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LEGAL HISTORY: CONTINENTAL LEGAL HISTORY



Spring 2020

Tentative Syllabus: Introduction

Online version: <http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/clhlaw/syllabus/index.html>.

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Meeting times.

This course is also listed in the Faculty of Arts and Sciences as Medieval Studies 119. The undergraduates will meet together with the law students for lectures on Mondays and Wednesdays from 10:30 to 11:45 (room Sever 103). The law students and FAS graduate students will meet for 'Section' on Tuesdays from 10:15 to 11:45 in the Law School (room WCC 3126). Our section meetings will serve two purposes: (1) to do a more sophisticated number on some of the documents than is possible with undergraduates, and (2) briefly review some of the history that we will be discussing with the undergraduates in their separate classes. There is a separate section for the undergraduates on Thursdays and a separate 'discussion class' for the undergraduates on Fridays from 11:05 to 12:00. Law students and FAS graduate students are not welcome at the undergraduate section meetings. You may come to the 'discussion classes' on Fridays if you wish, but please don't be offended if I ask you not participate in certain discussions or if I don't call on you at certain times.

Under the old calendar FAS classes in the spring began two days after the Law School's did. That gave us an opportunity to do an introduction to the course particularly for lawyers. This year we will have to jam that into our first 'section meeting' on Tue., Jan. 28. The slight difference in calendars also means that our 'section meetings' will to be squeezed toward the end of the course to enable us to cover some of the nineteenth century developments at the end of the semester. Law school classes do meet on Presidents' Day (Mon., Feb. 17), but

those in the FAS do not. We'll meet in the Law School (room TBA). FAS classes last a three days longer than do the Law School's. We need the first of those days to finish the story. (If you have an exam on this day, let me know. I'll post my notes on the web.)

Requirements

There are two requirements for credit in the course: (1) a *short* paper (no more than five double-spaced typed pages exclusive of notes); (2) a final exam ('take-home', distributed in the final class and due at the end of exam period). (I will consider allowing students to write a term paper in lieu of taking the final exam. More about this below under [Papers.](#))

Prerequisites.

None. See below under [Background.](#)

Work load

For a history course, the reading load is fairly light, but much of it is documentary material, and is thus relatively slow going. Give priority to the documentary materials. Almost all the classes have documentary assignments, and those which do will devote a considerable amount of time to the documents. You'll be lost if haven't read them in advance. They are in the multilithed *Documents* (see below under [Readings](#)).

The Course

This course is an attempt to discover how the distinctive features of the 'civil' law of the European Continent arose and why these distinctions persisted. It is also an attempt to discover how the legal systems of Continental Europe developed and were influenced by a group of ideas about politics and public order that are frequently invoked today when we speak of the 'Western legal tradition'. In order to do this we have to conduct a 'Cook's tour' of European legal history, to survey the sources and literature of the law from the fall of Rome (roughly 500 A.D.) to the codifications of the 19th century. That gives the course something of the quality of 'if-this-is-Tuesday-it-must-be-Belgium'. I have attempted to give focus to the course by emphasizing three topics, the capture of wild animals as the foundation of property, the formation of marriage, and the rules about the use of witnesses in criminal and civil procedure. I wish there were a more strictly public-law topic that we could use as well, but no public-law topic has deep enough roots to allow us to trace it over this long period of time. Hence our examination of public law will have to come about as we unfold the history of institutions within which the law operated. We focus on France. We will also deal with Germany, Italy, Spain, and the Low Countries, but France give us the backbone, while the other areas give us examples (as does England by way both of comparison and contrast). The rest of the European Continent will get only an occasional mention.

We will proceed largely by way of lecture, interspersed with examination of documents that are contained in the multilithed *Documents*. These documents will largely carry the story of wild animals, marriage and witnesses. In each period we will ask two questions: (1) how does

the way people were thinking about law in this period proceed from what had gone before and lead to what was to come next (a largely diachronic question)? And (2) how was the way that people were thinking about law in this period relate to the broader political, social and intellectual developments in the period (a largely synchronic question)? The ultimate question is comparative: why did Continental law develop its distinctive features?

