

Theories of Law and Society
Professor: Mark Leinauer

Syllabus¹

Lectures. Lectures will be held Monday, Wednesday and Friday from 10 a.m. to 11 a.m. (Pacific Time) in room 20 of the Social Sciences Building.

Email contact. To contact Mark Leinauer, please simply email Mark through the course webpage (there is an “email / inbox” tab for within course messaging). Please note that messages to other email addresses may not be received. I aim to answer all emails within 48 hours. Substantive questions are best addressed in office hours.

Office Hours. I will hold office hours every Tuesday from 10 a.m. to 11 a.m. (Pacific time) via zoom. A general invite for office hours will be released to the entire class as an announcement about 5 minutes before 10 a.m. Your GSI, Haley Anderson, will hold office hours as well. Please consult her syllabus for that information.

GSI. Your G.S.I. will be Haley Anderson. Haley received a Juris Doctorate from N.Y.U. and is currently a doctoral student in the Jurisprudence and Social Policy department. Needless to say she is extremely knowledgeable. If you are struggling with any aspect of the material you are strongly encourage to use Haley as a resource.

Attendance & Participation. I will not take attendance but I *highly recommend* attending lectures live. This material is best presented in a conversational format, with students asking questions in real time. Each lecture will also conclude (time allowing) with a question and answer period designed to address lingering confusion. That process, obviously, requires live attendance. Most classes also have an assignment attached (answering a brief question etc.). These assignments are designed to prompt class discussion. While they will be graded only on a pass/fail basis, completing them will contribute to your participation grade.

One final note, if this class has a waitlist then we will take attendance during the first week to determine if anyone has dropped the class. It behooves you, therefore, to attend the first week live. If you cannot attend the first week live and yet intend to remain in the course, please contact Haley via email to let her know.

Materials. The course utilizes the following materials. Additional readings will be provided through the course website. Please note that many of them are available for free online.

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

¹ This syllabus may be adjusted slightly to accommodate topics of students’ interest and other circumstances.

- 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>.]
- 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)

Prerequisites. No previous course work is required.

Homework. Most lectures will have an “assignment” attached to them. These assignments mostly consist of short questions designed to stimulate discussion during lecture. These assignments will be graded pass/fail and there are no “wrong answers” but please take them seriously. Thoughtful responses will be appreciated. They will also benefit the class (and they will influence your participation grade).

Grading. There are two papers and a final exam. The first paper will be shorter and will count for 25% of your final grade. Paper two will count for 30%, the final will count for 30% and participation will count for 15%. The Final Examination covers the entire course. *Please note carefully: you cannot pass the course without completing each of the two papers and the final exam.*

Accommodations. If you need disability-related accommodations in this class, if you have emergency medical information you wish to share with me, or if you need other special arrangements, **please inform me immediately**. Please see me privately after class or in office hours. You may also email me.

Help Available. And finally, I know that dealing with post-pandemic instruction (and dealing with college life in general) can be very difficult. There are, however, some resources available.

Confidential counseling: <https://uhs.berkeley.edu/caps>

LGBTQ+ & gender equity support: <https://cejce.berkeley.edu/geneq>

Guide to Campus Wellness Resources: <https://recalibrate.berkeley.edu/home>

Sequence by Week

Week of August 22nd (W & F Class)

August 25th will be an introductory class, but there is a discussion question that I intend to address. You will find that question under the “assignments” tab (on the course website) listed as Assignment One. Please provide a response (a paragraph or two) in the space allotted. The assignment is not graded (and there are no wrong answers) but completing the assignment will impact your participation grade.

For class:

Complete discussion assignment one

August 27th: 18th Century Legal Reform / Moral Goals of the Law

Read for class:

Beccaria, *On Crimes and Punishments*, Introduction, Chapters 1-3, 47
“Declaration of the Rights of Man and Citizen [DMRC]”, Articles 1-6.

Week of August 29th (M, W & F Class)

August 30th: 18th Century Legal Reform / Guiding Conduct

For class:

Beccaria, *On Crimes and Punishments*, Introduction, Chapters 6, 27

Complete discussion assignment two

September 1st: 18th Century Legal Reform / The Modern Legal Subject

Read for class:

“Declaration of the Rights of Man and Citizen [DMRC]” (entire declaration)

“Revolutionary Debates in France,” items 15, 16, 17, 34, 36 (posted as PDF)

Complete discussion assignment three

September 3rd: Marx on Law & Society / Historical Materialism

Read for class:

Marx Study Questions (in “files” section; credit owed to Prof. Lieberman for this document).

