

LEGAL STUDIES 103 - THEORIES OF LAW AND SOCIETY

Spring 2012
Mon-Wed-Fri, 9-10 a.m. – 88 Dwinelle Hall

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Office Hours
Tuesday, 2-3
Wednesday, 2-3

Course Design

"Theories of Law and Society" surveys leading attempts to construct social theories of law and to use legal materials for systematic social theorizing, during the period from the mid-eighteenth century to the early twentieth century. The course considers major discussions of such themes as the relationships between law, politics, society and economy; the connection between historical change and legal change; the role of law in the processes of social integration and social discipline; and the distinctive elements of legal ordering in the modern west. The course begins with a rapid examination two celebrated programs of law reform presented in the second half of the 18th century: Cesare Beccaria's *On Crimes and Punishments* and the "Declaration of the Rights of Man and Citizen" enacted during the first phase of the French Revolution. These momentous statements in support of humane and rational law-making, individual rights and legal equality introduce several defining features of the modern understandings of the nature and purposes of law. Thereafter, we will study four important and still-influential theories of law and society from the 19th and early-20th centuries: the historical jurisprudence of Henry Maine; the historical materialism of Karl Marx; and the sociologies of law of Emile Durkheim and Max Weber. Each of these theories present different accounts (first) of how to study the relationship between law and society in general, and (second) of the specific kinds of social experience and institutions which sustain the "modern" conceptions of law, such as that associated with the eras of the French Revolution and the 18th-century Enlightenment.

Course Web Site

A bSpace course web site [<http://bspace.berkeley.edu>] will be used throughout the semester to post study guides, assignments and other required course materials. The course site should be available to those currently enrolled and anyone with a CalNet ID or campus guest account. If you are unable to access the site, please send me an email message so that I can add you to the roster. (I will need your student ID number and your email address *as listed in the campus directory* (<http://directory.berkeley.edu> .) *Email announcements from the site will be sent your "@berkeley.edu" addresses. Please be sure to check this account through the semester.*

Course Materials

Weekly reading assignments are chiefly taken from the following books which have been ordered for the class As indicated below, in some cases you may substitute other editions or make use of free on-line editions. If you use an online version, you need to print out the assigned sections and bring the copy to Section meetings. Links to on-line editions of required books are posted on the bSpace site (see "Resources" section - "Reading Assignments Links". folder).

All additional assigned readings are available as PDF files posted on the course web site. This material also is found in the "Resources" section of the bSpace course site.

Anthony GIDDENS *Capitalism and Modern Social Theory* (Cambridge Pb)

Cesare BECCARIA, *On Crimes and Punishments*
[use on-line edition or use any other complete English translation]

Emile DURKHEIM *The Division of Labor in Society* (Free Press Pb)
[or use any other **complete** edition of the work]

Henry MAINE *Ancient Law*
[use any **complete** edition or complete online version]

Karl MARX *Selected Writings*, ed. Simon (Hackett Pb)

Max WEBER *On Charisma and Institution Building*,
ed. Eisenstadt (Chicago Pb)

Requirements and Grading

L.S. 103 carries a substantial reading load.

During the semester, you will be given three Course Assignments, either a short paper (4-6 pages in length) or an in-class exam. The Final Examination covers the entire course. (There is no Midterm Exam.) *Please note carefully: you cannot pass the course without completing each of the three Course Assignments and Final Exam.*

Attendance and participation at weekly section meetings are required. For many section meetings, you will be asked to complete very brief writing assignments (one or more paragraphs in length). These will be collected and evaluated on a pass/no pass basis. Discussion Sections will often cover assigned and examined course materials not discussed in regular class meetings. You may not use laptops, phones, or similar devices during class or section unless you have medical reasons for doing so that you have cleared with me in advance. My experience is that computer use is more likely to inhibit understanding and attention during class than to improve them.

