Theories of Law and Society LEGAL ST 103 Spring Semester 2021

4 semester credits

Course Description

"Theories of Law and Society" examines the origins of social theories of law, and of attempts to use legal materials for systematic social theorizing. The course concentrates on the period from the late eighteenth century to the early twentieth century. This is the period that we identify with the emergence of the "modern" west under the influence of the eighteenth century Enlightenment and of the French Revolution (1789-93). The course explores the relationship between this "emergence of the modern west" and the emergence of social science, with a particular emphasis on the relationship between social science and law. In particular, we will explore how leading European intellectuals began for the first time to conceive of the relationships and to construct the connections that we now take for granted: relationships between law, politics, society, and economy; connections between history and human development, and between historical change (change over time) and legal change. We will also explore how those intellectuals thought about the role of law in creating social integration and social discipline, and we will consider what was distinctive and original to the elements of legal ordering that developed over the course of the nineteenth century.

The course commences with an examination of two celebrated programs of law reform presented in the second half of the eighteenth 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 rational law-making, humane punishment, individual rights, and legal equality underpin much of our contemporary understanding of the proper nature and purpose of law, and of the human being - the "modern legal subject" - that is the law's object of attention.

We will then study the work of four of the most important theorists of law and society of the nineteenth and early twentieth centuries. All are still extremely influential.

We will begin with the materialist theory of Karl Marx, particularly as it bears on the relationship between law and capitalism. Then we will consider the historical jurisprudence of the English jurist, Sir Henry Maine, and his conception of the proper ideals for a liberal legal order. Then we will study the legal sociology of Emile Durkheim, which sought to understand how social order varied according to the relationship between the individual and the collective. We will conclude with a return to the relationship between capitalism and modernity, this time via the legal and organizational sociology of Max Weber. Throughout the semester, we will see how each of these four theorists offered a distinctive account of how to think about the relationship between law, economy, and society. We will see that the steps Marx, Maine, Durkheim, and Weber took to understand the specific kinds of social experience and institutional transformations that confronted them in their own times sustain our own "modern" conceptions of law.

Prerequisites

None (but Legal Studies majors have preference in enrollment. On all enrollment questions check with the Legal Studies Program advisor, Lauri LaPointe <u>lauri@berkeley.edu</u>.

Course Objectives

Overall, the class is organized to advance the following learning goals:

(1) Critical engagement with and close reading of leading theories concerning the relationship between forms of law and the societies in which those forms of law operate.

(2) An enhanced understanding of the defining features of modern law, such as the promotion of individual rights and of legal equality, and of competing explanations of the societal supports for these modern features.

(3) Training in how to evaluate rival attempts to understand law and legal change in terms of other societal dynamics and structures.

(4) Improvement of writing and analytical skills, through regular and brief writing assignments.

The course emphasizes your close reading of the actual (and long-influential) works on law and society developed by these theorists, and your written opinions of/responses to them. During the semester, you will be assigned 3 short papers (4 pages/1500 words in length) in which you will be asked to consider the meaning of assigned

readings from Marx, Maine, and Durkheim. Under the guidance of your GSI you will also be expected to provide occasional brief written responses (no more than a paragraph in length) in connection with weekly section meetings. Finally, you may be asked for occasional brief written responses (a paragraph in length) to prompts posted for our class meetings.

The purpose of these writing assignments is to assist your mastery of the assigned reading and to strengthen your analytical and writing skills. The course will end with a final take-home examination, which will include a short paper on Weber, and one other question. There is no mid-term examination.

Instructor Information, Contact, Office Hours, & Communication

Course Instructor

Christopher Tomlins

Graduate Student Instructor (GSI)

Your GSI's name is: Cheri Kruse

While the instructor will interact with the whole class and will oversee all activities and grading, as well as being available to resolve any issues that may arise, your GSI will be your main point of contact. Your GSI is responsible for assisting you directly with your questions about assignments and course requirements, as outlined in the Assignments and Calendar. Your GSI will also facilitate ongoing discussion and interaction with you on major topics in each module. Finally, your GSI will grade your written assignments.

