

# LEGAL STUDIES 103 - THEORIES OF LAW AND SOCIETY

Fall 2020

Mon-Wed-Fri, 8:10-9:00 a.m. – remote on zoom

David Lieberman

445 North, Boalt Hall (Berkeley Law)

e-mail: [dlieberman@law.berkeley.edu](mailto:dlieberman@law.berkeley.edu)

## Design, Learning Goals and Overview

"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 through 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 class is organized to advance the following learning goals:

- Critical engagement with and close reading of leading theories concerning the relationship between forms of law and the societies in which these laws operate.
- Improvement in your writing and analytical skills, through regular and brief writing assignments.
- Gaining an understanding of the defining features of modern law, such as the promotion of individual rights and legal equality, and of competing explanations of the societal supports for these modern features.
- Your evaluation of rival attempts to understand law and legal change in terms of other societal dynamics and structures.

## Course Content

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 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: one from the mid-19<sup>th</sup> century, the historical materialism of Karl Marx; two from the late 19<sup>th</sup> and early-20<sup>th</sup> centuries, the sociologies of law of Emile Durkheim and Max Weber; and finally, the social study of race and law of WEB Du Bois, first presented in the 1890s and still being enriched in the 1960s. 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 our "modern" understandings of law.

Through the semester, you will complete 3 writing assignments: two brief reflection papers (3 pages in length) and 1 more substantial paper (6 pages in length). [These are described at greater length in the page "Expectations, Requirements, Engagement, Grading".] The purpose of these assignments is to strengthen your writing and analytical skills and to assist your mastery of the assigned reading. There is a cumulative final exam, but no mid-term exam or research paper.

## Expectations, Engagement, Requirements, Grading

The basic class requirement is your careful and timely completion of the assigned reading and your regular and engaged participation.

**Assigned reading.** Theories of Law and Society carries a challenging and stimulating body of required reading. We read influential theories in the words of the theorists themselves, rather than read *about* these theories in the words of others.

The bspace site is organized into separate modules for each of the major theorists we consider. For each class, reading assignments and topics covered are set out in the individual modules. Slides will be posted summarizing the topics covered in each class. In addition, our Zoom meetings will be recorded and links to these recordings posted on the bspace site.

**Active engagement.** Given the circumstances of remote instruction, you will be given various opportunities to demonstrate your active engagement in the class. For those who attend the class synchronously through Zoom, we will regularly use Zoom "breakout rooms" and the "chat" function for your participation. For those who receive class content through the Zoom recordings, we will regularly use "Discussion" threads on bspace for your participation. Less often, you will be asked to provide brief reaction comments (a few sentences in length) to particular class meetings.

**Sections.** Weekly Discussion Sections form an integral part of the course and will often cover material not discussed in the M-W-F class meetings. They provide another setting for you to participate and demonstrate your active engagement. Your contributions to Sections is included in your final grade. Cristina Violante, the GSI and co-teacher, has created separate bcourse sites for Sections and provides detailed information there. You can anticipate having to contribute briefly to posted bcourse Discussion threads in advance of most Section meetings.

**Required Papers.** During the semester, you will be given three writing assignments: 2 brief "reflection exercises" (about 3 pages in length) and 1 more substantial paper (about 6 pages in length). These writing assignments are based on the assigned reading and do not require additional research. A Take-home Final Examination covers the entire course. (There is no Midterm Exam.) You cannot pass the course without completing each of the writing assignments and the Final Exam.

**Grading.** Your final grade will be determined on the following basis:

- Sections and class participation - 15%
- First "reflection" exercise - 15%
- Second "reflection" exercise - 20%
- Paper - 30%
- Final exam - 20%.

## Books to obtain

The following books have been ordered for purchase or are available in free on-line editions. All other assigned materials are posted on this site. (You do not need to use an English translation, when a reliable translation in your native language is available or when you do not require a translation.)

*Please note: Maine's Ancient Law is no longer required. Du Bois, The Philadelphia Negro, has been added.*

- Cesare Beccaria, *On Crimes and Punishments* [use free on-line version or any other complete English translation]

- W.E.B. Du Bois, *The Philadelphia Negro: A Social Study* (Oxford paperback and ebook, 2007). Any complete edition of the book is fine to use. There is a free ebook version available through the UC Berkeley library at:

[https://lawcat.berkeley.edu/record/1174064.](https://lawcat.berkeley.edu/record/1174064)]

- Emile Durkheim, *The Division of Labor in Society* (Free Press, paperback, 2014)  
[This edition, translated by W.D. Halls, is the best version in English. However, a free ebook version, using an earlier translation, is available through the UC Berkeley library at: <https://lawcat.berkeley.edu/record/1174065>Links to an external site..

- Karl Marx, *Selected Writings*, ed. Simon (Hackett, paperback and ebook, 1994) [If you already own an anthology of Marx's writings, please consult with me about using it as a substitute.]

- Max Weber, *On Charisma and Institution Building*, ed. Eisenstadt (Chicago Paperback, 1968)

*Not assigned, but recommended, are:*

- William Strunk, *Strunk and White's The Elements of Style* (Pearson, paperback) - a short, inexpensive and excellent aid to better writing;

Either of two excellent introductions to the social theories of Marx, Durkheim and Weber:

- Anthony Giddens, *Capitalism and Modern Social Theory* (Cambridge, paperback, 1971); and
- Ken Morrison, *Marx, Durkheim, Weber: Formations of Modern Social Thought* (Sage, paperback, 2006).