LAW AND SOCIAL THEORY

Semester 2, 2016
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Class 1 – Introduction to Modernity

Administration:
- **Lecturer** – Daniel McLoughlin
- Theory questions the way in which things are understood
  - Interested in the ideas and social structures that underpin the institutions and our political and legal discourses
- **Readings** – Reading questions should guide the main points of the texts
- **Assessments** – 1500 word essay (small amount of research – primarily about a close engagement with the relevant text → Purpose is to show understanding with the relevant text), 3000 word essay (research essay)
  - 1st essay – First 4 weeks (Marx) → 3 weeks from the Friday to hand in essay
  - 2nd essay – Week 5 onwards (Durkheim onwards) → 5 weeks from the Friday to hand in essay
  - **CP** – 20% maximisable
- **Classes** – Introduction to the readings... Then driven by questions and answers (reading questions)

Hall – What is Modernity?
- What are the defining features or characteristics of modern societies?
  - **Politics** - The dominance of secular forms of political power and authority and conceptions of sovereignty and legitimacy
    - Rise of secular/irreligious political power (demise of religious legitimacy/ superiority)
  - **Economics** - A monetarised exchange economy
    - Rise of private property and commodity markets rather than the belief of a communal economy
  - **Society** - The decline of traditional social order
  - **Culture** - The decline of the religious world-view typical of traditional societies
- **Modernity** – Newness (as opposed to traditional)
  - Hall goes further than believing modernity is new → He identifies the defining characteristics (as set out in the rise and decline of the 4 structures above)

Hamilton – The Enlightenment and the Birth of Social Science:
- Enlightenment is a characteristic bundle of ideas, it is an intellectual movement
  - In its simplest enlightenment was the creation of a new framework of ideas about man, society, and nature, which challenged existing conception rooted in a traditional world-view, dominated by Christianity
    - Change in a world view → New conceptualisation of the world!
  - It created the elements from which intellectuals could begin to construct an image of society which reflected human interests
• Enlightenment also encompassed medical, scientific, technological and other innovations, and that as a result it was widely thought of as part of a society-wide process of improving human life

Lyon – The Problem of Modernity
• Modernity refers to the social order that emerged following the Enlightenment
  o Modernity’s forward-looking thrust relates strongly to belief in progress and power of human reason to produce freedom
• Sketches modernity and the emergence of social theory (provides good context to understand Marx, Weber, Durkheim)
  o Marx – There was an emerging industrial society characterised by divisions of labour → Responding to industrial capitalism (brings about mass social changes)
    ▪ Emphasises technological innovation which are brought about through the pursuits of profit
  o Durkheim – The role of people is becoming more and more specialised
  o Weber – Rationalised everything
• Ambivalence of modernity – Uncertainty about the lack of modern values which are no longer existent in the same ways as before
  o Modernity dissolves us of religious values and structures of power however sets up new values which replicate the newer values which are representative of the current state of affairs
    ▪ Different realms of specialist knowledge have emerged (eg: Priests were previously those with specialised knowledge, now scientists as those who are informed in particular important matters)

Hobson – Countering the Eurocentric myth of the pristine West
• It is often naturally assumed that the East and West are, and always have been, separate and different entities → The rise and triumph of the west view can be called ‘Eurocentric’
• Claimed that Eurocentric view (East and West are two separate bodies) is false as the West and East have been fundamentally interlinked through globalisation ever since 500CE
• Basic assumption of Eurocentrism – The East has been a passive bystander in the story of the world historical development as well as a victim or bearer of Western power, and accordingly it can be legitimately marginalised from the progressive story of world history
  o Orientalism – Constructs a permanent image of the superior West which is defined negatively against the no less imaginary backward and inferior East
    ▪ Pits the ‘dynamic’ West against the unchanging ‘East’
Class 2 – The ‘early’ Marx on Religion

Marx – Introduction to *A Contribution to the Critique of Hegel’s ‘Philosophy of Right’*