Office Hours

The course instructor and GSI will offer virtual office hours via Zoom (a video conferencing program). These office hours allow for synchronous interaction with the instructor and GSIs and are a good opportunity to discuss your questions relevant to the course.

Initially, course instructor office hours will be arranged by individual appointment. Contact the course instructor by email to arrange an appointment <u>ctomlins@law.berkeley.edu</u>. This system may well change to a specific day/time availability system during the course of the semester. If so, the change will be announced.

GSI office hours: Day: TBD; Hours (PT): TBD

Links to the appropriate Zoom room will be available in bCourses.

Course Mail

You can also contact your GSI and instructor using bCourses emailing system, accessed via your Inbox. Make sure to check the Inbox for messages from the instructor and GSI. You can also choose to have your bCourses mail forwarded to your personal email account or your cell phone.

Question & Answer Discussion

Please use this discussion to post questions relevant to the entire class. This can include questions about the course materials and topics or mechanics around assignments. The instructor and GSI will monitor this discussion, but you should also feel free to answer questions posted by other students. This helps to create a general FAQ so that all students in the course may benefit from the exchange.

Course Materials and Technical Requirements

Required Materials

You will find assigned reading for each class posted on bCourses.

The following books have been ordered for purchase, rent, or borrowing. **See the Class Info Section on the Course CalCentral page for details**. Two of the books are also available in free online editions (see below). All other assigned materials are posted on the course bCourses site.

(a) Cesare Beccaria, On Crimes and Punishments

For a free online version go <u>here</u> or alternatively <u>here</u>; or use any other complete English translation

(b) Henry Maine, Ancient Law

For a free online version go <u>here</u>; or use any other complete edition.

(c) **Karl Marx**, *Selected Writings*, ed. Lawrence Simon (Hackett Publishing, paperback, 1994)

Not available free online.

(d) **Emile Durkheim, The Division of Labor in Society** (translation by W.D. Halls; Free Press, paperback, 2014) [White Cover]. This translation was first published by the Free Press/MacMillan in 1984. Whatever edition you choose you must ensure it uses the translation by W.D. Halls).

Not available free online.

Books that are not assigned, but are extremely useful as excellent introductions to the social theories of Marx, Durkheim and Weber, are **Anthony Giddens**, *Capitalism and Modern Social Theory* (Cambridge University Press, paperback, 1971); **Ken Morrison**, *Marx*, *Durkheim*, *Weber: Formations of Modern Social Thought* (Sage Publications, paperback, 2006); Edward Royce, Classical Social Theory: Marx, Durkheim, Weber (Rowman & Littlefield, 2015).

Technical Requirements

The course is built on a Learning Management System (LMS) called Canvas and UC Berkeley's version is called bCourses. You will need to meet these <u>computer specifications to participate within this online</u> <u>platform.</u>

In Spring 2021 the course will be taught remotely using Zoom videoconferencing. To participate you will need to have a webcam and a microphone installed on your computer.

Optional

bCourses allows you to record audio or video files of yourself and upload them in the course. Although doing so is not required for any of the activities, using these features will enhance your engagement in the course.

Technical Support

If you are having technical difficulties please alert your GSI immediately. However, please understand that neither your GSI nor the instructor can assist you with technical problems. You must call or email tech support and make sure you resolve any issues immediately.

In your course, click on the "Help" button on the bottom left of the global navigation menu. Be sure to document (save emails and transaction numbers) for all interactions with tech support.

Extensions and late submissions will not be accepted due to "technical difficulties."

Learning Activities

You are expected to fully participate in all the course activities described here.

- 1. Read the posted class reading assignments
- 2. Watch, listen to, and read the instructor lectures
- 3. Watch and listen to any additional media provided for the week
- 4. Fully participate in asynchronous discussions by responding to the provided prompts and engaging with other students' posts
- 5. Complete all written assignments (3 essays and a take-home final)
- 6. Complete all section assignments required by your GSI

Sections

For grading purposes, each student has been assigned to one of the two course sections taught by the course GSI. Your GSI will grade all of your work, as well as that of your section-mates, and engage with you in the course discussions. You can see in which section you have been placed in by exploring the "Section" column within the "People" page on the bCourses course site.