Karl Marx Selected Writings (ed. Simon): introduction pp. xix – xliii

Karl Marx Selected Writings (ed. Simon): “Preface to .. a Critique of Political Economy,” pp. 209-13

Karl Marx Selected Writings (ed. Simon): The German Ideology, pp. 107-8, 111-12 (begin at “The production of ideas...” and finish with “in direct contrast to...”)

Complete discussion assignment four

Week of September 5 (W & F Class)

September 6th: No Class (Holiday)

September 8th: Marx on Law & Society / Capitalism as a System of Production

Read for class:

The Communist Manifesto, pp.157-76.

Complete discussion assignment five

September 10th: Marx on Law & Society / Class rule, private property, free trade

Read for class:

The Communist Manifesto, pp.176-86

Complete discussion assignment six

Week of September 12 (M, W & F Class)

September 13th: Marx on Law & Society / the critique of rights theory

Read for class:

“On the Jewish Question”, pp.1-10 (at p.10 include and end with paragraph beginning, "Man emancipates himself *politically* ..."; pp.13-14 (at p.13 begin at bottom of page, “We thus have shown ...”, at p.14 include and end with paragraph beginning, "We thus do not say ..."); pp.15-17 (at p. 15 begin at, "The rights to man as such ..."; at p.17 include and end with paragraph beginning, "Thus none of the so-called ...).

Complete discussion assignment seven

September 15th: Marx on Law & Society / ideology and legitimization

Read for class:

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

"The Little Red Hen" folk story (posted PDF)

Complete discussion assignment eight

September 17th: Marx on Law & Society / Commodification and the market

Read for class:

"Banks Pay Big Bucks", Wall Street Journal, January 29, 2018 (posted file)

"Power of Sleep", California Magazine, Winter 2017 (posted PDF)

Karl Marx Selected Writings: Capital, p.244

Complete discussion assignment nine

Week of September 19 (M, W & F Class)

September 20th: Marx on Law & Society / Commodification and the market

In class review of Marx on Law & Society.

No readings or assignment, but please put some thought into clarifying questions that you would like to ask.

Note: Paper #1 due in one week.

September 22nd: Maine & Spencer / Contract, freedom, progress

Read for class:

Study Guide: Maine, Spencer, Sidgwick (credit owed to Prof. Lieberman for this document).

Maine, *Ancient Law*, chapter 5, paragraphs 6-13 (Begin with paragraph starting, "the effect of the evidence derived from comparative Jurisprudence..."; end with the paragraph beginning, "before this branch of our subject is dismissed..."); Chapter 5, paragraphs 25-26 (final two paragraphs of the chapter); chapter 9, paragraph 1.

Sidgwick, *Elements of Politics*, pp. 55, 82-5.

Complete discussion assignment ten

September 24th: Durkheim: Law and the Sociology of Morals

Read for class:

Durkheim Study Questions (credit owed to Prof. Lieberman for this document).

Durkheim, *Division of Labor in Society*,

2014 edition (white cover): Coser Introduction, pp.xi-xxiii; Lukes Introduction, xxv-xxxix.

1984 edition (blue cover): pp.ix-xxiv + Lukes Introduction, xxv-xxxix [posted online]

Marx, *Communist Manifesto* Part 2, list of 10 measures anticipated at the start of the Communist era, *Karl Marx Selected Writings*, pp. 175-6.

Complete discussion assignment eleven

Week of September 26 (M, W & F Class)

September 27th: Durkheim: Law and the Sociology of Morals (continued)

Paper #1 due by 11:59 p.m. (Pacific)

Read for class:

No readings for today

No discussion assignment for today

This class will follow up on the material for yesterday and allow open discussion.

September 29th: Durkheim: Division of Labor in Society

Read for class:

Durkheim, *Division of Labor in Society*

1933 translation: Book I, chapter 1, pp. 49-50, 63-9.

2014 edition (white cover): Book I, chapter 1, pp. 41, 51-6.

Complete discussion assignment twelve

October 1st: Durkheim: Punishment & Society

Read for class:

Reading assignment: Durkheim, *Division of Labor in Society*

1933 trans.: Book I, chapter 2, pp. 70-5, 79-82, 85-90, 105-10.