Background

No one (including the instructor) comes to a course like this with all the necessary background information. I will try to say everything that I think you need to know to make sense out of what is going on, and so, I will assume that you do not have any of the relevant background. On the other hand, in a survey course as broad as this one, I can say things only once. For this reason, I would suggest, particularly if you have not taken a course in medieval and/or early modern European history, that you read a good textbook on one or both of these topics. In the past I have asked the Coop to stock H. G. Koenigsberger's, *Medieval Europe, 400–1500* (1987) and the same author's, *Early Modern Europe, 1500–1789* (1987). The books are now out of print, but second-hand copies are readily available. Both books are a relatively quick read, particularly if you're not trying to memorize kings and battles and dates. I have included the page numbers in the syllabus at the relevant spots under 'Secondary Reading'.

If you have taken a medieval and/or early modern European legal and/or constitutional history course someplace else or if you have had a European history course that devoted some time to legal and/or constitutional development in the same periods, you probably should not take this course. There is a seminar this semester (Legal History Seminar: Continental Legal History) for which you are ready.

Readings

The multilithed *Documents* contain a number of documents, legal sources in translation. These vary greatly in the length of their extracts. When they are long, try to get a sense for the overall structure; when they are short, you should focus on the detail. The syllabus contains some notes as to what is important.

Outlines for most of the lectures are posted on this website under [Lectures](#) I will be revising them as we go along, but you should bring the version that is there now with you to class either on your computer or in paper form. Having this kind of material already written down saves you time in taking lecture notes.

As can be seen from what is said above, I think that the best way to learn about legal history is by reading documents. There is a quite good textbook of European legal history that has just been published in English, Antonio Padoa-Schioppa, *A History of*



Law in Europe (first Italian ed. 2007, first English ed. 2017). It is long and expensive, and more than half of it covers periods that we will be dealing with only lightly. For this reason, I am not recommending that you buy it. I have, however, given page references to Padoa-Schioppa in the syllabus. In the past I asked the students to buy either Manlio Bellomo's, *The Common Legal Past of Europe: 1000–1800* or Raoul van Caenegem's *An Historical Introduction to Private Law*. Previous course evaluations suggested that the students found van Caenegem more helpful than Bellomo. Both are shorter and cheaper than Padoa-Schioppa. Neither is really a textbook. Prior to Padoa-Schioppa, the best textbook in English was probably Robinson, Fergus and Gordon, *An Introduction to European Legal History* (2d ed., 1994) [RFG2]. It is available in the Law School Library and in Lamont. (There is a third edition of RFG [RFG3], which is shorter and focuses more on the later period, which is available only in the Law School.)¹

¹ Two other recent textbooks, Randall Lesaffer, *European Legal History: A Cultural and Political Perspective* (2009) and Tamar Herzog, *A Short History of European Law: The Last Two and a Half Millennia* (2018) are also available in the Law School (and the latter also [online](#)). If you read either of them, let me know what you think. My initial impression is that they are interesting, but that they don't give enough detail about the law.

References to Bellomo, van Caenegem, and RFG are included in the syllabus. As an alternative to Bellomo and van Caenegem, I have also listed in the syllabus readings from three other books. One of them is a classic: Paul Vinogradoff's, *Roman Law in Medieval Europe*. Two others are relatively new and controversial, Alan Watson's, *The Making of the Civil Law* and Harold Berman's *Law and Revolution*. Pdf copies of the extracts from Bellomo, van Caenegem, Vinogradoff, Watson, and Berman are found under [Lectures](#) on the website. I will try to add extracts from Padoa-Schioppa as the semester progresses.

By and large, I think that the books other than RFG do a better job of covering the topics to which they refer than does RFG, or even Padoa-Schioppa. Some people, however, really like to have a textbook, and although none of the books now extracted is a textbook, Bellomo and van Caenegem come close. You might want to read some of the extracts for class, and others when you are reviewing the course for the exam.

Papers and exams There will be a short paper required for the course. It should be no more than five double-spaced typed pages exclusive of notes. It may analyze one or a couple of the documents in the *Documents* (or you can choose a document on your own). The basic idea is to present an *idea* supported by *evidence* (primary sources please). You may do the paper any time during the semester. You should have chosen a topic no later than Tue., Mar. 31. You should turn in your first draft no later than Tue., Apr. 14. I will comment on it, probably quite extensively, and

return it to you. The final draft should be turned in before the beginning of the 1L exam period (Wed., May 06).