- Hegel – The political form of freedom is the modern state (Marx opposes this)
- Critique of religion - The basis of irreligious criticism is the *man makes religion*, religion does not make man
  - Religion is indeed man’s self-consciousness and self-awareness so long as he has not found himself or has lost himself again
  - Religion is believed to take the focus away from man → Religion masks the reality of society
  - Marx is also critical of the dominant critique of religion – In order to change things we also need to change the way in which society thinks about things
  - “Religion is the opium of the people”
  - Religion is not necessarily the problem… Rather it is the symptom/delusion that is associated with religion
    - The elimination of religion will allow man to act as his own soul, rather than as a product of the religious dominant
- Marx’s position – For one class to be the liberating class *par excellence*, it is necessary that another class should be openly the oppressing class
  - In Germany every class lacks the logic, insight, courage and clarity which would make it a negative representative of society → Not possible to put in place in Germany as the proletariat (common class) has the ability to control
    - French situation – The nobility and the clergy were running the country… In the French revolution the bourgeoisie attempted to overthrow this to act in favour of the market (however was unsuccessful as they were not supported by the masses)
  - Society is full of inherently free and equal beings and yet out political and societal environments are anything but free
    - Changing one’s idea is not enough to change the world → Changing the structure of the world requires political action (and subsequent change of the social and economic structure)
    - Unity of theory and political practice/action necessary for change
- Marx does an imminent critique → His major work (“Capital”) starts with liberal political advocates and then through a rigorous analysis shows how capitalism is based on economic inequality and political crises
  - Believed that it was clear that globalisation produced inequality and hollowed out the middle class
  - Was not just a capitalism vs communism argument… He rigorously analysed the prior position before posing his own thoughts
  - Marx rejects philosophy in favour of a scientific approach

“Where is there, then, a real possibility of emancipation in Germany?” section (p. 30)

- His answer to the question – How is it that the proletariat realise philosophy?
  - The proletariat – What are they?
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- One main working class – The dissolution of all classes and a sphere of society which has a universal character because its suffering are universal
- Working class – People who do the labour... “Blue collar” workers who put things together → Those who work for a wage
- Wrongs are not a particular wrong, but a wrong influencing all (general wrong)
  - **Why is it the proletariat why can bring about a radical revolution?**
  - Universal suffering – United class which is excluded from the remainder of society → Solidarity amongst each other as they are united from their exclusion from the rest of society
  - All of the other classes have some stake in economic society... Unity amongst the proletariat emerges from all of them having no connection to the rest of society
  - Solidarity in opposition to the system that exists
  - **How might this realise philosophy?**

**Wolff – The rise, fall, and return of Marxian analyses:**
- Once Greenspan’s “new economy” had collapsed in 2008 and been exposed as the same old crisis-prone capitalism, Marx and Marxism began to be rediscovered again. People are turning to the Marxian tradition for help in understanding the crisis’s causes and finding solutions.
- Capitalist economics everywhere display a recurring pattern of oscillation
  - What remains the same is the capitalist structure of production – A small group of people (typically a corporate board of directors) appropriates the surplus produced by a large, different group of hired labourers
- After the 1970s, market deregulation and privatisation became the official and prevailing principles of business, politics, journalism and academia
  - Neoclassical economic once again, as before the Great Depression, the modern economics

**Reading Questions for Week 1 Class 2:**
The Wolff article was written in 2010, less than two years after the Global Financial Crisis began. Wolff is a contemporary Marxist political economist, and his essay does three things for us. First, it provides an interesting brief history of the rise, fall, and recent return of Marxism. Second, it situates the Marxist analysis of the economy in respect to the two dominant ways of understanding the economy today. Third, it provides a contemporary example of Marxist political and economic thought, as it uses Marx’s ideas to analyse the causes of the Financial Crisis and provide a political response to it.

This should help provide some useful context for thinking about the contemporary meaning of Marx’s thought as we study its development over the next few weeks.
1. Marxism was very popular as a body of thought and a political movement for over a century, from Marx’s own time through to the 1970s. What happened in the 1970s to cause the ‘fall’ of Marxism, according to Wolff? Is there anything you think that he misses or glosses over?