Reading Assignments

Each week includes assigned readings relevant to the topics covered. Readings are listed by lecture class. As indicated above, some of those readings are only available in books that are required by purchase, rent, or borrowing. All other assigned readings are available via bCourses. They are listed in the course schedule at the end of the syllabus.

Lectures

Each week you will find lectures (MWF 9.00 – 9.59 am) that provide important information and insights on the week's topics. You are required to engage with all lecture materials and will be responsible for addressing the concepts in your course assignments.

Discussions

Consult your GSI about section discussion assignments and requirements.

Essay Assignments during the Semester: Schedule and Description

(a) Schedule

During the semester, you will be required to complete three short essays (4 pages/1500 words in length). The schedule below is intended to help you plan the semester's workload. You will receive detailed information concerning the specific paper assignment the Friday prior to each due date.

Marx essay - Topic and information released on bCourses February 26 at 10 am; completed paper due March 4, by 11:59 pm

Maine essay - Topic and information released on bCourses March 12 at 10 am; completed paper due March 18, by 11:59 pm

Durkheim essay - Topic and information released on bCourses April 7 at 10 am; completed paper due April 13, by 11:59 pm

(b) Description

Each of these short essays will require that you write about the ideas we have discussed in lecture and in section specific to the particular component of the course that we have just completed. In each component of the course you will find in the course materials a set of study questions designed to help you with the assigned reading for that component. **In each case the essay question (the prompt) will be one of these study questions.** So for each essay the study questions are a good guide to help you prepare for the essay prompt.

Exams

The Final Examination is a take-home that will be available from 10 am Monday April 26 until 11.59 pm Friday May 7. Your completed examination must be turned in by 11.59 pm on Friday May 7. Instructions describing the final examination will be released on bCourses on Monday April 19.

Grading and Course Policies

Your final course grade will be calculated as follows:

Table 1: Final Grade Percentages

Category	Percentage of Grade
Lecture and Section Attendance/Participation	20%
First Essay	15%
Second Essay	15%
Third Essay	15%
Final Exam	35%

Late Work Policy

Unexcused late work will be penalized. Discuss late work with your GSI.

Course Policies

Promptness

All assignments have specific due dates listed in the course site on bCourses (see the **Assignments** tab). You are expected to meet those listed due dates. All assignments will be submitted via bCourses.

Honor Code

The student community at UC Berkeley has adopted the following Honor Code: "As a member of the UC Berkeley community, I act with honesty, integrity, and respect for others." The expectation is that you will adhere to this code. Read the entire <u>Berkeley Honor Code</u> for more information.

Collaboration and Independence

Reviewing lecture and reading materials and studying for exams can be enjoyable and enriching things to do with fellow students. This is recommended. However, all assignments are to be completed independently and should be the result of one's own independent work.

Cheating

A good lifetime strategy is always to act in such a way that no one would ever imagine that you would even consider cheating. Anyone who cheats on an essay or the final exam will receive a failing grade in the course, and will be reported to the University Center for Student Conduct. The expectation is that you will be honest in composing your essays and participating in the final exam. In particular, avoid plagiarism (defined below). All written work will be assessed for originality by subjecting it to Turnitin.

Plagiarism

To copy text or ideas from another source without appropriate reference is plagiarism and will result in a failing grade for your assignment and usually further disciplinary action. For additional information on plagiarism and how to avoid it, read the <u>UC Berkeley</u> <u>Library Citation Page, Plagiarism Section.</u>

Academic Integrity and Ethics

Cheating on exams and plagiarism are two common examples of dishonest, unethical behavior. Honesty and integrity are of great

importance in all facets of life. They help to build a sense of self-confidence, and are key to building trust within relationships, whether personal or professional. There is no tolerance for dishonesty in the academic world, for it undermines what we are dedicated to doing - furthering knowledge for the benefit of humanity.

