

## **SOC 354: SOCIOLOGY OF LAW**

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**METU, Department of Sociology**

### **COURSE SYLLABUS**

**2004, Spring**

The main objective of this course is to introduce the students to an understanding of law as a socio-historical institution acquiring its form, meaning and effect through social practices, and allow them to develop a sociological insight into the relations between law and centres of power as well as into the interactions between law, ethical life in society (*ethos*), and custom.

The course will require a careful reading of the course material as well as eager participation of the students into the discussions (not to mention **attendance** that will bring the student **20** points). Each week there will be one or more major text(s) that should be read by all the students. In addition to this, those who are assigned to make **presentations** (**25** points) in the same week will read and include the supplementary readings in their presentations as well as some additional readings of their own choice related with the topic. As for the papers, the presentation topic must be organised around a certain problematic by the student and submitted to the instructor before the announced date in the form of a carefully designed **paper proposal** (**10** points). Finally the students are expected to submit their **papers** (**45** points) two weeks before the end of the semester.

Note: Otherwise stated, all the readings are compulsory.

### **Soc 354 Outline**

#### **Part I: The Foundation of Law as Idea**

**Week 1 (04.III.04) : Justice I.** Justice as the good order of things.

Plato, 1980 (ca. BC 395), *Socrates' Defense (Apology)*, in Hamilton, Edith and Huntington Cairns (ed.s), *The Collected Dialogues of Plato Including the Letters*, Princeton University Press, Princeton, NJ, pp. 25-26 (40d-42).

Friedrich, Carl Joachim, 1963, *The Philosophy of Law in Historical Perspective*, The University of Chicago Press, Chicago & London, pp. 27-56.

Plato, 1980 (ca. BC 395), *Republic*, in Hamilton, Edith and Huntington Cairns (ed.s), *The Collected Dialogues of Plato Including the Letters*, Princeton University Press, Princeton, NJ, pp. 586-614.

Hobbes, Thomas, 1968 (1651) *Leviathan, or the Matter, Forme, and Power of a Common-Wealth Ecclesiasticall and Civill*, Penguin Books, Harmondsworth, pp. 183-188 (Chap.s XIII).

Locke, John, 1967 (1698), *Two Treatises of Government*, Cambridge University Press, London, pp. 287-303 (Book II, Chap.s II-IV).

**Week 2 (11.III.04): Justice II. Justice of and in the Self. The Self as the Moral Legal Subject.** (Freedom of the Self, rationality, responsibility)

Aristotle (ca. BC 350), *Nicomachean Ethics*, in Barnes, Jonathan (ed.), *The Complete Works of Aristotle*, Vol. II, pp. 1752-1760 (Book III0-BookIII5)

Kant, Immanuel, 1963 (1775-1780), *Lectures on Ethics*, Harper & Row Publishers, New York, pp. 1-47

Becker, Don, "Kant's Moral and Political Philosophy" in Solomon, C. Robert and Kathleen M. Higgins (ed.s), *The Age of German Idealism*, Routledge, London and New York, 1993, pp. 68-82.

Hegel, G. W. F. , 1996 (1820), *Elements of the Philosophy of Right*, (ed. by Allen W. Wood and trans. by H. B. Nisbet, Cambridge University Press, Cambridge, pp. 135-156 (§§ 105-128 ).

**Week 3 (18.III.04): Justice III: Ethics or Justice of the Self towards the Other**

Aristotle, 1985 (ca. BC 350), *Nicomachean Ethics*, in Barnes, Jonathan (ed.), *The Complete Works of Aristotle*, Vol. II, pp. 1781-1797 (Book IV).

Kant, Immanuel, 1991 (1797), *The Metaphysics of Morals*, Cambridge University Press, Cambridge, pp. 379-397.

Hegel, G. W. F. , 1996 (1820), *Elements of the Philosophy of Right*, (ed. by Allen W. Wood and trans. by H. B. Nisbet, Cambridge University Press, Cambridge, pp. 62-64 (§ 33 ).

**Week 4 : Last Day for PRESENTATION ASSIGNMENTS**

**Week 4 (25.III.04): Justice IV. Confrontation of the Self and the Other, or what**

happens in the ethical life of civil society.