The final exam will be a take-home exam distributed in the last class and due no later than Wed., May 06. (You do not turn in the exam to the registrar's office; rather, you send it to me by [email](#) or turn it into my assistant Mr. Matthiessen in Hauser Hall 518.) The exam will contain two questions (it may also contain some identification questions). The first question will give you a document drawn from the *Documents* (you may have a choice of documents) and will ask you to comment on the document and its significance. The second will call for a more wide-ranging essay. Once more, it will be due before the beginning of the 1L exam period (Wed., May 06).

If you wish to write a term paper in lieu of the final exam, you must get my approval of your term paper topic. The term paper should cover material in at least two of major time periods of the course (e.g., early medieval and late medieval, or late medieval and early modern). It may trace the history of a particular idea or institution from one period to another or it may compare ideas and institutions in two different periods. In order to get my approval of a term-paper topic, you will need to have completed your short paper and to turn in a one-page statement or outline of what you plan to write about by Tue., Apr. 14. Students in the past who have taken the paper option in the past thought that it was fun but that it involved more work than taking an exam.

Offices

My office is in Hauser 512 in the Law School. My assistant is assistant is Mr. Matthiessen in Hauser 518. My office hours are currently scheduled from 1:30–3:30 on Tuesdays, or by appointment. There is a sign-up sheet on the door of my office. That sheet will also tell you where my office hours will be held. It probably won't be in my office.

Tentative Syllabus: Assignments

Syllabus	Week 5	Week 10
Week 1	Week 6	Week 11
Week 2	Week 7	Week 12
Week 3	Week 8	Week 13
Week 4	Week 9	Calendar



In what follows Bellomo=Manlio Bellomo, *The Common Legal Past of Europe: 1000-1800*

(Washington, DC: Catholic U. Press, 1995); Berman = H. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge [MA]: Harvard Press, 1983); *Documents* = C. Donahue, *Documents on Continental Legal History* (unpublished, first installment available at the Distribution Center); K1500 = H. G. Koenigsberger, *Medieval Europe, 400-1500* (Harlow: Longman, 1987); K1789 = H. G. Koenigsberger, *Early Modern Europe, 1500-1789* (Harlow: Longman, 1987); Padoa-Schioppa = Antonio Padoa-Schioppa, *A History of Law in Europe* (Cambridge [Eng.]: Cambridge U. Press, 2017); RFG = O. F. Robinson, T. D. Fergus and W. M. Gordon, *An Introduction to European Legal History*, 2d ed. (London: Butterworths, 1994); van Caenegem = R. C. van Caenegem, *An Historical Introduction to Private Law* (Cambridge [Eng.]: U. Cambridge, 1988); Vinogradoff = P. Vinogradoff, *Roman Law in Medieval Europe*, 2d ed. (Oxford: Clarendon, 1929); Watson = A. Watson, *The Making of The Civil Law* (Cambridge [MA]: Harvard Press, 1981).

A calendar follows the syllabus, which allows you to see at a glance the date, title of the class, the assignment number, and the various due dates. To navigate from the syllabus to the calendar click on the date; to navigate from the calendar to the syllabus click on the assignment number.

<u>Week</u>	<u>Assignment</u>
<u>Week 1</u>	Secondary reading: Padoa-Schioppa, 3–23; Bellomo, 1–26; van Caenegem, 1–15; RFG2 vi-x; RFG3 v–vii, 285–319. RFG2 1–10; RFG3 1–11; Watson 1–38.
Mon., Jan. 27	1 <u>Lecture 1</u> : Introduction to the course. A basic chronology of three legal traditions: Roman, Continental European and English. Introduction to Roman law
Tue., Jan. 28	2 <u>Section 1</u> : The structure of Roman law and of the European civil codes. <u>Assignment</u> : Justinian’s <i>Institutes</i> ; D.23.2; C.5.4; D.22.5; C.4.20 (<i>Documents</i> , Part I); selected 19th-century European codes on marriage, wild animals, and witnesses (<i>Documents</i> , Part XX). [Focus on the overall structure of Justinian’s <i>Institutes</i> (Outline for Lecture 2) rather than on the detail. In the case of the <i>Digest</i> and the <i>Code</i> , try to get a sense for how the material is organized. Try to think about ‘fundamental legal categories’: <i>ius</i> vs. <i>lex</i> , public vs. private, criminal vs. civil, persons vs. things vs. actions, property vs. contract vs. delict (tort). Then ask yourself how these categories are reflected in Justinian’s <i>Institutes</i> and in the 19th century codifications. Then try to figure out what the rules were about the capture of wild animals, marriage, and witnesses both in Roman law and in the 19th-



century codes.] The legacy of the ancient world: Christianity. Paul's letter to the Romans (*Documents*, Part II.A). Reflections on what we mean by the 'Western legal tradition'.

