I. MECHANICS

FAS: Medieval Studies 117: Constitutional and Legal History of Medieval England, Prof. Donahue, Mr. Jacobs

Law 2371: Legal History: English Legal History, Prof. Donahue

Meeting times and requirements for both courses are listed in the syllabus (law and gradute students, or undergraduates).

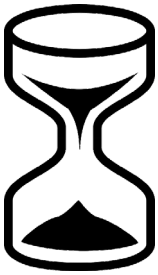
At least to start off with, Prof. Donahue's office hours are Tuesdays 1:30–3:30, via Zoom. Email him (rspang@law.harvard.edu), and he'll send you a link. His office is in Hauser 512, but he will rarely be there this semester.

Mr. Jacobs's office hours are TBA; his email is djacobs@g.harvard.edu.

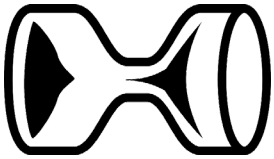
II. WHAT IS THIS COURSE ABOUT?

1. The constitutional and legal history of England from the Anglo-Saxon invastions (c. 450) to the end of the reign of Queen Elizabeth (d. 1603) (for the undergraduates) or to that of Queen Anne (d. 1714) (for the law and graduate students).
2. Common core of Monday and Wednesday classes, with a separate section meeting (tentatively scheduled for Fridays) for the undergraduates. Is this two courses or one?
3. It's one: a common core of documents in the multilithed materials and all the readings are the same.
4. The legal is not just for the law students and constitutional just for the FAS students. It is the privilege of the historian to see what the links are between the legal system and the wider social and governmental structures.
5. "Constitution" in the modern sense is an anachronism for most of the period we will be studying. How do we deal with this fact?
    a. Pretend that medieval England had a constitution in the modern sense? The danger of anachronism and the mistakes of William Stubbs.
    b. Break up constitutional history into its constituent elements? (i) political history (ii) history of political theory (iii) administrative history (iv) social history (v) the history of legal institutions or ideas.
    c. Try to recover the vision of the great English consitutional historians (including Stubbs) had: A synthesis of three quite diverse histories: (i) legal, moral and political ideas, (ii) social structure and social conflicts (iii) governmental and political institutions.

Ideas
Institutions
Society



Society Institutions Ideas



d. Examples of change at each level: (i) the Black Death of 1348; (ii) the changes wrought by Henry II (1154–1189) in institutions; (iii) the revival of the study of Roman and canon law in first half of the 12th century.

6. No one theme for the course, but rather a starting point and an ending point. Perhaps the beginnings of a theme in the development of something called the "common law."

III. OUTLINE OF ENGLISH LEGAL HISTORY

Period	*Description*	*Politics*	*Sources of Law*	*Roman Influence on England*	*Roman Influence on Continent*
600–1150	Age of Tort	Tribal –>Feudal Monarchy	Barbarian Codes, Custom	Almost non-existent	Weak
(1000?, 1066?) 1150–1300	Age of Property	Feudal monarchy	Custom, Case Law, Statute	Strong on Method	Strong on Method
(1250) 1300–1500 (1602)	Age of Trespass	National monarchy	Case Law	Weak	Quite Strong
(1375) 1500–1700	Age of Equity	Absolute Monarchy –> Const. Monarchy	Case Law, Statute	Strong in spots	Strong
1700–1900	Age of Reform	Const. monarchy	Case law, Some Codification	Submerged but there	Very strong

IV. THE LEGACY OF THE ANCIENT WORLD — ROMAN LAW

Outline of Roman Legal History

Period	*Description*	*Politics*	*Sources of Law*
500–250 BC	Archaic	City-State	XII Tables
250–1 BC	Pre-Classical	Urban Empire	Statutes/Cases
1–250 AD	Classical	Principate	Cases
250–500 AD	Post-Classical	Dominate	Imperial Constitutions
550 AD	Justinian	Byzantine	Code

1. Not the direct background of Anglo-Saxon law
2. As a paradigm of legal development—archaic, pre-classical, classical,post-classical as paralleling our ages of tort, property, trespass and equity,and the continental ages of Germanic codes, glossators, commentators, and humanists/natural lawyers with codification coming at the end of all three developments
3. Rome left the codifications of Justinian, the so-called *Corpus Juris Civilis* as a legacy to the West, a book that ranks in importance with the Bible among the important books of all time.
4. As an influence in England—weak in the age of tort, strong in the age of property,weak in the age of trespass (but strong on the Continent), strong in the age of equity.
5. Fundamental structural distinctions in Roman law (derived from Justinian's *Institutes*) that appear at different times in medieval and early modern law.

