

LS 103: Theories of Law and Society
Syllabus
Summer 2024

Instructor: Jorge Cortés-Monroy (jorgecortesmonroy@berkeley.edu)

GSI: Anthony Carrasco (anthonycarrasco@berkeley.edu)

Lecture: Mon, Tue, Wed, Thurs 2-4 pm, in Wheeler 102

Discussion Section 101: Mon 10 am - 12 pm, in Wheeler 104

Discussion Section 102: Tue 12 - 2 pm, in Wheeler 104

Office Hours. I will hold office hours every Thursday from 4:15 pm to 6:15 pm (Pacific time) at Cafe Strada. Your GSI, Anthony Carrasco, will hold office hours as well. Please consult his syllabus for that information.

Please use the following form to notify us of an absence before the class starts:

<https://forms.gle/nnBtbgy2soBPp4Hq8>

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:

1. Critical engagement with and close reading of leading theories concerning the relationship between forms of law and the societies in which these laws operate.
2. Improvement in your writing and analytical skills, through regular writing assignments.
3. 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.
4. 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 an examination of two programs of law reform presented in the second half of the 18th century that expressed the culmination of the social thought of the Enlightenment: 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 two important and still-influential theories of

law and society from the mid-19th century, which in a sense represented two different reactions to the social thought of the Enlightenment: the historical materialism of Karl Marx and the historical jurisprudence of Henry Maine. Finally, we will move to the origins of sociology and social science as we know it in the late 19th and early-20th centuries and study the sociologies of law of Emile Durkheim and Max Weber. Each of these theories presents different accounts of the relationship between law and society in general, and of the specific kinds of social experience and institutions which sustain our “modern” understandings of law.

Expectations, requirements, grading

The basic class requirements are your careful completion of the assigned readings, your timely submission of the written assignments, and your regular and engaged participation.

Assigned readings. 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. Slides will be posted on the bCourses site summarizing the topics covered in each class.

Discussion sections. Weekly discussion sections form an integral part of the course and will often cover material not discussed in the lecture meetings. They provide another setting for you to participate and demonstrate your active engagement. Your attendance and contribution to discussion sections is included in your final grade. Anthony Carrasco, the GSI for this class will provide further information about the requirements for discussion section.

Attendance and participation. Attendance at lectures and discussion sections is required. If you must miss lecture or section, please notify (via the below form, not via email) the relevant instructor in advance of your absence and give your reason for being absent. Unexcused absences will count against your grade. Please use the following form to notify us of an absence before the class starts:
<https://forms.gle/nnBtbgv2soBPp4Hq8>

Required papers. During the semester, you will submit three writing assignments: 2 papers (each of 1500 words in length – around 5 pages) and a final exam. These writing assignments are based on the assigned reading and do not require additional research. The final examination covers the entire course. **You cannot pass the course without completing each of the writing assignments and the Final Exam.**

1. 1st paper upload to bCourses on Monday June 3 at 11.59 pm
2. 2nd paper upload to bCourses on Monday June 17 at 11.59 pm
3. Final exam upload to bCourses on Friday June 28 at 11.59 pm

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

1. Attendance and participation – 20%
2. 1st paper – 25%
3. 2nd paper – 25%
4. Final exam – 30%.

Late submissions. In general, no extensions will be given unless under exceptional circumstances. If your paper is late and you have not received an extension, the final grade of your paper will be reduced by a ½ letter grade for every day your paper is late. ** Particularly, no extensions will be given for the final exam unless you have DSP accommodations. Please communicate DSP accommodations to your instructor at least one week in advance of the due date. This is because final grades are due to the University registrar very soon after the final exam deadline and we will not be able to grade any papers submitted late.

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.

1. **Cesare Beccaria, *On Crimes and Punishments***

For freely available online versions go [here](#), or use any other complete English translation. This book is also available via UC Bears Electronic Reserves.

2. **Henry Maine, *Ancient Law***

For a freely available online version go [here](#), or use any other complete edition. This book is also available via UC Bears Electronic Reserves.

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

This book is not freely available online. You are urged to buy this book. This book is also available via UC Bears Electronic Reserves.