[Wed., Jan. 29](#) 3 Lecture 2: The legacy of the ancient world: Roman law. How the story came out. Assignment: Justinian's *Institutes* (*Documents*, Part I.A). [Focus on the overall structure of Justinian's *Institutes* and on the specifics about wild animals and marriage (there's nothing about witnesses).] Extracts from 19th century European codes. (*Documents*, Part XX). [Ask yourself about the overall structure and the rules about wild animals, marriage and witnesses in the 19th century codifications. Are the different codes more notable for their similarities or their differences?]

Week 2 Secondary reading: Padoa-Schioppa, 24–37; K1500 1–66; RFG2 10–23; RFG3 11–25; van Caenegem, 16–29; Vinogradoff 11–42.

[Mon., Feb. 03](#) 4 Lecture 3: Two 'Barbarian' Law Codes. Assignment: Aethelberht (*Documents*, Part III.A). [Ask yourself two questions: (1) What is the overall structure of this material? (2) What, if anything, does it have to say about wild animals, marriage and witnesses?]

[Tue., Feb. 04](#) 5 Section 2: The basic structure of Roman law (cont'd). Marriage and Witnesses in the Bible. Assignment: Justinian's *Institutes*; D.23.2; C.5.4; D.22.5; C.4.20; selected 19th-century European codes on marriage, wild animals, and witnesses (*Documents*, Parts I, XX). [Review the first part of Assignment 2. After a week in the course are your thoughts on these topics any different?] New Testament extracts on marriage (*Documents*, Part II.B). Witnesses in the Bible (*Documents*, Part II.C).

[Wed., Feb. 05](#) 6 Lecture 4: Two 'Barbarian' Law Codes. Assignment: Gundobad (compared with the *Lex romana burgundionum*) (*Documents*, Part III.B). [Same questions as Assignment 4.]

Week 3 Secondary reading: Padoa-Schioppa, 38–70; Bellomo, 27–43; RFG2 6–70; Berman 85–119, 273–332; RFG3 11–41; van Caenegem, 16–29; Vinogradoff 11–42. K1500 67–212.



- [Mon., Feb. 10](#) 7 Lecture 5: Carolingian institutions and ‘feudalism’. Assignment: Documents on Continental feudalism (*Documents*, Part IV).
- [Tue., Feb. 11](#) 8 Section 3: The ‘barbarian’ invasions. Feudalism and the reform movement. Assignment: Two ‘Barbarian’ Law Codes: Aethelberht and Gundobad compared. (*Documents*, Part III). The Collection in 74 Titles. (*Documents*, Part VI). [Same questions as Assignment 4.]
- [Wed., Feb. 12](#) 9 Lecture 6: Eleventh-century reforms and a glimpse at *regnum* and *sacerdotium*, to the end of the 13th century. Assignment: Documents on the investiture controversy (*Documents*, Part V). The Collection in 74 Titles (cont’d). (*Documents*, Part VI). [The key question here is what is the relationship between the basically political arguments that are found in the literature surrounding the investiture controversy and the legal rules (most of which are derived from forged documents) found in the Collection in 74 Titles?]
- Week 4 Secondary reading: Padoa-Schioppa, 73–94; Bellomo 44–88; RFG2 71–99, 106–23; RFG3 42–58, 129–168; Vinogradoff 43–96. [review K1500 213–80].
- [Mon., Feb. 17](#) 10 Holiday in FAS, Presidents’ Day. Special Lecture: The institutional history of the 12th and 13th centuries.
- [Tue., Feb. 18](#) 11 Section 4: Eclectic sources of law. Assignment: The Bible, Aethelberht and Gundobad, the Collection in 74 Titles (*Documents*, Parts II.B, III, VI). [Same questions as Assignment 4.] [This is an opportunity to review the types of sources of law at which we have been looking and at some of those at which we will be looking in the next couple of weeks, and, perhaps, to ask the question ‘what is law’?]
- [Wed., Feb. 19](#) 12 Lecture 7: The revival of academic law study: Roman Law. Assignment: Roman law glossators on wild animals (J.I.2.1.12–13, D.41.1.55) (*Documents*, Part VII). [We move here from the rather obvious politics of the investiture controversy to something that looks like ‘apolitical’ law. The question is ‘is it’? Try to see how Accursius twisting the Roman text to make it say things that it probably does not say or, at least, does not say so clearly as he does.]



