

LEGAL STUDIES 103 - THEORIES OF LAW AND SOCIETY

Fall 2008

Mon-Wed-Fri, 11-12 noon – 56 Barrows

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Office Hours:

Monday, 5:15-6:15

Tuesday, 2-3:00

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 brief examination of the theory of the "Rights of Man and Citizen" articulated during the era of the French Revolution. This historically momentous account of individual rights and legal equality introduces 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 web site for the class will be used throughout the semester as the primary mechanism for distributing class and section assignments, announcing deadlines and discussion section topics, and distributing other required information. The web site is open to anyone with a CalNet I.D. To access the web site, go to <http://bspace.berkeley.edu>; log in with your CalNet I.D. The class is listed as: LEGALST 103 Fall 2008.

Students enrolled in the class are automatically included in the list of participants who receive email announcement posted to the site. Those who are not enrolled in the class need to join the site. If you have any difficulty gaining access, please notify me by email. I will need your student ID number and your email address *as listed in the campus directory* (<http://directory.berkeley.edu> .)

Course Materials

Weekly reading assignments are chiefly taken from the following titles. Copies of these books have been ordered for the class. In the case of Maine's *Ancient Law*, a free on-line edition also is available.

All additional assigned readings are available as PDF files posted on the course web site. Links to this material are found in the "Resources" section of the site - look for the folder "Reading Assignments Links".

- Anthony GIDDENS *Capitalism and Modern Social Theory* (Cambridge Pb)
- Emile DURKHEIM *The Division of Labor in Society* (Free Press Pb)
[or use any other **complete** edition of the work]
- Lynn HUNT *The French Revolution and Human Rights* (Bedford Pb)
- Henry MAINE *Ancient Law* (obtain any **complete** edition, or the online
version at <http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/maine/anclaw/index.html>)
- 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 (a combination of short papers or in-class exams). 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 several 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.

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 August 27-29

Lynn Hunt, *The French Revolution and Human Rights*: Editorial introduction, pp.1-32, 140-1;

Week of September 2-5

Lynn Hunt, *The French Revolution and Human Rights*: Document Nos. 1, 3, 6, 10, 12, 13, 14, 15, 16, 17,

Week of September 8-12

Lynn Hunt, *The French Revolution and Human Rights*: Document Nos. 23, 26, 32, 34, 36, 39.

Lawrence Rosen, Foreword to Henry Maine, [Ancient Law](#) [PDF copy posted at Course Web Site (“Resources” section - Reading Assignments Links)]

Week of September 15-19

Henry Maine, *Ancient Law*

<http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/maine/anclaw/index.html>

If using on-line edition or other complete edition:

chapter 1: entire chapter; chapter 2: paragraphs 1-9; chapter 3: paragraphs 1-9, 15-17.

OR,

If using University of Arizona Press edition of *Ancient Law*:

pp.vii-xx. (editorial foreword); chapter 1, pp.1-19; chapter 2, pp.20-32;
chapter 3, pp.42-55, 65-69.

OR,

If using Beard Books and Everyman editions of *Ancient Law*:

Introduction, pp.v-ix, chapter 1, pp.1-12; chapter 2, pp.13-20;
chapter 3, pp.26-34, 40-2.

Week of September 22-26

Henry Maine, *Ancient Law*

<http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/maine/anclaw/index.html>

If using on-line edition or other complete edition:

chapter 4: paragraphs 1-7, 9-12; chapter 5: paragraphs 1- 11, 14-26;
chapter 9: paragraphs 1-5, 22.

OR,

If using University of Arizona Press edition of *Ancient Law*:

chapter 4, pp.70-79, 83-92; chapter 5, pp.109-36, 141-65;
chapter 9, pp.295-304, 329-32.

OR,

If using Beard Books and Everyman editions of *Ancient Law*:

chapter 4, pp.43-8, 50-6; chapter 5, pp.67-83, 86-100; chapter 9, pp.179-85, 200-01.

Week of September 29-October 3

Henry Sidgwick, *The Elements of Politics* (1891), pp.39-49, 55, 83-6, 143-6.
[PDF copy posted at Course Web Site (“Resources” section - Reading Assignments Links)]

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

Week of October 6-10

Karl Marx: Selected Writings, ed. Simon (Hackett Pb)
Theses on Feuerbach, pp.98-101 (optional).
The German Ideology, pp.102-56.
The Communist Manifesto, pp.157-86.
Preface to, A Critique of Political Economy, pp.209-13.

Week of October 13-17

Karl Marx: Selected Writings
The Eighteenth Brumaire, pp.187-208 (optional).
Capital, pp.214-20, 230-43.
Economic and Philosophical Manuscripts, pp.54-5, 58-68.
On the Jewish Question, pp.1-21.
Critique of the Gotha Programme, pp.315-24, 327-32.

Week of October 20-24

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

Week of October 27-31

Durkheim, “Individualism and the Intellectuals”
[PDF copy posted at Course Web Site (“Resources” section - Reading Assignments Links)]

Durkheim, *The Division of Labor in Society*,
Book I: chapter 1, pp. 24-9; chapter 2, pp.31-4, 38-41, 44-52, 60-4;
chapter 3, pp. 68-73; chapter 6 (entire); chapter 7 (entire).

Week of November 3-7

Durkheim, *The Division of Labor in Society*,
Book II: chapter 5 (entire);
Book III: Conclusion (entire).

Durkheim, “Dualism of Human Nature”, pp. 149-63.

[PDF copy posted at Course Web Site (“Resources” section - Reading Assignments Links)]

Week of November 10-14

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, 15-17, 28-39.

Week of November 17-21

Max Weber, *On Charisma and Institution Building*
Political Sphere, pp.43-61, 66-77.

Weber, “Author’s Introduction” to *The Protestant Ethic and the Spirit of Capitalism*, pp.13-28;

Weber, selection from “The Social Psychology of World Religions”
[PDF copies posted at Course Web Site (“Resources” section - Reading Assignments Links)]

Week of November 24-26

Max Weber, *On Charisma and Institution Building*
Legal System, pp.81-90, 95-106, 110-17.
Capitalism, 140-2, 147-50, 154-65.
Science as a Vocation, pp.294-309.

Week of December 1-5

No assigned reading!

Week of December 8-10

No assigned reading!

Final Exam – Saturday, December 13; 12:30-3:30