4. **Emile Durkheim, *The Division of Labor in Society*** (translation by W.D. Halls; Free Press, paperback, 2014) [White Cover].

This book is not freely available online. You are urged to buy this book in the 2014 edition. The 2014 edition is also available via UC Bears Electronic Reserves.

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).

Course Outline

WEEK 1		
Mon May 20	Introduction & What is Theory?	<ol style="list-style-type: none"> 1. Syllabus 2. Beccaria, <i>On Crimes and Punishments</i>, Introduction, and Chapters 1-5
Tue May 21	The Enlightenment & The Ancien Régime	<ol style="list-style-type: none"> 1. "What is the Third Estate?" January 1789 2. "Declaration of the Rights of Man and Citizen, 26 August 1789"[DRMC] 3. Beccaria, <i>On Crimes and Punishments</i>, Chapters 6, 16, 27.
Wed May 22	The French Revolution & The Doctrine of Rights	<ol style="list-style-type: none"> 1. Beccaria, <i>On Crimes and Punishments</i>, Chapter 26. 2. "Revolutionary Debates in France," items # 15, 16, 17, 23, 24, 34, 36, 39.
Thu May 23	Introducing Marx & Law in the Early Marx 1st Paper topic becomes available on Thursday May 23 at 4 pm. It is due on Monday June 3 at 11.59 pm	<ol style="list-style-type: none"> 1. "Marx Study Questions" 2. <i>Karl Marx Selected Writings</i> (ed. Simon): Introduction, pp. ix-xxxv; and "Toward a Critique of Hegel's <i>Philosophy of Right</i>: Introduction," pp. 27-39. 3. Karl Marx, "Debates on the Law on Thefts of Wood," Articles from the <i>Rheinische Zeitung</i> 1842, pp. 48-84.

WEEK 2		
Mon May 27	Academic and Administrative Holiday	
Tue May 28	The Critique of Rights & The Notion of Labor	<ol style="list-style-type: none"> 1. <i>Karl Marx Selected Writings</i> (ed. Simon): "On the Jewish Question", pp. 1-26. 2. <i>Karl Marx Selected Writings</i> (ed. Simon): "Economic and Philosophical Manuscripts," pp. 54-68.
Wed May 29	Historical Materialism & Capitalism	<ol style="list-style-type: none"> 1. <i>Karl Marx Selected Writings</i> (ed. Simon): "The German Ideology," pp. 102-31, 153-56. 2. <i>Karl Marx Selected Writings</i> (ed. Simon): "The Communist

		Manifesto," pp. 157-76.
Thu May 30	The Critique of Political Economy & Commodity Fetishism	<ol style="list-style-type: none"> 1. <i>Karl Marx Selected Writings</i> (ed. Simon): "Preface to <i>A Contribution to the Critique of Political Economy</i>," pp. 209-13. 2. <i>Karl Marx Selected Writings</i> (ed. Simon): "Capital, Volume One," pp. 214-43. 3. <i>Karl Marx Selected Writings</i> (ed. Simon): "Capital, Volume One," pp. 244-73.

	WEEK 3	
Mon June 3	State and Socialism & Marx Review 1st Paper is due Today at 11.59 pm	<ol style="list-style-type: none"> 1. <i>Karl Marx Selected Writings</i> (ed. Simon): "Critique of the Gotha Programme", pp. 315-32. 2. "Marx Study Questions"
Tue June 4	Introducing Maine & "From Status to Contract"	<ol style="list-style-type: none"> 1. "Maine Study Questions" 2. Maine, <i>Ancient Law</i>, chapter 5. 3. Maine, <i>Ancient Law</i>, chapter 1 (in full); chapter 2, paragraphs 1-7.
Wed June 5	Legal Equality & The Modern Contract	<ol style="list-style-type: none"> 1. Maine, <i>Ancient Law</i>, chapter 3, paragraphs 1-9; chapter 4, paragraphs 1-7, 9-12. 2. Maine, <i>Ancient Law</i>, chapter 9, paragraphs 1-22, 31 (the last paragraph of the chapter). 3. Henry Sidgwick, <i>The Elements of Politics</i> (1891), chapters 3, 4, and 6
Thu June 6	Historical Jurisprudence & Maine Review 2nd Paper topic becomes available on Thursday June 6 at 4 pm. It is due on Monday June 17 at 11.59 pm	<ol style="list-style-type: none"> 1. J.H. Morgan, "Introduction" to <i>Ancient Law</i> (Tredition Classics edition) 2. Lawrence Rosen, "Foreword" to <i>Ancient Law</i> (University of Arizona Press edition) 3. Theodore W. Dwight, "Introduction" (1875) to <i>Ancient Law</i> (included in the 1986 University of Arizona Press edition). [This source provides a convenient descriptive synopsis of Maine's book]