Justinian's Institutes (Basic Categories)

6. Public law vs. private law

J.I.1.1.3–4. The study of the law consists of two branches, law public, and law private. The former relates to the welfare of the Roman State; the latter to the advantage of the individual citizen. Of private law then we may say that it is of threefold origin, being collected from the precepts of nature, from those of the law of nations, or from those of the civil law of Rome.

7. Persons vs. things vs. actions

J.I.1.2.12. The whole of the law which we observe relates either to persons, or to things, or to actions. And first let us speak of persons: for it is useless to know the law without knowing the persons for whose sake it was established.

8. Acquisitions of individual things vs. acquisitions "in the aggregate" vs. obligations (contract and delict)
    a. Acquisition of individual things

J.I.2.1pr. In the preceding book we have expounded the law of Persons: now let us proceed to the law of Things. Of these some admit of private ownership, while others, it is held, cannot belong to individuals: for some things are by natural law common to all, some are public, some belong to a society or corporation, and some belong to no one. But

most things belong to individuals, being acquired by various titles, as will appear from what follows.

b. Ownership vs. possession

J.I.2.6pr. It was a rule of the civil law that if a man in good faith bought a thing, or received it by way of gift, or on any other lawful ground, from a person who was not its owner, but whom he believed to be such, he should acquire it by usucapion—if a movable, by one year's possession, and by two years' possession if an immovable, though in this case only if it were in Italian soil;—the reason of the rule being the inexpediency of allowing ownership to be long unascertained. The ancients thus considered that the periods mentioned were sufficient to enable owners to look after their property; but we have arrived at a better opinion, in order to save people from being over-quickly defrauded of their own, and to prevent the benefit of this institution from being confined to only a certain part of the empire. We have consequently published a constitution on the subject, enacting that the period of usucapion for movables shall be three years, and that ownership of immovables shall be acquired by long possession—possession, that is to say, for ten years, if both parties dwell in the same province, and for twenty years if in different provinces; and things may in these modes be acquired in full ownership, provided the possession commences on a lawful ground, not only in Italy but in every land subject to our sway.

c. Acquistion of things "in the aggregate"

J.I.2.9.6. So much at present concerning the modes of acquiring rights over single things: for direct and fiduciary bequests, which are also among such modes, will find a more suitable place in a later portion of our treatise. We proceed therefore to the titles whereby an aggregate of rights is acquired. If you become the successors, civil or praetorian, of a person deceased, or adopt an independent person by adrogation, or become assignees of a deceased's estate in order to secure their liberty to slaves manumitted by his will, the whole estate of those persons is transferred to you in an aggregate mass.

d. Obligations

i. Contractual obligations

J.I.3.1.13. Let us now pass on to obligations. An obligation is a legal bond, with which we are bound by a necessity of performing some act according to the laws of our State. … [T]hey are arranged in four classes, contractual, quasi-contractual, delictal, and quasi-delictal. And, first, we must examine those which are contractual, and which again fall into four species, for contract is concluded either by delivery, by a form of words, by writing, or by consent: each of which we will treat in detail.

ii. Delictual obligations

J.I.4.1pr. Having treated in the preceding Book of contractual and quasi-contractual obligations, it remains to inquire into obligations arising from delict. The former, as we remarked in the proper place, are divided into four kinds; but of these latter there is but one kind, for, like obligations arising from real contracts, they all originate in some act, that is to say, in the delict itself, such as a theft, a robbery, wrongful damage, or injury.

e. Actions (procedure)

J.I. 4.6pr. The subject of actions still remains for discussion. An action is nothing else than the right of suing before a judge for what is due to one.