LAW AND CLASSICAL SOCIAL THOUGHT (LAW 214.2)

Fall 2014

Thursday, 10:10-12:40 Professor David Lieberman office hours:

Selznick Room 445 North, Boalt Hall Tuesday, 2:10-3

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Course Design

“Law and Classical Social Thought” surveys leading attempts to construct social theories of law and to use legal materials for social theorizing, during the period from the mid-eighteenth century to the early twentieth century. While many figures are read and treated, the theorists receiving most attention are: Maine, Marx, Durkheim and Weber. Through an intensive engagement with their writings, students are exposed to leading approaches to the study of law and society, and to a set of distinctive questions that continues to animate research in this field. These questions include 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.

As an attempt to trace historically major developments in the legal and social sciences, the course may resemble classes you have taken previously on the history of political theory in a political science department, or the history of sociological analysis in a sociology department. There are many points of overlap. The key difference in the coverage is the attention paid to what the better-known figures had to say specifically about law and legal development (as in the case of Marx, Durkheim and Weber), and the inclusion of influential though often-neglected jurists (such as Maine and Beccaria).

The course is organized chronologically, and considers a large number of themes. After an initial meeting devoted to 18th-century programs of law and political reform, we turn to the theorists of the mid-19th century (Maine, Marx) and of the late-19th and early-20th centuries (Durkheim, Weber). In considering this weighty and influential body of writings, particular attention is devoted to the rival attempts to characterize what was distinctive about the legal institutions of “modern” western societies, and to explain the social foundations of liberal legalism and modern rights theory.

(A more detailed list of class topics is set out below in the seminar meeting schedule.)

Organization and Requirements

“Law and Classical Social Thought” is linked to the undergraduate Legal Studies class, “Theories of Law and Society” (Legal Studies 103). The undergraduate class provides a basic survey of the principal writings and themes covered in the seminar, which makes it possible to devote our seminar meetings to an advanced discussion of the material. *All students enrolled in Law and Classical Social Thought are expected to be familiar with my lectures this semester in “Theories of Law and Society.”* This can be done by attending the undergraduate class (Monday-Wednesday-Friday; 9:10-10:00 at 155 Kroeber Hall). Alternatively, students can listen to the audio webcast of the lectures, available at <http://webcast.berkeley.edu/>. Students who receive the lectures by audio webcast need to send me each week a brief (paragraph-length) comment on the week’s lectures, explaining how they could be improved.

Our seminar meetings will be devoted to a collective discussion of the assigned materials. The success of the class is fully dependent on your careful preparation of all assigned readings and your energetic contribution to class discussions. For all meetings, a study guide will be posted, as well as study questions. These are designed to help identify leading issues covered in the assigned reading and to anticipate topics for our seminar discussions. For some meetings (at most 5), you will be asked to prepare brief written answers to the study questions, which will be submitted online.

A seminar paper of about 30-35 pages in length is due on December 17, which is the final day of the exam period. You will have a wide range of choice over paper topics and approaches, provided the subject-matter of the paper engages a significant amount of the seminar’s main coverage. A topic proposal is due on October 16. Prior to this deadline, I shall devote some time in class to discussing further the paper requirement. A longer summary of the paper topic and the paper bibliography is due two weeks later (November 6). Students need to have their paper topics approved by the instructor by before the Thanksgiving break (November 27-28).

A bCourse site will be used throughout the semester to post materials and coordinate seminar meetings. Once published, the bCourse site should be available to anyone with a CalNet ID or campus guest account. If you are unable to access the site, please send me an email message (address above). Email announcements from the site will be sent your “@berkeley.edu” addresses. Please be sure to check this address through the semester.

Assigned Readings

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.

Cesare Beccaria, *On Crimes and Punishments* [on-line version - <http://www.constitution.org/cb/crim_pun.htm> - or use any other complete English translation]

Emile Durkheim, *The Division of Labor in Society* (Free Press, paperback, 2014)

[or use any other complete edition of the work; preferably an edition in which the translation is by W.D. Halls].

Henry Maine, *Ancient Law* [online version - <http://oll.libertyfund.org/titles/2001> - or use any complete edition]

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

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

Max Weber, *Protestant Ethic and the Spirit of Capitalism*  [on-line version <http://www.marxists.org/reference/archive/weber/protestant-ethic/index.htm> - or use any other complete edition]

Not assigned, but useful, is the excellent introduction to the social theories of Marx, Durkheim and Weber, by Anthony Giddens, *Capitalism and Modern Social Theory* (Cambridge, paperback, 1971).

Seminar Schedule: Discussion Topics and Reading Assignments

**Meeting 1 (August 28) - Course Overview and Introduction**

*Optional* reading assignment *(posted PDF)*:

Runciman, W.G. *Social Science and Political Theory,* chapter 2.

Unger, Roberto M. *Law and Modern Society,* pp. 1-8, 23-40.

**Meeting 2 (September 4) – Enlightenment Jurisprudence and Reform**

Beccaria, *On Crimes and Punishments*, Introduction, chapters 1-8, 11-12, 16, 19-21, 27-28, 33, 39, 42, 47.

“The Declaration of the Rights of Man and Citizen”

Hunt, “Introduction” (Revolutionary Origins of Human Rights) pp.1-32. *(posted PDF)*

Sieyes, “What is the Third Estate?” *(posted PDF)*

Revolutionary Debates in France, Documents nos. 14, 15, 16, 17, 23, 24, 34, 36 *(posted PDF)*.

