

LAW AND SOCIETY

Professor: Aurélien BOUAYAD (Teaching Fellow, PhD Candidate)
Academic Year 2019/2020: Spring Semester

SYLLABUS

Course description

The aim of this course is to expose students to the theoretical frameworks developed by social sciences in order to examine how the law shapes society and society shapes the law. We will begin by reading and discussing how theorists including Weber, Marx, Foucault and others understood the role of law in society, whose interests they saw the law serving and the law's role in societal transformation, and will apply these theoretical perspectives to current socio-political issues and debates. The approach we will take to studying the law will emphasize the social, political, cultural and historical aspects of the law, rather than studying the law through legal doctrines, statutes or judicial opinions. The last part of the course will concentrate on the relationship between law and "cultures". Students will be introduced to the anthropological study of law, and to issues related to the accommodation of cultural differences by legal systems.

Aims

The aims of this course are:

- to introduce students to fields of legal studies that interact with social sciences (such as sociology, anthropology, philosophy, or political sciences);
- to encourage students to think critically about law (and society) thanks to the theories and the methods of social sciences;
- to provide students with various perspectives on law, in order to help them grasp the theoretical and practical complexity of legal phenomena.

*Assessment Overview**

Oral presentation: 30%
Reaction paper: 20%
Class participation: 10%
Final paper (take-home exam): 40%

* Additional information on the assignments will be given in class.

Bibliography

In addition to required and optional readings indicated below, and available on *Moodle*, students may consult the following general works, available at Sciences Po's library, as well as the *Law and Society Association's* website (available at www.lawandsociety.org):

Max Travers, *Understanding Law and Society*, New York: Taylor & Francis, 2009.

Lawrence M. Friedman, *Law and Society: An Introduction*, Englewood Cliffs (N.J.): Prentice-Hall, 1977.

Austin Sarat (ed.), *The Blackwell Companion to Law and Society*, Malden (Mass.): Blackwell Publishing, 2004.

Roger Cotterrell, *Law, culture and society: legal ideas in the mirror of social theory*, Burlington: Ashgate, 2006.

Outline

Session 1. Introduction

PART ONE — LAW AND SOCIAL THEORY, A GENEALOGY

Session 2. Law and the social: Emile Durkheim

Session 3. Law and modernization: Max Weber

Session 4. Law as ideology: Karl Marx

Session 5. Law and social control: Michel Foucault

PART TWO — LAW AND SOCIETY, SELECTED PERSPECTIVES

Session 6. Law and its actors: professionals and laymen

Session 7. Law and ethics: civil disobedience

Session 8. Law as a tool for social change: the strategic mobilization of law

PART THREE — LAW AND CULTURES, AN ENCOUNTER

Session 9. Law and anthropology: law's universality?

Session 10. Law and cultural studies: the accommodation of cultural diversity

Session 11. Conclusion: is law undemocratic?

Session 1 —January 27th
Introduction

Our goals for this introductory session are to have several brief introductions. First we will get introduced to each other. Second, I will provide you with an introduction to the course and an overview of the course goals and assignments. Third, and finally, we will get introduced to examining the role of law in society by the role and conditions of the U.K. Suffrage movement in the early 20th century.

Readings

Optional

Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life*, Chicago: University of Chicago Press, 1998, excerpts (pp. 15-23, 33-53).

PART ONE — LAW AND SOCIAL THEORY, A GENEALOGY

Session 2 —February 3rd
Law and the social: Emile Durkheim

In the next sessions (2, 3, 4 and 5), we will be examining historical and contemporary theoretical perspectives on the role of law in society. By the end of this first part you should understand how each of these theorists viewed the relationship between law and society. Finally, you should be able to compare and contrast these theories in context (through examining a contemporary legal or law-related topic) and explain what each theory illuminates and fails to illuminate about the issues at hand.

Readings

Required:

Steven Lukes and Andrew Scull (eds.), *Durkheim and the Law*, New York: St. Martin's Press, 1983 (excerpts from Emile Durkheim, *The Division of Labor in Society*).

Questions:

- According to Durkheim, what role does the study of law play in sociological investigation? What conception of law underlies this approach?
- What is a crime in Durkheimian sociology, and what does it reveal to the sociologist?
- What is a restitutory rule, and what is the function of contract in society?

Optional:

Steven Spitzer, "Punishment and Social Organization: A Study of Durkheim's Theory of Penal Evolution", *Law and Society Review*, 9(4), 1975: 613-35.

Michael Clarke, "Durkheim's Sociology of Law", *British Journal of Law and Society* 3(2), 1976: 246-55.

Session 3 —February 10th
Law and modernization: Max Weber

Readings

Required:

Max Weber, *Economy and Society*, translated by Max Rheinstein, Cambridge: Harvard University Press, 1954, excerpts (pp. 11-20, 224-31).

Questions:

- What is it, for Weber, to adopt a "sociological point of view" on a legal norm? What does he mean by his notion of "empirical validity"? What does he mean by a "right"?
- Weber distinguishes between a formal and a substantive justice. What are the main characteristics of these two types of justice? Who has interest in each of them?

Optional:

David Trubek, "Max Weber on Law and the Rise of Capitalism" *Wisconsin Law Review*, 1972(3), 1972: 720-53.

Oral presentation

AI judges and juries: are "cyber courts" desirable?

Session 4 —February 24th
Law as ideology: Karl Marx

Readings

Required:

Karl Marx, "Debates on the Law on Thefts of Wood", *Rheinische Zeitung*, 298, 300, 303, 305 and 307, 1842.