Incomplete Course Grade

Students who have substantially completed the course but for serious extenuating circumstances, are unable to complete all required written work may request an Incomplete grade. This request must be submitted in writing to the GSI and instructor. You must provide verifiable documentation for the seriousness of the extenuating circumstances. According to the policy of the university, Incomplete grades must be made up within the first three weeks of the next semester.

Students with Disabilities

If you require course accommodations due to a physical, emotional, or learning disability, contact <u>UC Berkeley's Disabled Students' Program</u> (<u>DSP</u>). Notify the instructor and GSI through course email of the accommodations you would like to use. You must have a Letter of Accommodation on file with UC Berkeley to have accommodations made in the course.

UC Berkeley is committed to providing robust educational experiences for all learners. With this goal in mind, we have activated the ALLY tool for this course. You will now be able to download content in a format that best fits your learning preference. PDF, HTML, EPUB, and MP3 are now available for most content items. For more information visit the alternative formats link or watch the video entitled, "<u>Ally First Steps</u> <u>Guide</u>."

End of Course Evaluation

Before your course ends, please take a few minutes to participate in the course evaluation to share your opinions about the course. Information about the course evaluation will be made available in bCourses.

Course Outline

Below is a weekly course schedule. All readings, lectures, and assignments are provided in the week assigned in bCourses. Check bCourses for specific assignment due dates.

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January 20 - First class meeting

At the first lecture class meeting - Wednesday January 20 - I shall introduce your GSI, Cheri Kruse, offer an overview of the entire course content and goals, carefully review all administrative matters, and survey all course requirements. We shall then briefly consider what is meant by a "theory of law and society."

Assigned Reading:

Please prepare for the class by reading the material posted on this site under the tab labeled "Course Basics."

Class prompt (be prepared for a brief class discussion on the following question):

Dramatic controversy and sweeping changes over the past two decades have occurred to laws in many U.S. states on the question whether legal marriage is restricted to relationships between a man and a woman or extends to same-sex couples. If you were asked to explain why this change in the law occurred, what reasons would you give?

(In this course you will quickly discover that there are very few "right" or "wrong" answers to the questions we consider. This means that your opinions always count! Opinions that are informed by advance preparation and careful consideration generally are more likely to convince or influence others than opinions formed hastily on the spot, but no one should feel that their opinions do not count. So in thinking about how you would answer this question please feel free to offer reasons that seem obvious or even random. In all our discussions we will want to try to consider all possible explanations for a phenomenon before deciding which explanations are more likely than others.)

Class topics, readings, prompts (01/22 - 01/29): The Eighteenth Century and the Modern Legal Subject

January 22 - The Baseline (1): The Enlightenment

Assigned Reading:

Beccaria, On Crimes and Punishments, Introduction, and Chapters 1-5

January 25 - The Baseline (2): The French Revolution

Assigned Reading:

"What is the Third Estate?" January 1789

"Declaration of the Rights of Man and Citizen, 26 August 1789"[DRMC]

January 27 - The Work of Law: Guiding Conduct

Assigned Reading:

Beccaria, On Crimes and Punishments, Chapters 6, 16, 27.

January 29 - The Work of Law: Fundamental Rights and the Modern Legal Subject

Assigned Reading:

Beccaria, On Crimes and Punishments, Chapter 26.

"Declaration of the Rights of Man and Citizen" [DRMC]

"Revolutionary Debates in France," items # 15, 16, 17, 23, 24, 34, 36, 39.

Class prompt (be prepared for a brief class discussion on the following question):

Article 6 of the DRMC declares that the law "must be the same for everyone" and that "all citizens" must be "equal in its eyes." What do the "Revolutionary Debates" tell us about Article 6?

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Class topics, readings, prompts (02/01 - 02/26): Marx on Law and Political Economy

February 01 - Introducing Marx: From Law to Political Economy

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): Introduction, pp. ix-xxxv; "Toward a Critique of Hegel's *Philosophy of Right*: Introduction," pp.27-39.

"Marx Study Questions"

February 03 - Law and the Young Marx

Assigned Reading:

Karl Marx "Debates on the Law on Thefts of Wood," Articles from the *Rheinische Zeitung* 1842, 48-84.

