

LS 103 Theories of Law and Society

Spring Semester 2019

[DRAFT ONLY – NOT PROOF-Read]

1. Course Basics

Design and Goals

"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, it explores 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 modern understanding of the nature and purpose of law. 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 relates to law and capitalism. Then we will consider the historical jurisprudence of the English jurist, Sir Henry Maine. Then we will study the legal sociology of Emile Durkheim. And we will conclude with a return to law and capitalism, this time via the legal and organizational sociology of Max Weber. Each of these theorists offered a distinctive account of how to study the relationship between law, economy, and society, and how to understand the specific kinds of social experience and institutions that sustain our "modern" conceptions of law.

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) on assigned reading from Marx, Maine, and Durkheim. You will also be expected to provide brief written responses (a paragraph in length) in connection with your weekly section meetings. Finally, you will be asked for occasional brief written responses (a paragraph in length) to prompts posed for our class meetings. The purpose of all 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. There will be no mid-term exam or final paper.

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 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.

Books to obtain

Books and other materials

The following books have been ordered for purchase. Some are also available in free online editions. All other assigned materials are posted on this site.

(a) **Cesare Beccaria, *On Crimes and Punishments***

For an online version go [here \(Links to an external site.\)Links to an external site.](#) or alternatively [here \(Links to an external site.\)Links to an external site.](#); or use any other complete English translation

(b) **Henry Maine, *Ancient Law***

For an online version go [here \(Links to an external site.\)Links to an external site.](#); or use any other complete edition.

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

Not available 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 [Blue Cover]. ***Whichever edition you choose you must ensure it uses the translation by W.D. Halls).***

A PDF of the 1984 edition exists online - [here \(Links to an external site.\)Links to an external site.](#). Unfortunately the URL is not always reliable.

(f) 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).

Requirements, Expectations, Grading

Success in this course requires that you fulfill the following basic requirements: (a) timely completion and careful preparation of the assigned reading; (b) regular attendance and active participation in GSI section and class discussions; (c) timely completion of all written assignments.

Both lecture class and discussion section meetings will proceed on the basis that you have completed and prepared the assigned reading. When appropriate (see the modules for a detailed week-by-week guide) you should arrive in class prepared to respond to a class discussion prompt. On occasion, you will be asked to submit a brief written response (a paragraph in length) to the class discussion prompt.

Attendance and participation in weekly discussion section meetings is required. For many section meetings, you will be asked to complete very brief writing assignments (one paragraph 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.

Lecture Class Audio-Visual Availability:

The Course Capture (Webcast) program is the campus service, run by ETS, for audio recording (with computer screen capture) and publishing classroom activity. Recordings of every lecture class session (MWF 9 - 10 am in Kroeber 155) are available to students in this course via CalCentral and bCourses. (If you have any difficulty locating the course capture recording, you can find help [here \(Links to an external site.\)](#)[Links to an external site.](#)

Laptop Policy

Use of Laptops, tablets and similar devices is not permitted at lecture class meetings. Use in discussion sections is at the discretion of your GSI. (Exceptions will be made for students needing special accommodations. Please see the instructor if you think this exception applies in your case.) The prohibition on laptop use is designed to limit distractions and to facilitate active listening and participation. The audio recordings of lectures will enable you to clarify anything missed in class.

Assignments and Grading

In addition to attendance and participation in weekly lecture classes and section meetings, you will be required to complete three short paper assignments (1500 words/4 pages in length). You will also complete a Final Examination (a multi-day take-home) which will cover the entire course. There is no Midterm Examination.

Both the paper assignments and the final take-home examination must be submitted through the bCourses portal. Check with your GSI for details.

Your final grade will be determined according to the following proportions:

Lecture Class and Section Participation - 20%

Paper assignments - 45%

Final Examination - 35%.

Please note carefully the following basic requirement: in order to pass the course you must complete and turn in each of the three papers and the Final Examination.

Schedule of Paper Assignments

During the semester, you will be required to complete three short papers (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 paper - Topic and information released on bCourses March 01 at 10 am; completed paper due March 05, by 11:59 pm

Maine paper - Topic and information released on bCourses March 15 at 10 am; completed paper due March 19, by 11:59 pm

Durkheim paper - Topic and information released on bCourses April 10 at 10 am; completed paper due November 16, by 11:59 pm

The **Final Examination** is a take-home that will be available from 10 am Friday May 10 until 11.59 pm Thursday May 16. Your completed examination must be turned in by 11.59 pm on Thursday May 16. Instructions describing the final examination will be released on bCourses on Monday April 22. (See **Final Examination Instructions**.)

Office Hours

My regular offices hours are on Monday, 2:00-3:00, at 2240 Piedmont, room 302.