Questions:

- What is, according to Marx, the link between law, the state, and private interests?

- What is the universal “customary rights of the poor” Marx is calling for? How is it distinguishable from “the customs of the privileged class”? Which form could this take in a contemporary context?
- To what extent can the law on the theft of wood be considered as a privatization of justice?

Optional:

Andrew Vincent, “Marx and Law”, *Journal of Law and Society*, 20(4), 1993: 371-97.

Peter Kropotkin, *Law and Authority: an Anarchist Essay*, 1886, excerpts.

Marc Galanter, “Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change”, *Law and Society Review*, 9(1), 1975: 95-160.

Oral presentation

Is poverty a crime? Historical and comparative perspectives

Session 5 —March 2nd Law and social control: Michel Foucault

Readings

Required:

Michel Foucault, *Discipline and Punish: the Birth of Prison*, New York: Vintage Books, 1995, excerpts (pp. 264-77).

Questions:

- Do you think that Foucault's analysis of the carceral system generally validates Durkheim's position on the decline of repressive law linked to modernization?
- According to Foucault, prison's failure is its success. What is the role of the carceral system then, and what distinction does Foucault make between delinquency and illegalities?
- Do you think Foucault's arguments still constitute a valuable framework for analyzing contemporary incarceration issues?

Optional:

Michelle Alexander, *The New Jim Crow: Mass incarceration in the age of colorblindness*. New York: New Press, 2010.

Eugene JARECKI, *The House I Live In*, United States, 2012, 108 min.

Oral presentation

Profiling, data collection and surveillance: promise and perils

PART TWO — LAW AND SOCIETY, SELECTED PERSPECTIVES

Session 6 —March 23rd
Law and its actors: professionals and laymen

Readings

Required:

Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*, Chicago: University of Chicago Press, 1990, excerpts (pp. 1-6, 8-17, 134-137, 142-144).

Questions:

- In Merry's account of the way court professionals deal with family and neighborhood problems (their "garbage cases"), how does the low status of such cases reflect in the use of various discourses? and in the organization of labor in court?
- How does the court experience influences the legal consciousness of working-class Americans as described in the book?
- What does Merry has to say about the "excessive litigiousness" of American society?

Optional:

Liu Sida, "Legal Profession as a Social Process: A Theory on Lawyers and Globalization", *Law & Social Inquiry*, 38(3), 2013: 670-93.

Raymond Depardon, *10e chambre, instants d'audience*, France, 2004, 105 min.

Oral presentation

The representation of legal professionals in popular culture

Session 7 —March 30th
Law and ethics: civil disobedience

Readings

Required:

Delbert D. Smith, "The Legitimacy of Civil Disobedience as a Legal Concept", *Fordham Law Review*, 36(4), 1968: 707-30.

Optional:

Henry David Thoreau, *Civil Disobedience*, 1849.

Steve Vanderheiden, "Radical environmentalism in an age of antiterrorism" (2008) *Environmental Politics*, vol. 17, n° 2, pp. 299-318.

Oral presentation

Civil disobedience today: advantages and limits of a legal strategy

Session 8 —April 6th
Law as a tool for social change: the strategic mobilization of law

Readings

Required:

William Felstiner, Rick Abel, and Austin Sarat "The emergence and transformation of disputes: Naming, Blaming, and Claiming", *Law and Society Review*, 15(3/4), 1980: 631-54.

Optional:

Austin Sarat and Stuart Scheingold, "Cause Lawyering and the Reproduction of Professional Authority" in: Austin Sarat and Stuart Scheingold (eds.), *Cause Lawyering: Political Commitments and Professional Responsibilities*, New York: Oxford University Press, 1998, pp. 3-12.

Oral presentation

Using courts to address injustices: the case of Native Americans

PART THREE — LAW AND CULTURES, AN ENCOUNTER

Session 9 — April 20th
Law and anthropology: law's universality?

Readings

Required:

Bronislaw Malinowski, "The Rationalization of Anthropology and Administration" *Africa: Journal of the International African Institute*, 3(4), 1930: 405-30.

Optional:

Marc Galanter, "The Displacement of Traditional Law in Modern India", *Journal of Social Issues*, 24(4), 1968: 65-90.

Bruno Latour, "Scientific Objects and Legal Objectivity", in Alan Pottage and Martha Mundy (eds.), *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*, Cambridge: Cambridge University Press, 2004: 73-114 (excerpts).

Oral presentation

Customary justice in New Caledonia

Session 10 — April 27th
Law and cultural studies: the accommodation of cultural diversity

Readings

Required:

Alison Dundes Renteln, "The Cultural Defense: Challenging the Monocultural Paradigm", in Marie-Claire Foblets *et al.* (eds.), *Cultural Diversity and the Law: State Responses from Around the World*, Brussels: Bruylant, 2010: 791-817.

Optional:

Aurelien Bouayad, "The Cactus and the Anthropologist: The Evolution of Cultural Expertise on the Entheogenic Use of Peyote in the United States", *Laws*, 8(2), 2019: 1-22.

Oral presentation

Traditional uses of psychoactive substances: challenging the prohibition paradigm

Session 11 —April 28th
Conclusion: is law undemocratic?

Readings

Required:

Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field", *Hastings Law Journal*, 38(5), 1987: 814-53.

Optional:

Karl N. Llewellyn, "Law and the Social Sciences – Especially Sociology", *Harvard Law Review*, 62, 1949: 1286-305.

Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy", *Journal of Legal Education*, 32, 1982: 591-615.