2. Why might Marxism still be analytically useful?

3. Wolff argue that the capitalist economy has oscillated between two different forms. What are they? At what points in the twentieth century did the economy shift between these two forms? Why did this happen? What remains the same between the two forms?

4. Wolff says that there are two ‘mainstream’ bodies of economic theory. What are they? How does each explain economic crisis? How does each think we should respond to a crisis?

5. What is Wolff’s Marxian explanation for economic crisis? What is his Marxian solution? Do you think this is an attractive idea? Can you think of any problems with it?

6. What does Wolff’s essay suggest about the relationship between theory and politics? (He doesn’t say anything explicit about this, you need to think about the implications of the history and different political approaches that he outlines).

Marx is best known as an economist and a political revolutionary. However, he was not just these things. He also had a PhD in philosophy, studied law, was a journalist and is regarded as the forefather of the modern study of society. Over the next few weeks we will study the way that his social analysis developed from his early critique of law and religion to his later study of political economy (the latter of which also has major implications for how we might understand law, as we will see with the work of Evgeney Pashukanis).

Marx’s A Contribution to the Critique of Hegel’s ‘Philosophy of Right’ is

1. What does Marx mean by ‘irreligious criticism’ in his opening comments to A Contribution to the Critique of Hegel’s ‘Philosophy of Right’?

2. How and why does Marx want to take the criticism of religion a step further?

3. Why does Marx say that religion is the ‘opium of the people’?

4. For Marx, what is the difference between a ‘partial, merely political revolution’ and a ‘radical revolution, universal human emancipation’?

5. What are the prospects for revolution in Germany, according to Marx?

6. Who or what is the proletariat? Why does Marx argue that it is the historical agent of radical revolution?
Class 3 - Marx on alienation, rights and historical materialism

Marx, On the Jewish Question:

- Purpose of article – Responding to Bauer’s beliefs on how political emancipation/freedom will be achieved
  - Follows with a critique of rights and political freedoms
- Just as the state evangelises when, although it is a state, it adopts a Christian attitude towards the Jews, the Jew acts politically when, through a Jew, he demands civil rights
  - Bauer - Denies that a man, though a Jew can be emancipated politically and acquire civil rights he is able to gain the rights of a man
    - Political emancipation is not human emancipation → Man can’t expect to have political and civil rights without religion
    - One cannot expect to have human rights when they are hanging on to religious connections which are inhibiting human conduct
    - Jews insist on their identity and their allegiance to the community...
      Doing this restricts their ability to be universally connected
  - Marx – The right to exercise religion is a political right which is not inconsistent with civil rights
    - American Bill of Rights declares that religion is a right... Bauer’s belief that Jews have to give up religion to gain political rights is wrong as the rights of a citizen include the rights to religion
    - The rights of man are not, therefore, a gift of nature, nor a legacy from past history, but the reward of a struggle against the accident of birth and against the privileges which history has transmitted from generation to generation
- The right to be religious, in one’s own fashion, is expressly included among the rights of a man → The privilege of faith is a universal right of man
- A distinction is made between the rights of man and the rights of the citizen
  - Citizenship rights are rights held in common with the community (have been around for a long time), Rights of a Man, such as equality and conscience, are individual rights (rights of man are more recent)
    - Rights of man are actually the rights of “white, rich, wealthy” man, rather than the rights of all (which are the rights of citizens) as they are not available to all of the community!
- Right of a man – Liberty - The right to do everything which does not harm others
  - One is free to act without interference from others
  - The practical application of the right to liberty is the right to private property
    - The right to enjoy one’s fortune and dispose of its as one will (pursue one’s own interest) is part of the pursuit of liberty
  - Individual egotism (protection of one’s individual interest, and one’s own interest alone) should lead to change in accordance with Marxist values
    - You can do whatever you like so long as it does not impact one anyone else