

CARLETON UNIVERSITY
Department of Law

LAWS 5000

FALL 2010

Wednesday 11.30 - 2.30pm

THEORIES OF LAW AND SOCIAL TRANSFORMATION

Professor: Alan Hunt

SEMINAR PROGRAMME:

The readings for each seminar are set out below. Participants are expected to be able to give a brief introduction to each reading of between 5 to 10 minutes, to respond to questions and take part in discussion. There is no prescribed form for an introduction; it may be either a summary or a commentary on the text. Please note that **it is the responsibility of each participant to ensure that they know which readings and assignments they are to prepare for each class.**

SEMINAR READINGS:

WEEK 2 The Sociology of Law

Hunt, Alan "Law as a Constitutive Mode of Regulation" in *Explorations in Law and Society: Toward a Constitutive Theory of Law* Routledge: New York, 1993, pp.301-33

Why treat law as a form of regulation? What is constitutive about law?

Litowitz, Douglas "The Social Construction of Law: Explanations and Implications" 21 *Studies in Law, Politics and Society* 215-42 (2000). What does it mean to say that law constructs social relations?

Abel, Richard L. "What We Talk About When We Talk about Law" in Richard L. Abel (ed.) *The Law and Society Reader* New York University Press: New York, 1995, pp.1-10

What are the advantages or disadvantages of focusing on the mobilization of law?

WEEK 3 Emile Durkheim

Durkheim, Emile "Types of Law in Relation to Types of Social Solidarity" from *The Division of Labour in Society* [1893] Free Press of Glencoe: New York, 1964, pp.68-112.

Why does Durkheim focus attention on the types of law? What is social solidarity?

Durkheim, Emile "Two Laws of Penal Evolution" [1900] (intro. T. Anthony Jones and Andrew Scull) 2 *Economy and Society* 285-308 (1973)

What primary concepts does Durkheim seek to link? How does this approach differ from that in *The Division of Labour*?

WEEK 4

Commentaries on Durkheim

Cotterrell, Roger "Legal Evolution" in *Emile Durkheim: Law in a Moral Domain* Edinburgh University Press: Edinburgh, 1999, pp.82-99.

Why does Cotterrell insist that Durkheim was not attempting to offer a general history of law?

Hunt, Alan "Emile Durkheim: Towards a Sociology of Law" in *The Sociological Movement in Law* Macmillan: London, 1978, pp.60-92.

Compare and contrast Hunt's criticisms of Durkheim with those advanced by Cotterrell?

Pearce, Frank "Durkheim and the Juridical Relation" in *The Radical Durkheim* Unwin Hyman: London, 1989, pp.88-117

What is a juridical relation?

WEEK 5

Karl Marx

Cain, Maureen and Alan Hunt *Marx and Engels on Law* Academic Press: London, 1979, pp.ix-xxiii and pp.48-61

Why does Marx attribute primacy to economic relations? What does Marx mean by a 'legal and political superstructure'?

Cotterrell, Roger "Law, Ideology, and Power: The Marxist Tradition" in *Law's Community: Legal Theory in Sociological Perspective* Clarendon Press: Oxford, 1995, pp.113-33.

How does Cotterrell seek to show that law is not simply a reflection of economic relations?

WEEK 6

Max Weber

Weber, Max *Max Weber on Law in Economy and Society* (ed. Max Rheinstein) Harvard University Press: Cambridge, Mass., 1954, pp.11-17, 61-64, 301-21.

What does Weber understand by 'rational'? Distinguish between 'formal', 'substantive', 'rational' and 'irrational'.

Hunt, Alan "Max Weber's Sociology of Law" in *The Sociological Movement in Law* Macmillan: London, 1978, pp.93-133.

What is the 'England problem'? In what sense is the 'common law' irrational?

Cotterrell, Roger "Legality and Political Legitimacy in the Sociology of Max Weber" in *Law's Community: Legal Theory in Sociological Perspective* Clarendon Press: Oxford, 1995, pp.134-59.

How does Cotterrell see legality being connected to political legitimacy?

WEEK 7

Foucault

Foucault, Michel "The Means of Correct Training" in *Discipline and Punish: The Birth of the Prison* Pantheon: New York, 1977, pp.170-84

What is the relationship between discipline and law?

Foucault, Michel "Lecture Two" in *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (ed. Colin Gordon) Harvester: Brighton, 1980, pp.92-108.

What is power? Why does Foucault want to avoid sovereignty?

Hunt, Alan "Foucault's Expulsion of Law: Towards a Retrieval" 17:1 Law and Social Inquiry 1-38 (1992).

What is the juridical? How closely connected are sovereignty and the juridical?

WEEK 8

Law and Governance

Foucault, Michel "Governmentality" [1978] in Graham Burchell, Colin Gordon and Peter Miller (eds.) *The Foucault Effect: Studies in Governmentality* Harvester-Wheatsheaf: Hemel Hempstead, 1991, pp.87-104.

What is 'governmentality'? Is law a form of governmentality?

Rose, Nikolas and Mariana Valverde "Governed By Law?" 7:4 *Social and Legal Studies* 569-79 (1998).

In what sense is law hybrid? How is law related to medical, psychiatric and other forms of knowledge?

Bauman, Zygmunt "Social Issues of Law and Order" 20:3 *British Jnl. of Criminology* 205-21 (2000).

Why are contemporary societies preoccupied with security and order?

WEEK 9

Habermas

Habermas, Jürgen "Law as Medium and Law and Institution" in Gunther Teubner (ed.) *Dilemmas of Law in the Welfare State* de Gruyter: Berlin, 1986, pp.203-20.

How are 'medium' and 'institution' distinguished? How are they related to 'life-world' and 'system'?

Habermas, Jürgen "Paradigms of Law" 17 *Cardozo Law Rev.* 771-84 (1996)

What is 'materialized law'? How does Habermas hope to rectify its defects?

Outhwaite, William "Law and the State" in *Habermas: A Critical Introduction* Polity Press: Cambridge, 1994, Chpt. 9, pp.137-51.

What is the tension between factivity and validity?

WEEK 10

Law and Community

Cotterrell, Roger "Imagining Law's Community" in *Law's Community: Legal Theory in Sociological Perspective* Clarendon Press: Oxford, 1995, pp.315-37.

What is community? Can we look to law to advance the life of the community?

Macaulay, Stewart "Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports" 21 *Law and Society Rev.* 185-218 (1987)

What is legal culture? How should we understand the inconsistency of attitudes towards compliance and avoidance?

WEEK 11

Law and Power

Bourdieu, Pierre "The Force of Law: Toward a Sociology of the Juridical Field" 38 *Hastings Law Jnl.* 805-53 (1987)

What is the legal or juridical field? Is the legal profession dedicated to the service of the state?

WEEK 12

Conservative and Liberal Perspectives

Hayek, F.A. "Reason and Evolution" (Chpt.1) *Law, Legislation and Liberty* (Vol.I) *Rules and Orders* Routledge: London, 1982, pp.8-34

On what grounds does Hayek reject 'constructivism'?

Hayek, F.A. "The Changing Concept of Law" (Chpt.4) *Law, Legislation and Liberty* (Vol.I) *Rules and Orders* Routledge: London, 1982, pp.72-93.

Why does Hayek distinguish between law and legislation?

Rawls, John *A Theory of Justice* Harvard University Press: Cambridge, Mass., 1971, pp.3-22 and 60-67.

Are Rawls' two principles of justice compatible?