February 05 - Marx: The Critique of Rights

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "On the Jewish Question", pp.1-26.

February 08 - Marx: The Centrality of Labor

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "Economic and Philosophical Manuscripts," pp.54-68.

"Marx Study Questions"

February 10 - Marx: On Historical Method

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "The German Ideology," pp. 102-31, 153-56.

February 12 - Marx: Capitalist Society, Capitalist Production

Karl Marx Selected Writings (ed. Simon): "The Communist Manifesto," pp.157-76.

February 15 - President's Day: No Class

February 17 - Marx: Toward a Theory of the Bourgeois Economy

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "Preface to A Contribution to the Critique of Political Economy," pp.209-13.

February 19 - Marx: The Commodity

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "Capital, Volume One," pp.214-43.

February 22 - Marx: Exchange

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "Capital, Volume One," pp.244-73.

February 24 - Marx: State, Equality, and Socialism

Assigned Reading:

Karl Marx Selected Writings (ed. Simon): "Critique of the Gotha Programme", pp.315-32.

February 26 - Marx: Review

Assigned Reading:

"Marx Study Questions"

This class is devoted to your questions concerning Marx. Come to class prepared to identify themes that require further discussion and clarification, and to identify any assigned sections of Marx's work that remain confusing.

NB: The Marx Paper topic becomes available today (February 26) at 10 am. It is due March 4 by 11.59 pm.

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Class topics, readings, prompts (03/01 - 03/12): Maine and Historical Jurisprudence

March 01 - Introducing Maine: From Status to Contract

Assigned Reading:

Maine, Ancient Law, chapter 5.

"Maine Quotations on Historical Method"

"Maine Study Questions"

March 03 - Maine: Understanding Legal Change

Maine, Ancient Law, chapter 1 (in full); chapter 2, paragraphs 1-7.

March 05 - Maine: The Invention of Legal Equality

Assigned Reading:

Maine, *Ancient Law*, chapter 3, paragraphs 1-9; chapter 4, paragraphs 1-7, 9-12.

March 08 - Maine: Contract and Modernity

Assigned Reading:

Maine, *Ancient Law*, chapter 9, paragraphs 1-22, 31 (the last paragraph of the chapter).

Henry Sidgwick, The Elements of Politics (1891), chapters 3, 4, and 6

March 10 - Maine: A Historical Jurisprudence

J.H. Morgan, "Introduction" to Ancient Law (Tredition Classics edition)

Lawrence Rosen, "Foreword" to *Ancient Law* (University of Arizona Press edition)

Theodore W. Dwight, "Introduction" (1875) to *Ancient Law* (included in the 1986 University of Arizona Press edition). [This source provides a convenient descriptive synopsis of Maine's book]

"Maine Quotations on Historical Method"

March 12 - Maine: Review

Assigned Reading:

"Maine Quotations on Historical Method"

"Maine Study Questions"

This class is devoted to your questions concerning Maine. Come to class prepared to identify themes that require further discussion and clarification, and to identify any assigned sections of *Ancient Law* that remain confusing.

NB: The Maine Paper topic becomes available today (March 12) at 10 am. It is due March 18 at 11.59 pm

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Class topics, readings, prompts (03/15 - 04/07): Durkheim on Law and Society

March 15 - Introducing Durkheim: Community, Society, Individual

Assigned Reading:

Durkheim, *Division of Labor in Society*, 2014 edition (white cover): Lewis Coser, "Introduction," pp.xi-xxiii; Steven Lukes, "Introduction," pp.xxv-xliii. 1984 edition (blue cover): Lewis Coser, "Introduction," pp.ix-xxiv.

"Durkheim Study Questions"

"Durkheim Reading References"

March 17 - Durkheim: Division of Labor in Society - Central Concepts

Durkheim, *Division of Labor in Society*, 2014 edition (white cover), 3-56; 1984 edition (blue cover) xxv-lix, 1-30.