2014 edition (white cover): Book I, chapter 2, pp. 57-60, 63-5, 67-71, 81-4.

Complete discussion assignment thirteen

Week of October 3 (M, W & F Class)

October 4th: Durkheim: Restitutive Law

Read for class:

Durkheim, *Division of Labor*,

1933 trans. Book 1, chapter 3, p.132; Book I, chapter 6, pp.174-6, 190-9.

2014 edition (white cover): Book 1, chapter 3, p.104; Book I, chapter 6, pp.138-9, 143-50.

Complete discussion assignment fourteen

October 6th: Durkheim: Modern contract and social solidarity

Read for class:

Durkheim, *Division of Labor in Society*

1933 trans. Book I, chapter 7, pp.206-7, 210-7, 219-29.

2014 edition (white cover): Book I, chapter 7, pp.162-3, 165-70, 171-9.

Posted web article: "Should You Make a Roommate Contract?"

Complete discussion assignment 15

October 8th: Durkheim: anomie & modern society

Read for class:

Durkheim, *Division of Labor in Society*

1933 trans. Book III: chapter 1, pp. 353-7, 364-71; Conclusion, pp.396-402, 406-9.

2014 edition (white cover): Book III: chapter 1, pp. 277-80, 285-9; Conclusion, pp.309-13, 316-19

....

1933 trans. Preface to the 2d Edition (1902), part 1, pp.1-7, 23-31.

2014 edition (white cover): Preface to the 2d Edition (1902), pp.8-12, 24-9.

Complete discussion assignment 16

Week of October 11 (M, W & F Class)

October 11th: Durkheim: moral individualism & modern society

Read for class:

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

Complete discussion assignment 17

October 13th: Durkheim: Review and discussion of paper assignment

Read for class:

This class will be devoted to a review of Durkheim's social theory and to the second paper assignment. There is no posted prompt. Instead, come to class with your questions that you would like to have addressed.

October 15th: Weber: Ideal types and the comparative method

Read for class:

Weber Study Questions (credit owed to Prof. Lieberman for this document).

Gerth and Mills, *From Max Weber* [posted PDF]

Max Weber, *On Charisma and Institution Building* (ed. Eisenstadt), pp. 46-7 (Pure Types of Legitimate Authority)

Complete discussion assignment 18

Week of October 17 (M, W & F Class)

October 18th: Weber: Bureaucracy as a concept, institution and practice

Read for class:

Weber, *On Charisma and Institution Building*, pp.66-77 (Bureaucracy)

Complete discussion assignment 19

October 20th: Weber: Rationalization as a sociological concept

Read for class:

“Social Psychology of World Religions,” pp.293-301 [posted PDF].

“Author’s Introduction” to *The Protestant Ethic and the Spirit of Capitalism*, pp.13-28 [posted PDF].

Complete discussion assignment twenty

October 22nd: Weber: Sites of dynamics of rationalization

Read for class:

Weber, *On Charisma and Institution Building*, pp.28-32, 37-9 (discipline); pp. 54-61 (charisma and its routinization); pp.140-2, 161-5 (modern capitalism).

Complete discussion assignment 21

Week of October 24 (M, W & F Class)

October 25th: Weber: Law and institutional rationalization

Read for class:

"Social Psychology of World Religions", pp.298-9.

Weber, *On Charisma and Institution Building*, pp. 81-90 (formal and substantive rationalization in law).

Complete discussion assignment 22

October 27th: Weber: Formal legal rationalism and its history

Read for class:

Weber, *On Charisma and Institution Building*, pp. 95-8, 110-17.

Complete discussion assignment 23

October 29th: Weber: bureaucracy, rationalization and disenchantment

Read for class:

Weber, *On Charisma and Institution Building*, pp. 294-304 (Science as a Vocation).

Read or listen to NPR story, "How Germany Staffed up Contact Tracing Teams to Contain Its Coronavirus

Outbreak": <https://www.npr.org/sections/health-shots/2020/06/22/880803278/how-germany-staffed-up-contact-tracing-teams-to-contain-its-coronavirus-outbreak>

Complete discussion assignment 24

Halloween outfits appreciated

Week of October 31 (M, W & F Class)

November 1st: Weber Review

Read for class:

Weber Study Questions (credit owed to Prof. Lieberman for this document).

