

General Theory of the State

Syllabus

I. Methodology

- A. What is the General Theory of the State?
- B. Legal positivism
- C. Theory and metatheory
- D. General Theory of the State and constitutional Law

II. Definition of the State

- A. Kelsen's identity thesis
- B. Critique
- C. An alternative view

III. Sovereignty and representation

- A. Carré de Malberg's theory of Sovereignty
- B. Sovereignty and the hierarchy of norms
- C. Representation and the theory of state organs

IV. Supremacy of the constitution

- A. Why supremacy? The problem of the basic norm
- B. Constitutional interpretation
- C. Judicial review and Democracy
- D. The problem of super constitutional norms

V. Rechtstaat and Rule of Law

- A. The two concepts
- B. Rechtstaat, liberty and democracy
- C. Rechtstaat, a tautology
- D. Rechtstaat, an impossibility