- Week 5 Secondary reading: Padoa-Schioppa, 95–150; RFG2 122–152; RFG3 72–90; van Caenegem, 30–114 (this takes us quite a bit further in time, but it provides a good overview of where we’ve been and where we’re going).
- [Mon., Feb. 24](#) 13 Lecture 8: The institutions of canon law. Substantive canon law. Marriage. Assignment: J.I.1.10, D.23.2.5–6; Gratian C.27 q.2; Peter Lombard; selected decretals on marriage (*Documents*, Part VIII). [Many have seen in these decretals a development in Alexander III’s thought on the topic of the formation of marriage. Do you see such a development here?]
- [Tue., Feb. 25](#) 14 Section 5: Wild animals and marriage in the glossators. Assignment: Roman law glossators on wild animals (J.I.2.1.12–13, D.41.1.55) (*Documents*, Part VII); J.I.1.10, D.23.2.5–6; Gratian C.27 q.2; Peter Lombard; selected decretals on marriage (*Documents*, Part VIII).
- [Wed., Feb. 26](#) 15 Lecture 9: The revival of academic law study: Romano-canonical procedure. Witnesses. Assignment: D.22.5, Gratian C.4 q.3, Tancred 3.6 (*Documents*, Part IX).
- Week 6 Secondary reading: Bellomo 61–88; RFG2 179–207; RFG3 129–168; Vinogradoff 71–96; review K1500 213–80.
- [Mon., Mar. 02](#) 16 Lecture 10: Marriage litigation in the High Middle Ages. Assignment: Smith c. Dolling (1271–1272) (*Documents* Part XIV.A). Adam Attebury c. Matilda de la Leye (1271–72) (*Documents*, Part XIV.B).
- [Tue., Mar. 03](#) 17 Section 6: Romano-canonical procedure on witnesses. Assignment: Smith c. Dolling (1271–72) (*Documents*, Part XIV.A). Adam Attebury c. Matilda de la Leye (1271–72) (*Documents*, Part XIV.B).
- [Wed., Mar. 04](#) 18 Lecture 11: *Coutumiers* and *fueros*. Assignment: Extracts from the *Usatges de Barcelona* on witnesses, marriage, and wild animals (*Documents* Part X.A).
- Week 7 Secondary reading: Review K1500 213–80.
- [Mon., Mar. 09](#) 19 Lecture 12: Courts and *coutumiers* in France. Assignment: Extracts from the *coutume* of Tourraine-Anjou and from Beaumanoir on witnesses, marriage and marital property, and wild animals (*Documents* Part X.B, C).



Tue., Mar. 10	20	<u>Section 7</u> : Reform and the ‘twelfth century renaissance’: England and France in the 12th and 13th centuries. Marriage and marital property. <u>Assignment</u> : Extracts from <i>Usatges</i> , Tourraine-Anjou and Beaumanoir (<i>Documents</i> , Part X).
Wed., Mar. 11	21	<u>Lecture 13</u> : Political ideas of the 12th and 13th centuries. <u>Assignment</u> : Extracts from Bracton on kingship and from the glossators on sovereignty (<i>Documents</i> Part XI).
Mon., Mar. 16	—	Fri., Mar. 20. Spring vacation.
<u>Week 8</u>		Secondary reading: Padoa-Schioppa, 151–228; Bellomo 118–61; RFG2 100–121; RFG3 59–71, 107–24; K1500 281–387.
Mon., Mar. 23	22	<u>Lecture 14</u> : The 14th and 15th Centuries—political and constitutional developments. The commentators. <u>Assignment</u> : Extracts from the commentators (<i>Documents</i> , Parts XII and XIII).
Tue., Mar. 24	23	<u>Section 8</u> : Political ideas of the medieval lawyers. The formation of a persecuting society? <u>Assignment</u> : Extracts from Bracton on kingship and from the glossators on sovereignty. (<i>Documents</i> Part XI). Gandinus, <i>Tractatus de maleficiis</i> (<i>Documents</i> , Part XII.C).
Wed., Mar. 25	24	<u>Lecture 15</u> : Commentators on witnesses. <u>Assignment</u> : <i>Tractatus de reprobatione testium</i> ; Gandinus, <i>Tractatus de maleficiis</i> ; Robertus Maranta, <i>Speculum Aureum</i> , (<i>Documents</i> , Part XII.A, C–D); <i>Decisio S.R.R.</i> (1574) (<i>Documents</i> Part XIV.E)
<u>Week 9</u>		No secondary reading specific to this week.
Mon., Mar. 30	25	<u>Lecture 16</u> : Commentators on wild animals. <u>Assignment</u> : Bartolus on D.41.1.1, .5 (<i>Documents</i> , Part XIII.A–B); Portius and Faber on J.I.2.2.11–13 (<i>Documents</i> , Part XIII.C–E).
Tue., Mar. 31	26	<u>Section 9</u> : Courts and case reports. <u>Assignment</u> : The <i>Rota Fiorentina</i> (1780) (Gorla article) (<i>Documents</i> , Part XIV.F).