Halloween outfits still appreciated

November 3rd: Du Bois: Race and Social Theory

Read for class:

Du Bois Study Guide for LS103

Du Bois, Chronology [posted PDF]

Christopher Muller, review of Morris, *The Scholar Denied: WEB Du Bois and the Birth of Modern Sociology* [posted PDF]

The Dawn of Dusk Links to an external site.(1940) – chap 5, pp 49-52, 59, 65-7 (begin at, “I think it was in Africa ...” (p.65) and continue to end of chapter).

Complete discussion assignment 25

November 5th: Du Bois: The Philadelphia Negro: The Seventh Ward Surveyed

Read for class:

The Philadelphia Negro: A Social Study Links to an external site.

Bobo introduction, xxv-xxix.

chapters 1-2, pp. 1-5; chapter 5, pp.34-6; chapter 7, pp.51, 55-7; chapter 9, pp.69-70,78,88-90 (The Trades), 91-6 (Laborers); chapter 10, pp.104-5,115- 7; chapter 11, pp.120-1,127-8,134-6.

Complete discussion assignment 26

Week of November 7 (M, W & F Class)

November 8th: Du Bois: open discussion

Paper #2 due by 11:59 p.m. (Pacific)

This class will be an open discussion of the material to date. Attendance is optional.

November 10th: Du Bois: Crime, Poverty & Segregation

Read for class:

The Philadelphia Negro Links to an external site.

chapter 13, pp.166,175-83; chapter 14, pp.202-4; chapter 15, pp.211-2, 221-7; chapter 16, pp.229-31, 241-5; chapter 18, pp.268-75.

Complete discussion assignment 27

November 12th: Du Bois: The color line and the legacies of slavery

Read for class:

The Souls of Black Folk Links to an external site.(1903),

Rampersad Introduction, pp.xxv-xxvii.

chaps.1-2, 8 (entire chapters).

Complete discussion assignment 28

Week of November 14 (M, W & F Class)

November 15th: Du Bois: Racial justice and Black advancement

Read for class:

The Philadelphia Negro Links to an external site., chap. 18, pp.268-75.

The Souls of Black Folk Links to an external site. (1903),
chap. 3, pp.25 (begin at, "Then came the Revolution of 1876...")-29;
chap. 6, pp. 43-7, 48 (begin at, "This was the gift of New England...")-52;
chap.9, pp.79 (begin at, "In the civilized life of to-day...")-88;
chap. 10, pp.96 (begin at, "In some such doubtful words and phrases...")-98.
Complete discussion assignment 29

November 17th: Du Bois: Du Bois, Marxism, Democracy and the Global Color Line

Read for class:

Marxism and the Negro Problem (1933) (posted PDF)

The World and Africa Links to an external site. (1947)

chap. 1, pp. 6-(begin at, "Members of the American delegation...")-8 (end at, "Not only Africa but Asia...")

chap.2 (entire chapter)

chap. 11, pp. 143-6, 150 (begin at, "At the Paris meeting...")-64.

Complete discussion assignment 30

November 19th: Du Bois: Democracy and Anti-Imperialism

Read for class:

Du Bois, Color and Democracy Links to an external site. (1945), pp. 293-7, 300-02

Complete discussion assignment 31

Week of November 21 (M Class)

November 22nd: Review for Exam / Social Structures and Social Action

Read for class:

Du Bois Study Questions, Final Exam Study Questions

This class will focus on #1 of the Final Exam Study Questions.

November 24th: No class

November 26th: No class

Week of November 28 (M, W & F Class)

November 29th: Review for Exam / Social Structures and Social Action

Read for class:

Du Bois Study Questions, Final Exam Study Questions

This class will focus on #1 of the Final Exam Study Questions.

December 1st: Review for Exam / The modern legal subject in societal context

This class will focus on #2 & #3 of the Final Exam Study Questions.

December 3rd: Review for Exam /

This class will focus on questions 4 & 5 of the Final Exam Study Questions.

Please read

Marc Galanter, "The Modernization of Law" [posted PDF], pp.153-9

Du Bois Study Questions

Week of December 5 (Reading Week. No class)

Review classes may be held if the class desires.

Week of December 12 (Exam Week. No class)

December 13th (8:00 – 11:00 a.m.): Final exam