		4. "Maine Study Questions"
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WEEK 4		
Mon June 10	Introducing Durkheim & The Individual in Society	<ol style="list-style-type: none"> 1. "Durkheim Study Questions" 2. Durkheim, <i>Division of Labor in Society</i>, 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.
Tue June 11	The Division of Labor & The Index Thesis	<ol style="list-style-type: none"> 1. Durkheim, <i>Division of Labor in Society</i>, 2014 edition (white cover), pp. 3-56; 1984 edition (blue cover) xxv-lix, 1-30.
Wed June 12	Mechanical Solidarity & Organic Solidarity	<ol style="list-style-type: none"> 1. Durkheim, <i>Division of Labor in Society</i>, Book I chapter 2 (both editions), pp. 57-87. 2. Durkheim, <i>Division of Labor in Society</i>, Book I chapter 3 and chapter 6 (both editions): pp. 88-104, and pp. 138-57.
Thu June 13	Individualism & Anomie	<ol style="list-style-type: none"> 1. Durkheim, <i>Division of Labor in Society</i>, Book I chapter 7 (both editions): pp. 158-80. 2. Durkheim, <i>Division of Labor in Society</i>, 2014 edition (white cover): Book III chapter 1 and Book III Conclusion (both editions): pp. 277-92, and pp. 309-19.

WEEK 5		
Mon June 17	Moral Individualism & Durkheim Review 2nd Paper is due Today at 11.59 pm	<ol style="list-style-type: none"> 1. Durkheim, "The Dualism of Human Nature and its Social Conditions" 2. Durkheim, "Individualism and the Intellectuals" 3. "Durkheim Study Questions"
Tue June 18	Introducing Weber & General Concepts	<ol style="list-style-type: none"> 1. "Weber Study Questions" 2. Weber, <i>On Charisma and Institution Building</i> (ed. S.N. Eisenstadt), pp. 3-17, 28-42, 46-7.
Wed June 19	Academic and Administrative Holiday	

Thu June 20	Bureaucracy & Types of Legitimate Authority Final Exam becomes available on Thursday June 20 at 4 pm. It is due on Friday June 28 at 11.59 pm	<ol style="list-style-type: none"> 1. Weber, "Bureaucracy," in <i>From Max Weber</i> (ed. H.H. Gerth and C. Wright Mills), pp. 196-244. 2. Weber, "Politics as a Vocation," (typescript).
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	WEEK 6	
Mon June 24	Capitalism & The Ascetic Spirit	<ol style="list-style-type: none"> 1. Weber, <i>The Protestant Ethic and the Spirit of Capitalism</i>, pp. 1-36, and pp. 67-122. 2. Weber, <i>Economy and Society</i>, pp. 311-37. 3. Weber, <i>Economy and Society</i>, pp. 753-84.
Tue June 25	Legal Formalism & The Formal Qualities of Modern Law	<ol style="list-style-type: none"> 1. Weber, <i>Economy and Society</i>, pp. 880-900. 2. Mark Galanter, "The Modernization of Law," in <i>Modernization</i> (ed. Myron Weiner), pp.153-65.
Wed June 26	Rationalization and Disenchantment & Weber Review	<ol style="list-style-type: none"> 1. Weber, "Science as a Vocation," (typescript). 2. "Weber Study Questions"
Thu June 27	Final Review Final Exam is due tomorrow, Friday June 28 at 11.59 pm	Come prepared with questions!