- [Wed., Apr. 01](#) 27 Lecture 17: Commentators on marriage. Assignment: *Decisio S.R.R.* (1574) (*Documents*, Part XIV.C); Panormitanus, *Consilia* (15th c) (*Documents* Part XIV.D).
- Week 10 Secondary reading: Padoa-Schioppa, 229–293; Bellomo 162–73; RFG2 280—352; RFG3 169–212; K1789 1–94; Watson 53–82.
- [Mon., Apr. 06](#) 28 Lecture 18: ‘Renaissance’ Europe—political, intellectual and constitutional developments. Humanists, humanism and the law. Assignment: Pithou on the *Collatio*; Bodin on Political Theory (*Documents*, Part XV).
- [Tue., Apr. 07](#) 29 Section 10: Legal humanism. Homologation of custom and reception. Assignment: Pithou on the *Collatio*; Bodin on Political Theory (*Documents*, Part XV). Coutumes de la prevoste et vicomte de Paris (*Documents*, Part XVI.C).
- [Wed., Apr. 08](#) 30 Lecture 19: Compilations, proto-codification, codification. The *Grandes Ordonnances*. Assignment: Decree, *Tametsi*; *Ordonnance* of Blois; *Ordonnance pour la procédure civile* (*Documents*, Part XVI.A, B, D (pp. 2–4, 5–6)).
- Week 11 Secondary reading: Padoa-Schioppa, 294–402; RFG2 209–23 406–37; RFG3 249–67; K1789 161–281; Watson 83–125.
- [Mon., Apr. 13](#) 31 Lecture 20: The 17th and 18th centuries—political, constitutional and intellectual developments.
- [Tue., Apr. 14](#) 32 Section 11: Intellectual developments and the law. The institutes of national law. Assignment: Extracts from French institutional treatises (*Documents*, Part XVII).
- [Wed., Apr. 15](#) 33 Lecture 21: Spanish scholastics, ‘elegant jurisprudes’, the natural law school, and the *usus modernus pandectarum*. The academics in action. Assignment: Pufendorf on wild animals (*Documents*, Part XVIII).
- Week 12 Secondary reading: RFG2 261–92; RFG3 269–285; van Caenegem, 115–69; Watson 126–30.



- [Mon., Apr. 20](#) 34 Lecture 22: The academics in action. Pufendorf on wild animals (cont'd) (*Documents*, Part XVIII).
- [Tue., Apr. 21](#) 35 Section 12: Domat and Pothier. Codification vs. Reform. Some thoughts on the French Revolution and the Napoleonic Code. Assignment: Pothier on D.23.2; Pothier on the contract of marriage (*Documents*, Part XIX). The Napoleonic codes on marriage, animals and witnesses (*Documents*, Part XX).
- [Wed., Apr. 22](#) 36 Lecture 23: The Napoleonic codes, the pandectists, the historical school and the making of the BGB. The road away from codification? Assignment: Windscheid (*Documents*, Part XX [Windscheid extracts]).
- Week 13 Secondary reading: van Caenegem, 170–97
- [Mon., Apr. 27](#) 37 Final Lecture: The achievements and failures of the *ancien régime*. Take-home exam passed out.

