

LAW AND SOCIAL THEORY

30 contact hours

COURSE OUTLINE

SESSION 2 2011/2012

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COURSE INFORMATION

Teaching staff

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Course description

In their practical day-to-day activities, citizens take, and must take, much for granted, both about society in which they work and live and about its legal order. Lawyers practice within established legal systems, with more or less settled institutions, techniques, traditions and rules. Citizens live, and the laws operate, in societies in which specific social arrangements, structures, roles, expectations and conceptions of what is possible and what is right, are widely held and shape our views about law and about society. Customarily, most of us think *within* these categories and arrangements, rather than *about* them.

Theoretical investigation of those arrangements and understandings has to do with what underlies them. It is concerned to look beneath what we take for granted, to see what accounts for it, what its nature is, how it works and how it changes. *Social* theory is concerned to ask such questions about societies in which people live. Investigations about theories of law and society will lead us beyond our original and usually quite unreflective views of what is important in law, what functions it plays, what it is for, whose interests it serves and how it serves them, what causes legal change and how important law is in society. In probing these questions we might come to confirm, modify or abandon our original assumptions; we will always, however, find these assumptions are more problematic, controversial and puzzling than they appeared at first to be.

This course is designed to introduce students to theoretical issues concerning the intricate and complex relationships between law and society. It seeks to do this by acquainting them with several important ways of approaching these issues, and with the sorts of questions best (and worst) addressed by each of these approaches.

The course materials are composed of two interlocking parts, each of which seeks to introduce students to a distinct range of questions—and a distinct way of asking such questions—about socio-legal relations.

Part 1—Law and Modernity: Classical Social Theory on Law in Modern Society

Classical social theory was born in nineteenth century Europe, that is at a time and in a place which was undergoing massive and unprecedented social, economic, scientific and intellectual change. The early social theories differed markedly from each other , but they agreed upon one thing: the modern west was developing in ways and at a pace which were unprecedented in European history, and unparalleled anywhere else in this world. This so-called “great transformation” formed the context and topic of classical social theory. It prompted questions which had not been considered as urgently or directly before.

Among these are large questions about how people can and should be expected to behave, how increasingly large and complex societies “hang together”; and what differentiates one form of society and legal order from another. Typically the law presupposes that it has the answers to such questions. But in fact these questions have a form and structure that are not amenable to traditional legal analysis: a fact which renders lawyers, who are exercising their own specialised techniques, not especially expert in answering them. Listed immediately below are some of the questions that engaged the attention of the classic founders of modern social theory and which will be covered in the course.

1. What social functions do legal systems in general play, and what functions do specific types of legal systems play?
2. Is law necessary (or even beneficial) for orderly social life, or is it better to dispense with it?
3. What are the major influences on the nature of the law and legal systems and on change in them—economic, political or internal legal imperatives; the interests of classes or other “new social movements”; the requirements of whole social systems; the interests of political leaders or the interests and training of lawyers?
4. What accounts for the many differences between law in different countries and at different times?
5. What are the distinctive characteristics of *modern* law?

These are, of course, complex questions having to do with the nature of societies as a whole, and of modern societies especially. There have been many suggested answers to these questions and controversy about them. This part of the course will focus on some of the most powerful and enduringly influential of such answers, which have been given by the three great figures of social theory and the three foundational analysts of modernity: *Karl Marx*, *Emile Durkheim* and *Max Weber*.

Part 2—The Analysis and Critique of Rule of Law and the Role of Law in Contemporary Society.

We are inheritors of modernity, but neither our society nor our law has stood still. On the contrary the pace of change in both is without precedent. In this part of the course we will look at contemporary law investigating the way in which *late modernity*—or what many call *postmodernity*—has affected the law, and what problems it now comes to face. We will discuss critical accounts of law and society which dispute many of the classical accounts that we covered in Part 1 of the course.

This Part takes as its point of departure a widely held vision—expressed in law—of the way in which law works and should work in society. This vision, which students will have already encountered in other law courses, is called the *Rule of Law*. By looking at some of the developments in contemporary law in terms of the social, moral and political assumptions embodied in them we will investigate the following issues.

