

THEORIES OF LAW AND SOCIAL TRANSFORMATION

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OFFICE HOURS: Thursday & Friday - 10:15-11:30 am
and at other times by appointment

COURSE OBJECTIVES:

The course will focus on the connection between law and social change. It will approach this broad issue by considering the implications of a selected range of theories. They will be examined for what they contribute to an understanding of the social, economic and political place of law in modern society.

COURSE ORGANIZATION:

This is a 3 hour class. Each class will start with a lecture-style presentation followed by discussion. During the first half of the course the second part of each session will be devoted to discussion of assigned texts. In the second half of the course each participant will give a seminar presentation on the topic of their Term Paper.

COURSE EVALUATION:

Evaluation will be based primarily on one Term Paper; 70% will be allocated to the final paper submitted; 15% will be allocated for written course assignments preparatory for the term paper and 15% for a course portfolio.

Portfolio:

The portfolio is intended to be a working document. It should be handed in with the term paper. It should contain the following:

- (a) Concepts: a list of concepts encountered with brief definition and comments; most valuable will be subsequent notes indicating how your understanding of the concepts has changed or developed;
- (b) Notes: A brief note in the form of an aide memoire of all material read for this course; the purpose of this exercise is to encourage the habit of keeping some record of what you read;
- (c) Term paper: a record of the stages required for working-up and planning your term paper; details will be provided in class.

Term paper:

The paper should normally be between 6,000 - 10,000 words. You will be given a number of assignments to assist in planning your paper. Papers should be word-processed and printed, with title page, paginated and with footnotes at the bottom of the page, and list of works cited at the end. Papers should be handed to me personally or deposited for me in the Law Department.. Papers should be submitted by **Monday 12th December 2011**. (You are advised to keep a copy of your paper). Please note that I reserve the right to conduct an oral examination on papers submitted if there is a suspicion of plagiarism (see 'Graduate Calendar' for details on plagiarism).

Preparatory steps for term paper

The steps are intended to help move forward plans for your term paper ahead. At the core of this approach is the view that the most important step is identifying and defining as sharply as possible a **question**.

Keep one computer file for this exercise. At each stage retain or revise each of the previous stages and hand in as hard copy. Please note that you can change your mind at any stage; simply repeat each of the steps described below.

The first step is the selection of a **topic**. You will be asked to select 2 or 3 possible topics understood as fields of inquiry but without necessarily indicating any particular orientation; for example 'social constructionism' or 'the forms of power' would count as topics. Your topic should related directly to one of the themes addressed in the course readings.

Your question: Select a question through which to address your selected topic. Make it one question rather than a series of questions. Make sure that it does end with a question-mark and that it is not a statement or a value judgement.

Revised version of question: On the basis of discussion of the questions selected you can have a chance to revise your question; for example to make it narrower (or broader if necessary), to make the question more clearly defined. The issue is not whether you know what you are on about, but whether your reader can understand your question.

Title of paper: Titles are important. Try to find a paper that both gives an adequate identification of your project and one that will interest the reader, make them want to read it!

Structure of paper: identify the main stages that you will need in order to develop your topic and address its questions.

Bibliography: Provide a bibliography distinguishing between items that you have already read and those that you plan to read.

Alan Hunt
September 2011

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?