21<sup>st</sup> century, a member of an indigenous community decides to become a modern artist. He uses methods that have traditionally been used by his group to produce his pieces of art and sells those on the global art market. What are the three types of conflicts that may arise concerning control or ownership of the traditional cultural



expressions? Provide an example for each type.

(6 points)

- b) What does Champagne mean when he says that indigenous societies show little cultural differentiation? How does Champagne describe modern society in terms of cultural differentiation? How does systems theory conceive the status and the function of art in a modern society?

(7 points)

- c) “[In market economies,] [m]arkets are supported by institutional and cultural regulations that are very different from those found in indigenous subsistence economies.”

(Source: Champagne, 'Indigenous Self-government, Cultural Heritage and International Trade: A Sociological Perspective', in Christoph B. Graber, et al. (eds), *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2012, pp. 31-58, at p. 48.)

Describe the differences in trading goods in modern capitalist societies and in indigenous societies. According to Weber, what institutional preconditions had influence on the emergence of capitalism?

(7 points)

### Question 6

In “Global Bukowina”, Teubner criticises lawyers who are denying the existence of *lex mercatoria*. Arguably they “are seeking a body of rules as the ‘essence’ of an autonomous legal order, instead of looking for a communicative process that moves the symbol of validity according to the binary legal code.” Explain the meaning of this sentence and Teubner’s critique, making sure to use the following key words: linguistic turn, self-validation and de-paradoxification.

(18 points)