March 19 - Durkheim: Mechanical Solidarity (Punishment and Society)

Assigned Reading:

Durkheim, *Division of Labor in Society*, Book I chapter 2 (both editions) "Durkheim Reading References"

March 22 - Spring Break: No Class March 24 - Spring Break: No Class March 26 - Spring Break: No Class

March 29 - Durkheim: Organic Solidarity (Restitutive Law)

Assigned Reading:

Durkheim, *Division of Labor in Society*, Book I chapter 3 and chapter 6 (both editions)

March 31 - Durkheim: Modern Contract and Social Solidarity

Assigned Reading:

Durkheim, Division of Labor in Society, Book I chapter 7 (both editions).

April 02 - Durkheim: Individualism (1): Individualism and Anomie

Assigned Reading:

Durkheim, *Division of Labor in Society*, 2014 edition (white cover): Book III chapter 1 and Book III Conclusion (both editions).

April 05 - Durkheim: Individualism (2): Individualism Defended Assigned Reading: Durkheim, "The Dualism of Human Nature and its Social Conditions" Durkheim, "Individualism and the Intellectuals"

April 07 - Review of Durkheim on Law and Society

Assigned Reading:

"Durkheim Study Questions"

"Durkheim Reading References"

This class is devoted to your questions concerning Durkheim. Come to class prepared to identify themes that require further discussion and clarification, and to identify any assigned sections of Durkheim's work that remain confusing.

NB: The Durkheim Paper topic becomes available today (April 07) at 10 am. It is due April 13 by 11.59 pm.

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Class topics, readings, prompts (04/09 - 04/28): Weber: Capitalist Society, Law, and Rationalization

April 09 - Introducing Weber: General Concepts 1 (Social Action, Legitimacy, Discipline, Ideal Types)

Assigned Reading:

Weber, On Charisma and Institution Building (ed. S.N. Eisenstadt), pp. 3-17, 28-42, 46-7.

"Weber Study Questions"

April 12 - Introducing Weber: General Concepts 2 (Bureaucracy)

Weber, "Bureaucracy," in *From Max Weber* (ed. H.H. Gerth and C. Wright Mills), pp.196-244.

April 14 - Weber: General Concepts Applied

Assigned Reading:

Weber, "Politics as a Vocation," (typescript).

April 16 - Weber: Capitalism and Religion (1): The Issue Defined

Assigned Reading:

Weber, The Protestant Ethic and the Spirit of Capitalism, pp.1-36.

April 19 - Weber: Capitalism and Religion (2): Asceticism and the Capitalist Spirit

Assigned Reading:

Weber, The Protestant Ethic and the Spirit of Capitalism, pp.67-122.

NB: The Final Examination Instructions become available today at 10 am. Please familiarize yourself with these instructions.

April 21 - Weber: Law (1) The Economy and Social Norms

Assigned Reading:

Weber, Economy and Society, pp.311-37.

April 23 - Weber: Law (2): The Emergence and Creation of Legal Norms

Assigned Reading:

Weber, Economy and Society, pp.753-84.

April 26 - Weber: Law (3): The Formal Qualities of Modern Law

Assigned Reading:

Weber, Economy and Society, 880-900.

Mark Galanter, "The Modernization of Law," in *Modernization* (ed. Myron Weiner), pp.153-65.

NB: The Final Examination becomes available today at 10 am.

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April 28 - Weber: Rationalization and Disenchantment

Assigned Reading:

Weber, "Science as a Vocation," (typescript).

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Class topics, readings, prompts (04/30): Final Examination Review

April 30 - Final Examination Review: Essay 1 (Weber) and Essay 2 (see "Final Exam Instructions")

Assigned Reading:

"Final Examination Instructions"

"Final Examination"

"Weber Study Questions"

This class is devoted to your questions about the final examination. It will be devoted to both the Weber Essay that is one half of the final examination, and a second question comprising the other half. Come to class prepared to identify themes from Weber that require further discussion and clarification, to identify any assigned sections of Weber's work that remain confusing, and to raise any other questions you may have in anticipation of the final examination.

Discussion Sections: Your GSI will tell you whether sections will meet during RRR Week

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