**Meeting 3 (September 11) - Maine and "Historical Jurisprudence"**

Maine, Sir Henry Sumner. *Ancient Law* (on-line edition or any other complete edition):   
chapter 1: entire chapter; chapter 2: paragraphs 1-9; chapter 3: paragraphs 1-9, 15-17; chapter 4: paragraphs 1-7, 9-12; chapter 5: paragraphs 1- 11, 14-26;

*Assigned* supplement *(posted PDF)*:

Blackstone, William. *Commentaries on the Laws of England*, vol. 2 (passage on "exclusion of the half blood"), pp. 227-229.

Maine, Sir Henry Sumner. *Village-Communities East and West*, seventh edition (London, 1913),   
pp. 3-17; 22; 205-211; 220-231.

**Meeting 4 (September 18) - Rights, Contract and Modern Society**

Maine, Sir Henry Sumner. *Ancient Law* (on-line edition or any other complete edition):   
Chapter 8: paragraphs 4-17; chapter 9: paragraphs 1-5, 22.

*Assigned* supplement (*posted PDF)*:

Sidgwick, Henry. *The Elements of Politics*, fourth edition (London, 1919), chapter 3, sect. 2-3;  
 chapter 4, sect. 1-2; chapter 6, sect. 1 and sect. 2 (first paragraph only); chapter 7, sect. 1;   
 chapter 10, sect. 1.

**NOTE: no class meeting on September 25!**

**Meeting 5 (October 2) - Marx: Historical Materialism and Law**

Marx*, Selected Writings* (ed. Simon), Introduction, pp.ix-xxv.

Marx*, Selected Writings*

Theses on Feuerbach, pp.98-101 (optional).

The German Ideology, pp. pp.102-56.

The Communist Manifesto, pp.157-86.

Preface to, A Critique of Political Economy, pp. 209-13.

**Meeting 6 (October 9) - Marx: The Critique of Liberal Rights Theory**

Marx*, Selected Writings* (ed. Simon)

Economic and Philosophical Manuscripts, pp.54-5, 58-68.

Jewish Question, pp. pp.1-21.

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

Capital, pp.216-9, 230-43.

*Optional* supplement (*posted PDF)*:

Lukes, Steven. "Marxism, Morality and Justice" in G.H.R. Parkinson, ed.,   
 *Marx and Marxism* (1982), pp. 177-205.

Marx*, Selected Writings* (ed. Simon)

The Eighteenth Brumaire, pp.187-208.

Capital, pp. 230-43.

**Meeting 7 (October 16) - review discussion**

**Meeting 8 (October 23) - Durkheim: the sociology of punishment**

Durkheim, Emile. Division of Labor in Society, “Introduction” and “Timeline” by Steven Lukes, pp.xxv-1.

Durkheim, Emile. *Division of Labor in Society*, Book 1, chapter 1 (part 3 only); chapters 2-3 (entire).

*Assigned* supplement *(posted PDF)*:

Durkheim, Emile. "Sociology in France", in *Emile Durkheim on Morality and Society* ed. Robert Bellah, pp.3-22.

*Optional* supplement (*posted PDF*):

Durkheim, Emile. "The Evolution of Punishment", in *Durkheim and the Law* ed. S. Lukes and A. Scull, pp. 102-132.

**Meeting 9 (October 30) - Durkheim: Law and the Moral System of Modernity**

Durkheim, Emile. *Division of Labor in Society*.

Book 1, chapters 6-7 (entire)

Book 2, chapter 5 (entire)

Book 3, chapter 1 and Conclusion

*Assigned* supplement *(posted PDF)*:

Durkheim, "Individualism and the Intellectuals" in *Emile Durkheim on Morality and Society*, pp.43-57.

Durkheim, "Dualism of Human Nature", in *Emile Durkheim on Morality and Society*, pp. 149-63.

*Optional* supplement (*posted PDF*):

Durkheim on "Morals of contractual association", in *Professional Ethics and Civic Morals*, pp.184-220.

Durkheim, "Legal Prohibition of Suicide", in *Durkheim and the Law*, pp. 133-45.

**Meeting 10 (November 6) -Weber: rationalism as societal process**

*From Max Weber*, eds. H.H. Gerth and C. Wright Mills, “Intellectual Orientations” (*posted PDF)*

Weber, Max. *Protestant Ethic and the Spirit of Capitalism*, Author's Introduction; chapters 1-3; chapter 4, intro. and section A (on Calvinism); chapter 5.

[*Note: on-line edition of Protestant Ethic lacks “Author’s Introduction.” Separate PDF  
 version posted]*

**Meeting 11 (November 13) -Weber: rationalism, bureaucracy and modern society**

Weber, Max. *On Charisma and Institution Building* (ed. Eisenstadt),

Social Action" pp. 3-8, 11-12, 15-17, 28-39.

Domination, pp. 46-65.

Bureaucracy, pp. 66-77.

Social Stratification, pp. 168-182.

Modem Capitalism, pp. 140-147, 154-165.

*Assigned* supplement (*posted PDF)*:

Weber, Max. "Social Psychology of World Religions", in *From Max Weber* ed. Gerth and Mills, pp. 267-270, 292-301.

Weber, “Author’s Introduction” to *Protestant Ethic and the Spirit* *of Capitalism*, pp.13-28

**Meeting 12 (November 20) -Weber: the Sociology of Law**

Weber, Max. *On Charisma and Institution Building*,

Sociology of Law, pp. 81-125.

Science as a Vocation, pp. 294-309.

*Assigned* supplement (*posted PDF)*:

Kronman, Anthony T. “Formal legal rationality”, in his *Max Weber*, pp. 72-95.

Weber, Max on "The Economy and Social Norms" in *Economy and Society*, pp. 311-325, 333-338.

**Meeting 13 (Thanksgiving Day make-up; TBD) – review discussion**