Calendar

- Mon., Jan. 27 = Assignment [1](#) Introduction to the course. Introduction to Roman law.
- Tue., Jan. 28 = Assignment [2](#) The structure of Roman law and of the European civil codes. The legacy of the ancient world: Christianity. Reflections on the distinction between ‘common law’ and ‘civil law’ and on what we mean by the ‘Western legal tradition’.
- Wed., Jan. 29 = Assignment [3](#) The legacy of the ancient world: Roman law. How the story came out.
- Mon., Feb. 03 = Assignment [4](#) Two ‘Barbarian’ Law Codes—Aethelberht
- Tue., Feb. 04 = Assignment [5](#) The basic structure of Roman law (cont'd). Marriage and Witnesses in the Bible.
- Wed., Feb. 05 = Assignment [6](#) Two ‘Barbarian’ Law Codes—Gundobad
- Mon., Feb. 10 = Assignment [7](#) Carolingian institutions and ‘feudalism’.
- Tue., Feb. 11 = Assignment [8](#) The ‘barbarian’ invasions. Aethelberht and Gundobad compared. The Collection in 74 Titles.



Wed., Feb. 12	=	Assignment 9	Eleventh-century reforms and a glimpse at <i>regnum</i> and <i>sacerdotium</i> , to the end of the 13th century . The Collection in 74 Titles (cont'd).
Mon., Feb. 17	=	Assignment 10	The institutional history of the 12th and 13th centuries.
Tue., Feb. 18	=	Assignment 11	Eclectic sources of law.
Wed., Feb. 19	=	Assignment 12	The revival of academic law study: Roman Law.
Mon., Feb. 24	=	Assignment 13	The institutions of canon law. Substantive canon law: marriage.
Tue., Feb. 25	=	Assignment 14	Wild animals and marriage in the glossators.
Wed., Feb. 26	=	Assignment 15	The revival of academic law study: Romano-canonical procedure
Mon., Mar. 02	=	Assignment 16	Marriage litigation in the High Middle Ages
Tue., Mar. 03	=	Assignment 17	Romano-canonical procedure on witnesses: <i>Smith c. Dolling</i> .
Wed., Mar. 04	=	Assignment 18	<i>Coutumiers</i> and <i>fuegos</i>
Mon., Mar. 09	=	Assignment 19	Courts and coutumiers in France
Tue., Mar. 10	=	Assignment 20	Reform and the ‘twelfth century renaissance’. Marriage and marital property.
Wed., Mar. 11	=	Assignment 21	Political ideas of the 12th and 13th centuries
Mon., Mar. 16	—	Fri., Mar. 20	Spring Vacation
Mon., Mar. 23	=	Assignment 22	The 14th and 15th Centuries—political and constitutional developments. The commentators.
Tue., Mar. 24	=	Assignment 23	Political ideas of the medieval lawyers. The formation of a persecuting society?
Wed., Mar. 25	=	Assignment 24	Commentators on witnesses.
Mon., Mar. 30	=	Assignment 25	Commentators on wild animals
Tue., Mar. 31	=	Assignment 26	Courts and case reports. (Section will meet in the Root Room of the HLS Library. Short paper topics must be chosen by this date.)



Wed., Apr. 01	=	Assignment 27	Commentators on marriage.
Mon., Apr. 06		Assignment 28	‘Renaissance’ Europe. Humanists, humanism and the law.
Tue., Apr. 07	=	Assignment 29	Legal humanism. Homologation of custom and reception.
Wed., Apr. 08		Assignment 30	Compilations, proto-codification, codification.
Mon., Apr. 13	=	Assignment 31	The 17th and 18th centuries—political, constitutional and intellectual developments. The <i>Grandes Ordonnances</i> .
Tue., Apr. 14	=	Assignment 32	Intellectual developments and the law. The institutes of national law. (Paper drafts must be handed in by this date.)
Wed., Apr. 15	=	Assignment 33	Spanish scholastics, ‘elegant jurisprudes’, the natural law school, and the <i>usus modernus pandectarum</i> . The academics in action.
Mon., Apr. 20	=	Assignment 34	The academics in action. Pufendorf on wild animals (cont’d).
Tue., Apr. 21	=	Assignment 35	Domat and Pothier. Codification vs. Reform. Some thoughts on the French Revolution and the Napoleonic Code.
Wed., Apr. 22	=	Assignment 36	The Napoleonic codes, the pandectists, the historical school and the making of the BGB.
Mon., Apr. 27	=	Assignment 37	Final Lecture. Take-home exams passed out.
Wed., May 06			Take-home exam and final papers due by 4:30 p.m. by email or in Room 518, Hauser Hall.

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