2240 Piedmont is the home base of the Legal Studies Program. It is a house on Piedmont Avenue 50 yards north of the intersection of Piedmont and Bancroft, opposite the steps up to Memorial Stadium.

I am also available by appointment. Please contact me by email to arrange a time/day that is convenient for both of us: ctomlins@law.berkeley.edu

Class Meetings Spring Semester 2019

Class topics, readings, prompts (01/23)

Class Introduction

At the initial class meeting - Wednesday January 23 - I shall introduce your GSI, 0000 00000000, 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 of 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 (01/25 - 02/01)

The 18th Century and the Modern Legal Subject

January 25 - The Baseline (1): The Enlightenment

Assigned Reading:

[Beccaria, *On Crimes and Punishments* \(Links to an external site.\)](#)Links to an external site., Introduction, and Chapters 1-5

January 28 - The Baseline (2): The French Revolution

["What is the Third Estate?"](#) January 1789

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

Discussion Sections: Monday Section will meet (11 am B1 Hearst Field)

January 30 - The Work of Law: Guiding Conduct

Assigned Reading:

[Beccaria, *On Crimes and Punishments* \(Links to an external site.\)Links to an external site.](#), Chapters 6, 16, 27.

Class prompt (be prepared for a brief class discussion on the following question): Beccaria treats criminal punishment as an important resource for influencing the conduct of the members of a community. How does punishment work in this way?

Discussion Sections: Wednesday Section will meet (12 pm 238 Kroeber)

February 01 - The Work of Law: Fundamental Rights and the Modern Legal Subject

Assigned Reading:

[Beccaria, *On Crimes and Punishments* \(Links to an external site.\)Links to an external site.](#), Chapter 26.

["Declaration of the Rights of Man and Citizen" \[DRMC\]](#) 

["Revolutionary Debates in France"](#) , " items # 15, 16, 17, 34, 36, 39 (only).

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?

Class topics, readings, prompts (02/04 – 03/01)

Marx on Law and Political Economy

February 04 - 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 06 - 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 08 - Marx: The Critique of Rights

Assigned Reading:

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

["Revolutionary Debates in France,"](#)  items # 23, 24.

February 11 - Marx: The Centrality of Labor

Assigned Reading:

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

["Marx Study Questions"](#) 

February 13 - Marx: On Historical Method

Assigned Reading:

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

February 15 - Marx: Capitalist Society, Capitalist Production

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

Class prompt (be prepared for a brief class discussion on the following topic): In *The Communist Manifesto*, Marx and Engels identify a variety of historical developments they associate with bourgeois society: technological changes in "industrial production" (p.160); globalization of markets ("the world market", p.160); transformation of transportation and communication ("steam navigation, railways, electric telegraphs", p.163); urbanization ("the rule of the towns", p.162); and so on. According to Marx and Engels, how are these particular developments *systematically* connected as part of a specifically capitalist form of production?

February 18 - Presidents' Day: No Class

Discussion Sections: Monday Section will not meet

February 20 - 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.

Discussion Sections: Wednesday Section will not meet

February 22 - Marx: The Commodity

Assigned Reading:

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

February 25 - Marx: Exchange

Assigned Reading:

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

February 27 - Marx: State, Equality, and Socialism

Assigned Reading:

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

March 01 - 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 (March 01) at 10 am. It is due March 5th by 11.59 pm.

Class topics, readings, prompts (03/04 - 03/15)

Maine and Historical Jurisprudence

March 04 - Introducing Maine: From Status to Contract

Assigned Reading:

[Maine, *Ancient Law* \(Links to an external site.\)Links to an external site.](#), chapter 5.

["Maine Quotations on Historical Method"](#) 

["Maine Study Questions"](#) 

March 06 - Maine: Understanding Legal Change

[Maine, *Ancient Law* \(Links to an external site.\)Links to an external site.](#), chapter 1 (in full), chapter 2, paragraphs 1-7.

March 08 – Maine: The Invention of Legal Equality

Assigned Reading:

[Maine, *Ancient Law* \(Links to an external site.\)Links to an external site.](#), chapter 3, paragraphs 1-9; chapter 4: paragraphs 1-7, 9-12.

Class prompt (be prepared for a brief class discussion on the following topic): We already have seen the manner in which the *Declaration of the Rights of Man* begins with an assumption of human moral equality and articulates a demand for legal equality. Maine believes an understanding of the historical origins of these revolutionary ideas serves to *undermine* the universal claims about law presented in the era of the French Revolution. Law in the ancient world (and not just in the ancient world!) is about inequality not equality. Can you identify an area of law and politics in our society which, in practice, exemplifies equality. Can you think of another that exemplifies inequality?