- A. The extent to which the classically conceived rule of law model provides an accurate *description* of contemporary law in comparison with other critical analyses that question (in many different ways) the basic assumptions of classical theory itself.
- B. The extent to which the *ideal* of the rule of law, in the light of these critical analyses, provides an appropriate aspiration for law in contemporary societies.
- C. Whether, in the light of the descriptive and normative deficiencies discussed in (A) and (B), the concept of the rule of law can (or even should) be recast or simply jettisoned in favour of another model that is able more adequately to come to terms with contemporary, globalized late-modern / postmodern / social conditions.

In view of the large and ever growing number of social and philosophical theories that are currently having a direct impact on legal theory and a more indirect impact on legal developments themselves, this part of the course will focus on some of the more influential and well worked-out positions offered by contemporary *globalization theory, feminism, and post-structuralism*. In considering the state of the rule of law in the current era of economic and cultural globalization attention will focus upon the growing body of work that specifically analyses the implications of the currently prevailing social and political paradigm: *neo-liberalism*. As will be made clear, all of these theories, no matter how critical they may be of the methods and findings of classical social theory, are still at least partly indebted to the “big three” (Marx, Weber and Durkheim). Because of this, the course will focus on the way contemporary theory not only criticizes, but also builds upon and develops, many of the central theoretical tenets and social diagnoses of the classics. It should be noted that the focus on these theories and theorists is very selective and students will be encouraged to delve into other contemporary theorists and thinkers that may interest them.

Aims of the Course

The emphasis in both parts of the course will be, as much, on coming to terms with broad theoretical thinking about law and society as with the application of the results of this thinking to current legal and social reality. In other words, just as in the courses earlier in the law curriculum, students had to come to terms with the “artificial reason” of the law and learn “to think like a lawyer”, this course seeks to introduce students to another way of thinking, just as removed from the suppositions of everyday common-sense thinking as it is from the assumptions and certainties of legal thinking itself. Whether one calls this type of thinking ‘philosophical’, ‘social-theoretical’ or whatever, students may find it quite challenging—dare one say difficult—at first. Nevertheless, no knowledge of philosophy, sociology and the like will be presupposed and, indeed, coming to this course with few or no preconceived ideas about Marxism, feminism, post-structuralism and critical theory (in its many guises) may well be an advantage.

Expected Learning Outcomes

The aims listed below are part of the aim of the AGH to instill in students the understandings values, skills and qualities necessary to become highly qualified professionals with a strong sense of citizenship, community and possibly social justice.

- 1 Core disciplinary knowledge :** a functioning and contextual knowledge of law and legal institutions
- 2 Transferable intellectual skills:** excellent intellectual skills of analysis, synthesis, critical judgment, reflection and evaluation
- 3 Research skills:** the capacity to engage in practical and scholarly research
- 4 Communication skills:** effective oral and written communication skills both generally and in specific legal settings
- 5 Personal and professional values:** a commitment to personal and professional self-development, ethical practice and social responsibility.

In the context of the aims of the course these attributes are realised as follows:

- To help you to conceive law as a phenomenon which may usefully be investigated from the viewpoint of many kinds of investigator - not just the lawyer or the law reformer, but also the historian, the sociologist, the anthropologist, the political scientist, the economist, the philosopher, etc.
- To acquaint you with legal and social theoretical terminologies and styles.
- To develop your skills in analysing and applying legal principles in a socially contextualized manner.
- To stimulate you to adopt a critical approach in considering social and legal institutions, rather than treating them as given phenomena whose character and desirability cannot be questioned.
- To give you a systematic understanding into the dynamics of social and legal development, that is, for the way law and society have changed in the past, and are currently changing in response to extra and intra-legal factors

ASSESSMENT

Teaching will be a combination of lectures and class discussion of pre-set material and of any issues which arise in the course of class discussion. The assessment for the course is as follows.

- (i) One research essays of 2,000 words due on 15 June 2012 comprising up to 70% of the mark
- (ii) Maximizable class participation comprising 30% of the mark
- (iii) Late work will not be accepted without penalty unless an extension has previously been granted.

Criteria for assigning marks

In assessing essays teachers will be looking for indications that students can undertake research, understand, analyse, apply and critically engage with the theorists and issues raised in the course materials, lectures and primary and secondary literature.