Grades for the class are curved according to a standard Legal Studies formula. (The flexible curve is: A's - maximum 20% of class; A's and B's combined - maximum 60% of class.)

Your final grade will be determined on roughly the following basis:

- sections - 20%
- papers and in-class exams - 50%
- final exam - 30%.

Reading Assignments by Week

Week of January 18

Beccaria, *On Crimes and Punishments* (on-line edition or other complete edition):
Introduction, chaps.1-3, 6, 27, 47.

Declaration of the Rights of Man and Citizen (1789) [posted PDF]

Week of January 23

“Revolutionary Debates in France” [posted PDF], items #15, 16, 17, 34, 36.

Lawrence Rosen, Foreword to Henry Maine, *Ancient Law* [posted PDF]

Henry Maine, *Ancient Law* (on-line edition or other complete edition):
chapter 1: entire chapter.

Week of January 30

Henry Maine, *Ancient Law* (on-line edition or other complete edition):

chapter 2: paragraphs 1-9;

chapter 3: paragraphs 1-9, 15-17.

chapter 4: paragraphs 1-7, 9-12.

Week of February 6

Henry Maine, *Ancient Law* (using on-line edition or other complete edition):

chapter 5: paragraphs 1- 11, 14-26.

chapter 9: paragraphs 1-5, 22.

Henry Sidgwick, *The Elements of Politics* (1891) [posted PDF], pp. 55, 82-5.

Week of February 13

Giddens, *Capitalism and Modern Social Theory*, pp.9-45, 52-5, 60-4.

Karl Marx: Selected Writings, ed. Simon (Hackett Pb)

The German Ideology, pp.107-12, 115-25, 129-31.

Preface to ... A Critique of Political Economy, pp.209-13.

Week of February 20

Karl Marx: Selected Writings

The Communist Manifesto, pp.157-86.

Economic and Philosophical Manuscripts, pp.54-5, 58-66.

On the Jewish Question, pp.1-21.

The Eighteenth Brumaire, pp.187-208 (optional).

Capital, pp. 230-43 (optional).

Week of February 27

Karl Marx: Selected Writings

Critique of the Gotha Programme, pp.315-24, 327-32.

Giddens, *Capitalism and Modern Social Theory*, pp.65-6, 70-85, 91-118.

Week of March 5

Durkheim, *The Division of Labor in Society*,

Book I: chapter 1, pp. 24-9;

chapter 2, pp.31-4, 38(begin at bottom of page)-41, 44-52, 60-4.

chapter 3, pp. 68-72.

chapter 6, pp.127-41.

Week of March 12

Durkheim, *The Division of Labor in Society*,
Book I: chapter 7, pp.154-74.
Book III: Conclusion (entire).

Durkheim, "Individualism and the Intellectuals" [posted PDF]

Durkheim, "Dualism of Human Nature" [posted PDF], pp. 149-63 (optional).

Week of March 19

No new Reading: complete any missed assigned Reading!

Week of March 26 - SPRING BREAK!!

Week of April 2

Giddens, *Capitalism and Modern Social Theory*, pp.119-38, 51-84.

Max Weber, *On Charisma and Institution Building* (ed. Eisenstadt)

Social Relations, pp.3-8, 11-12, 28-39

Political Sphere, pp.43-61, 66-77.

Weber, "Author's Introduction" to *The Protestant Ethic and the Spirit of Capitalism*, pp.13-28 [posted PDF]

Week of April 9

Weber, selection from "The Social Psychology of World Religions"
[posted PDF]

Max Weber, *On Charisma and Institution Building*
Capitalism, 140-2.

Legal System, pp.81-90, 95-8, 110-17.

Science as a Vocation, pp.294-309.

Week of April 16

No new Reading: complete any missed assigned Reading!

Week of April 23

Course Review - No assigned reading!

Week of May 2

Campus Review Week - No assigned reading!

Final Exam – May 7, 7-10 p.m.