Levinas, Emmanuel, 1991, *Totality and Infinity: An Essay on Exteriority*, Kluwer Academic, Boston, pp. 33-40, 48-52, 82-100.

Derrida, Jacques, 2002 (1989), "Force of Law: The 'Mystical Foundation of Authority'", in Derrida, Jacques (ed. by Gil Anidjar), 2002, *Acts of Religion*, Routledge, New York and London, pp. 228-258.

Foucault, Michel, 1980 (1976), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. by Colin Gordon, The Harvester Press, Brighton, Sussex, pp. 87-108.

**Week 5 : PRESENTATIONS BEGIN**

**Week 5 (01.IV.04): Justice V. Body Politic as the Supreme Third Person, or Law as the Dictates of the Sovereign.**

Hobbes, Thomas (1651) *Leviathan, or the Matter, Forme, and Power of a Common-Wealth Ecclesiasticall and Civill*, Penguin Books, 1968, Harmondsworth, pp. 188-217 (Chap.s XIII-XV).

Locke, John (1698), *Two Treatises of Government*, Cambridge University Press, London, 1967, pp. ?? (Book II, Chap.s II-IV).

Rousseau, Jean-Jacques (1762), *The Social Contract and Discourse on the Origin of Inequality*, ed. By Lester G. Crocker, Washington Square Press, London, 1967, pp. 7-23 (Chap.s I-VIII).

**Supplementary Readings:**

Reiman, Jeffrey, 1990, *Justice and Modern Moral Philosophy*, Chapter 3: Natural Justice and the Natural Covenant, Yale University Press, New Haven and London, pp. 157-212.

Fitzpartick, Peter, 1992, *The Mythology of Modern Law*, Chapter 4: The Mythic Consolidation of Modern Law, Routledge, London and New York, pp. 92-145.

## **Part II: Sociology on Law**

**Week 6 (08.IV.04) : Introduction.** Formal definition(s) of law and sociology of law.

Milovanovic, Dragan, 2003, *An Introduction to the Sociology of Law*, Criminal Justice Press, Monsey & New York, pp. 1-26.

**Supplementary Readings:**

Hunt, Alan, 1993, *Explorations in Law and Society: Toward a Constitutive*

*Theory of Law*, Routledge, New York & London, pp. 36-57.

Van Hoecke, Mark and Warrington, Mark, 1998, "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law" in *International Comparative Law Quarterly*, Vol. 47, Part 3, July 1998, pp. 495-536.

**Week 7 (15.IV.04): The rise of universal rationality with its normalizing power. The Normal and the Pathological.**

Heathcote, Frank, "Social Disorganisation Theories", in Firtzgerald, M., McLennan, G. and Pawson, J. (eds) (1981), *Crime and Society: Readings in History and Theory*, Routledge and Kegan Paul, London, 1995, pp.341-370.

Durkheim, Emile (1893), *The Division of Labor in Society*, The Free Press, New York, 1997, 291-301.

Garland, David, *Punishment and Modern Society: A Study in Social Theory*, Clarendon Press, Oxford, 1991, pp. 23-46.

**Supplementary Readings**

Foucault, Michel (1961), *Madness and Civilization: A History of Insanity in the Age of Reason*, Tavistock Publications, London, 1985, pp. 241-278.

Cohen, Stanley, 2001, *Visions of Social Control*, Polity Press, Cambridge, pp. 197-235.

**Week 8 (22.IV.04) : Punishment and the Dangerous Individual (Durkheim, Foucault)**

Beccaria, Cesare (1764), *On Crimes and Punishments*, Hackett Publishing Co., Indianapolis, 1986, pp. 1-23.

Foucault, Michel (1978), "The Dangerous Individual", in Foucault, Michel, *Politics, Philosophy, Culture: Interviews and Other Writings 1977-1984*, ed. by Lawrence D. Kritzman, Routledge, New York and London, 1988, pp. 125-151.

Garland, David, *Punishment and Modern Society: A Study in Social Theory*, Clarendon Press, Oxford, 1991, pp. 131-156.

**Supplementary Readings**

Garland, David, *Punishment and Modern Society: A Study in Social Theory*, Clarendon Press, Oxford, 1991, pp. 157-176.

