

## LEGAL STUDIES 103 - THEORIES OF LAW AND SOCIETY

Spring 2013

Mon-Wed-Fri, 11:10 a.m.-12 p.m. – 240 Mulford Hall

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Office Hours

Tuesday, 2-3 p.m.  
Wednesday, 2-3 p.m.

### 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 18<sup>th</sup> 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 19<sup>th</sup> and early-20<sup>th</sup> 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 18<sup>th</sup>-century Enlightenment.

### Course Web Site

A bSpace course web page 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 (4-5 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.

Audio podcasts of individual class lectures will be available on the Berkeley webcast site: <http://webcast.berkeley.edu/> .

Laptops, tablets and similar devices are permitted during class and section for the purposes of note taking and study. Please confine your use of these devices. If I find the devices are being used for other purposes and inhibiting instruction, they will be banned during class and sections.

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

- sections - 20%
- papers and in-class exams - 55%
- final exam - 25%.

## Reading Assignments by Week

### Week of January 23

Marc Galanter, "The Modernization of Law" [posted PDF], pp.153-8  
Beccaria, *On Crimes and Punishments* (on-line edition or other complete edition):  
Introduction, chaps.1-3, 6, 27, 47.

### Week of January 28

*Declaration of the Rights of Man and Citizen* (1789) [posted PDF]  
"Revolutionary Debates in France" [posted PDF], items #15, 16, 17, 34, 36.  
Lawrence Rosen, Foreword to Henry Maine, Ancient Law [posted PDF]

### Week of February 4

Henry Maine, *Ancient Law* (on-line edition or other complete edition):  
chapter 1: entire chapter.  
chapter 2: paragraphs 1-9.  
chapter 3: paragraphs 1-9, 15-17.  
chapter 4: paragraphs 1-7, 9-12.

### Week of February 11

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 18

Giddens, *Capitalism and Modern Social Theory*, pp.9-45, 52-5, 60-4.  
*Karl Marx: Selected Writings*, ed. Simon (Hackett Pb)  
Preface to ... A Critique of Political Economy, pp.209-13.

### Week of February 25

*Karl Marx: Selected Writings*  
The German Ideology, pp.107-12, 115-25, 129-31.  
The Communist Manifesto, pp.157-86.

### Week of March 4

*Karl Marx: Selected Writings*  
Economic and Philosophical Manuscripts, pp.54-5, 58-66.  
On the Jewish Question, pp.1-21.  
Critique of the Gotha Programme, pp.315-24, 327-32.  
Capital, pp. 230-43 (optional).

### Week of March 11

Giddens, *Capitalism and Modern Social Theory*, pp.65-6, 70-85, 91-118.  
Durkheim, *Division of Labor in Society*,  
Book I: chapter 1, pp. 24-9;

Week of March 18

Durkheim, *Division of Labor in Society*,  
Book I: chapter 2, pp.31-4, 38(begin at bottom of page)-41, 44-52, 60-4.  
chapter 3, pp. 68-72, 87.  
chapter 6, pp.127-41.  
chapter 7, pp.154-74.

Week of March 25 - SPRING BREAK!! No assigned reading

Week of April 1

Durkheim, *Division of Labor in Society*,  
Book III: Conclusion (entire).  
Durkheim, "Individualism and the Intellectuals" [posted PDF]  
Durkheim, "Dualism of Human Nature" [posted PDF], pp. 149-63 (optional).

Week of April 8

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.

Week of April 15

Weber, "Author's Introduction" to *The Protestant Ethic and the Spirit of Capitalism*, pp.13-28 [posted PDF]  
Weber, selection from "The Social Psychology of World Religions", pp.293-300. [posted PDF]  
Max Weber, *On Charisma and Institution Building*  
Capitalism, 140-2.  
Legal System, pp.81-90, 95-8, 110-17.

Week of April 22

Max Weber, *On Charisma and Institution Building*  
Science as a Vocation, pp.294-309.

Week of April 23 Course Review - No new reading!

Week of April 29 Course Review - No new reading!

Week of May 6 Campus Review Week - No assigned reading!

Final Exam – May 14, 7-10 p.m.