March 11 – Maine: Contract and Modernity

Assigned Reading:

[Maine, *Ancient Law* \(Links to an external site.\)Links to an external site.](#), chapter 9, paragraphs 1-24, 31 (the last paragraph of the chapter).


[Henry Sidgwick, *The Elements of Politics*](#)  (1891), chapters 3, 4, and 6

March 13 – Maine: A Historical Jurisprudence

Assigned Reading:

[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 15 - 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 15) at 9 am. It is due March 19th at 11.59 pm

Class topics, readings, prompts (03/18 - 04/10)

Durkheim on Law and Society

March 18 - 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 20 - Durkheim: Division of Labor in Society - Central Concepts

Assigned Reading:

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

March 22 - Durkheim: Mechanical Solidarity (Punishment and Society)

Assigned Reading:

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

["Durkheim Reading References"](#) 

Class prompt (be prepared for a brief class discussion on the following topic): What are Durkheim's most important criticisms of how societies punish?

March 25 - Spring Recess: No Class

Discussion Sections: Monday Section will not meet

March 27 - Spring Recess: No Class

Discussion Sections: Wednesday Section will not meet

March 29 - Spring Recess: No Class

April 01 - Durkheim: Organic Solidarity (Restitutive Law)

Assigned Reading:

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

Class prompt (be prepared for a brief class discussion on the following topic): Public policy on a number of controversial issues often divides those who prioritize criminalization and prohibition and those who prioritize harm reduction. For example, on the question of drug policy, some favor a "war on drugs" designed to eliminate drug abuse, while others favor "needle exchange programs" designed to reduce the disease and infections that accompany many forms of drug abuse. How would you explain in *social* terms the differences between those who support criminalization and prohibition and those who support harm reduction?

April 03 - Durkheim: Modern Contract and Social Solidarity

Assigned Reading:

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

Class prompt (be prepared for a brief class discussion on the following topic): Durkheim writes, "Summing up, therefore, the contract is not sufficient by itself, but is only possible because of the regulation of contracts, which is of a social origin" (*Division of Labor in Society*, 2014 edition, p.169; 1984 edition, p.162). What does he mean?

April 05 - 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).

Class prompt: (be prepared for a brief class discussion on the following topic): Consider the basic plot of Shakespeare's drama, *Romeo and Juliet*: two young individuals in medieval Verona defy their warring families, fall in love, get married in secret, and wind up dead. Now consider a modern alternative *Romeo and Juliet*: two young individuals in a different community defy their warring families, fall in love, get married in secret, and survive. How might Durkheim explain the difference between the two scenarios?

April 08 - Durkheim: Individualism (2): Individualism Defended

Assigned Reading:

[Durkheim, "The Dualism of Human Nature and its Social Conditions"](#) 

[Durkheim, "Individualism and the Intellectuals"](#) 

April 10 - 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 at 10 am. It is due April 16th by 11.59 pm.

Class topics, readings, prompts (04/12 - 05/01)

Weber: Capitalist Society, Law, and Rationalization

April 12 - Introducing Weber: General Concepts 1 (Social Action, Legitimacy, Discipline, Ideal Types)


Assigned Reading:

[Max Weber, *On Charisma and Institution Building* \(ed. S.N. Eisenstadt\)](#) , pp.3-17, 28-42, 46-7.

["Weber Study Questions"](#) 

April 15 - Introducing Weber: General Concepts 2 (Bureaucracy)

Assigned Reading:

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

April 17 - Weber: General Concepts Applied

Assigned Reading:

[Max Weber, "Politics as a Vocation,"](#)  (typescript).

April 19 - Weber: Capitalism and Religion (1): The Issue Defined

Assigned Reading:

[Max Weber, *The Protestant Ethic and the Spirit of Capitalism*](#) , pp.1-36.

April 22 - Weber: Capitalism and Religion (2): Asceticism and the Capitalist Spirit

Assigned Reading:

[Max 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 24 - Weber: Law (1) The Economy and Social Norms

Assigned Reading:

[Max Weber, *Economy and Society*](#) , pp.311-37.


April 26 - Weber: Law (2): The Emergence and Creation of Legal Norms

Assigned Reading:

[Max Weber, *Economy and Society*](#) , pp.753-84.

April 29 – Weber: Law (3): The Formal Qualities of Modern Law

Assigned Reading:

[Max Weber, *Economy and Society*](#) , , 880-900.

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

May 01 – Weber: Rationalization and Disenchantment

Assigned Reading:

[Max Weber, "Science as a Vocation,"](#)  (typescript).

Class topics (05/03)

Final Examination Review

April 03 - Final Examination Review: Essay 1 (Weber) and Essay 2 (see "Final Exam Instructions")

Assigned Reading:

"Final Exam Instructions"

["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