Relationship between assessment and course objectives

Consistent with the graduate attributes stated above, these assessable tasks apply the following academic principles:

- (i) The research essay is designed to encourage students to pursue a number of issues in some depth.
- (ii) The in-class test is designed to test overall command of the subject matter and grasp of methodology
- (ii) Class participation tests overall command of the subject matter. But the main object of this form of assessment is to foster discussion and to reward oral demonstrations of comprehension and analytical ability. It is also intended to encourage students to keep up to date with the materials set for each class and develop skills in presenting and evaluating arguments. Being maximizable, this form of assessment will only count towards a student's total mark if it improves that mark.

ACADEMIC HONESTY AND PLAGIARISM

What is Plagiarism?

Plagiarism is the presentation of the thoughts or work of another as one's own. Examples include:

- direct duplication of the thoughts or work of another, including by copying material, ideas or concepts from a book, article, report or other written document (whether published or unpublished), composition, artwork, design, drawing, circuitry, computer program or software, web site, Internet, other electronic resource, or another person's assignment without appropriate acknowledgement;
- paraphrasing another person's work with very minor changes keeping the meaning, form and/or progression of ideas of the original;
- piecing together sections of the work of others into a new whole;
- presenting an assessment item as independent work when it has been produced in whole or part in collusion with other people, for example, another student or a tutor; and
- claiming credit for a proportion a work contributed to a group assessment item that is greater than that actually contributed.

For the purposes of this policy, submitting an assessment item that has already been submitted for academic credit elsewhere may be considered plagiarism.

Knowingly permitting your work to be copied by another student may also be considered to be plagiarism.

Note that an assessment item produced in oral, not written, form, or involving live presentation, may similarly contain plagiarised material.

The inclusion of the thoughts or work of another with attribution appropriate to the academic discipline does *not* amount to plagiarism.

Student should use:

- correct referencing practices;
- paraphrasing, summarising, essay writing, and time management;
- appropriate use of, and attribution for, a range of materials including text, images, formulae and concepts.

Students are also reminded that careful time management is an important part of study and one of the identified causes of plagiarism is poor time management. Students should allow sufficient time for research, drafting, and the proper referencing of sources in preparing all assessment items.

It is the responsibility of each student to use correct methods of acknowledging other people’s ideas. In cases where students collaborate with other students, the extent of collaboration should be included as well as the names of all students who contributed to the piece of work.

COURSE SCHEDULE - TBA

WEEK 1 (1)	- (Vol. 1) Introduction to modernity - Marx	
WEEK 1 (2)	- Marx - Marx	
WEEK 1 (5) (6)	- Marx - Marx	
WEEK 1 (7) (8)	- Pashukanis - Pashukanis con’t, Durkheim	
WEEK 1 (9)	- Durkheim	

(10)	- Durkheim	
WEEK 1 (11) (12)	- Durkheim - Weber	
WEEK 1 (13) (14)	- Weber - Weber	
WEEK 1 (15) (16)	- Weber -summary	
WEEK 2 (17) (18)	- Rule of law - Rule of law / Globalisation	
WEEK 2	Reading week	
WEEK 2 (19) (20)	- Globalisation - Globalisation	
WEEK 2 (21) (22)	- globalisation - Feminism	
WEEK 2 (23) (24)	- Feminism - Feminism	
WEEK 2 (25) (26)	- Foucault - Foucault	

RESOURCES FOR STUDENTS

Despite the huge number of books and journals devoted to issues in legal and social theory, no one work adequately covers the topics dealt with in the course.

For a preliminary orientation to the course, students might find useful Reza Banakar and Max Travers, eds., *An Introduction to Law and Social Theory*, Hart Publishing, Oxford, 2003.

- Hurst, C. E. *Living Law: The Application of Classical Theory to Contemporary Life*, Boston, Allyn and Bacon, 1999.
- McIntyre, L. J. *Law in the Sociological Enterprise: A Reconstruction*, Westview Press, Boulder, 1994.

- Milovanovic, D. *An Introduction to the Sociology of Law*, 3rd ed. Monsey, New York, Criminal Justice Press, 2003.
- Trevino, A. J. *The Sociology of Law: Classical and Contemporary Perspectives*, St Martins Press, New York, 1996;
- Turkel, G. *Law and Society—Critical Approaches*, Allyn & Bacon, Boston, 1995.

ADMINISTRATIVE MATTERS

- Essays should be handed electronically to lecturer's email address

Consultation hours TBA.