**Week 9 (29.IV.04) : Law as a Part of the Process of Rationalization: Weber and Rule of Law**

Weber, Max (1922), *Economy and Society: An Outline of Interpretative*

*Sociology*, Vol. II, ed. By Guenther Roth and Claus Wittich, University of California Press, Berkeley, Los Angeles and London, 1978, pp. 809-864.

Garland, David, *Punishment and Modern Society: A Study in Social Theory*, Clarendon Press, Oxford, 1991, pp. 177-192.

#### **Supplementary Reading**

Habermas, Jurgen, 1988, "Law and Morality", in McMurrin, Sterling M. (ed.), *The Tanner Lectures on Human Values VIII*, University of Utah Press, Salt Lake City, pp. 219-279.

### **Week 10 (6.V.04): Property, Law and Class Struggle**

Panesar, Sukhninder, 2001, *General Principles of Property Law*, pp. 7-42.

Hirst, Paul Q., 1972, "Marx and Engels on Law, Crime and Morality", in *Economy and Society*, Vol. I., No. 1, pp. 28-55.

Garland, David, *Punishment and Modern Society: A Study in Social Theory*, Clarendon Press, Oxford, 1991, pp. 111-130.

#### **Supplementary Reading**

Hay, Douglas, 1995, "Property, Authority and the Criminal Law" in Fitzgerald, M., McLennan, G., and Pawson, J. (eds), *Crime and Society, Readings in History and Theory*, Routledge, London, pp. 6-28.

## **Part III: Sociolo-Politics of Law**

### **Week 11 (13.V.04) : Universal Human Rights. or Moral Imperialism?**

#### **Universal Declaration of Human Rights, UN**

*Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13*, 2003, Council of Europe, can be downloaded from the web site of European Council.

Fitzpatrick, Peter, 2001, *Modernizm and the Grounds of Law*, Cambridge University Press, Cambridge, pp. 183-218.

#### **Supplementary Reading**

Tulkens, Françoise, 2001, "Human Rights, Rhetoric or Reality?", in *European*

*Review*, Vol. 9, No. 2, pp. 125-134.

Cheah, Pheng, 1997, "Posit(ion)ing Human Rights in the Current Global Conjuncture", in *Public Culture*, No. 9, pp. 233-266.

#### **Week 12 (20.V.04) : Reception or Assuming Law's Reformatory Power? Turkey**

Bozkurt, Gülnihal, 1996, *Batı Hukukunun Türkiye'de Benimsenmesi: Osmanlı Devleti'nden Türkiye Cumhuriyeti'ne Resepsiyon Süreci (1839-1939)*, Türk Tarih Kurumu, pp. 5-37, 175-219.

##### **Supplementary Readings**

Örücü, Esin, 1996, "Turkey: Change Under Pressure", in Örücü, Esin, Elspeth Attwooll and Sean Coyle (eds.), *Studies in Legal Systems: Mixed and Mixing*, Kluwer Law International, The Hague, pp. 89-111.

Kılıçoğlu, Ahmet, 1999, "Evlilik Dışı Çocukların Mirasçılığı" in Erdoğan, S., Esirgemez, Ö, et. al. (eds.), *Av. Dr. Faruk Erem Armağanı*, Türkiye Barolar Birliği Yayını, Ankara, pp. 449-465.

#### **Week 13 (27.V.04) : Some Issues in Turkish Jurisprudence**

Şimşek, Sefa, 1998, "Şeref Kavramı Temelinde Doğu'da ve Batı'da Bireye Bakış: Kan Davası ve Düello Gelenekleri", in *Toplum ve Bilim*, No. 76, pp. 187.

Karınca, Eray, 1999, "Şanlı Urfa Yöresinden Örneklerle Kan Davaları" in Erdoğan, S., Esirgemez, Ö, et. al. (eds.), *Av. Dr. Faruk Erem Armağanı*, Türkiye Barolar Birliği Yayını, Ankara, pp. 395-447.

##### **Supplementary Readings**

*Töre Cinayetleri Panel Bildirileri*, T.C. Başbakanlık Kadının Statüsü ve Sorunları Genel Müdürlüğü.

- Discussions around the rape issue in the latest draft of Turkish Criminal and Civic Codes.