Medieval Law
Seminar: English Legal History
SYLLABUS AND ASSIGNMENTS

Spring 2021

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For some simple Zoom procedures for the class, click here.

HLS has a spring break the week beginning 14 Mar.; FAS does not, but, fortunately, Tue., 16 Mar. is a “wellness day” in the FAS, so for one reason or another, there is no class on that day.

Requirements. If you have not taken the English Legal and Constitutional History course (Law 2165 = Medieval Studies 117) (or had equivalent preparation elsewhere), you should attend the lectures in that course (Mon. and Tue. at 10:30–12:00, Zoom links to be provided). Law students should sign up for an hour of “optional written work,” unless you are writing your third-year paper in conjunction with this seminar. The sessions of this reading course / seminar will focus on the “primary readings” listed below in the light of the “secondary readings.” The primary materials will come either from my “coursepack,” Materials on English Legal and Constitutional History (Mats.), or J. H. Baker and S. F. C. Milsom (eds), Sources of English Legal History: Private Law to 1750, 2d ed. (Oxford: University Press, 2010) (the first ed. [London: Butterworth, 1986] is equally good for our purposes), or from digital copies that I will provide. A research paper is not required (except for those law students who are doing their third-year papers in conjunction with this seminar). Rather, you should prepare three five-page papers each focusing on one or more of the texts to be discussed in the seminar. (More on this requirement below under “Papers.”)

Syllabus: This syllabus is not cast in bronze. We could, for example, do more on the church and the learned law and less on English secular administration. Last time we devoted much of final weeks to equity, and that meant that the topic of the Tudor Revolution in government had to be dropped. If you let me know what your interests are fairly early on, we can make some accommodations. We may also move some topics around if it turns out that anyone taking the seminar is also taking the course concurrently.

There is a rather large amount of reading listed for each seminar session. In most of the sessions we will begin with some of the general statements that might be derived from the readings, but I certainly don’t expect you read everything. Where I know that we will want to discuss a particular piece, I’ll mention that fact in the previous week. I used to be able to maintain a reserve of relevant books in a seminar room. We can’t do that anymore, but I’m beginning the painful process of scanning the relevant material and making it available online. I need help, particularly with the last weeks of the seminar. If you decide to read something that is not
already listed below as “online,” make a pdf of it and send it to me. That way we all can look at it, and it will be available the next time the seminar is given.


Week 1—Tue., 26 Jan.

The legacy of the Anglo-Saxon world. (N.B. I am well aware that you are not going to be able to get to all this for a meeting the second day of classes. The “Assignments” section of the website lists some images that we will be looking at to start off with, the primary source listed below, and a a couple of key pieces of secondary literature. Look at them in the order presented.)

Primary reading: Aethelberht’s Code [Mats. § 2D–F].


Week 2—Tue., 2 Feb.

The Conquest, Domedday Book, and Administration

Primary reading: Selections from Domedday Book (Mats. § 3E with additions, including the almost complete Domedday of Huntingdonshire [pdf]).

Secondary reading: F. W. Maitland, *Domedday Book and Beyond* (Cambridge: Cambridge University Press, 1897 (repr. many times, copies all over the place; it is also available at

Administration (cont’d)

Primary reading: Pipe Roll of 31 Henry I (Mats. § 3E, pp III–44 to III–48 (better edition online with images of the original). (Be patient; the images file is big, and takes quite a while to download. The printed edition tells you which image to look at. The Pipe Roll is not exactly bedtime reading. We will focus on Warwickshire [p. 83], Norfolk [p. 72], Yorkshire [p. 19], and Between Ribble and Mersey [p. 26], probably in that order). Richard Fitzneale, Dialogus de Scaccario = The course of the Exchequer (Oxford: Clarendon, 1983) (Lamont, Law School, Widener: HJ1028 .F413 1983) (there’s a new edition of this [Oxford, 2007], but this one is adequate for our purposes) (online).

Secondary reading: Chrimes, Introduction, above.

Week 3— Tue., 9 Feb.

Feudalism and the Law


Week 4—Tue., 16 Feb.

The Church, the Learned Law, and the Problem of Proof

Primary reading: Selected cases from the ecclesiastical courts of the province of Canterbury (online). Review the cases in the Polstead Saga and ask how they were proved.


Week 5—Tue., 23 Feb.

The king and the law (herewith a bit on parliament) (I). The Statute De Donis.

The king and the law:

Primary reading: Coronation Charter of Henry I (*Mats. § 3E*, pp III–43 to III–44; better ed. online, derived from a remarkable website). Magna Carta. Bracton on kingship (*Mats. § 5F*).


The statute De Donis:

Primary reading: Statute De Donis (*Mats. § 5B*).


Week 6—Tue., 2 Mar. Marriage Law and Society

Primary reading: *Select Canterbury Cases* (Materials § 9B (overview of ecclesiastical jurisdiction and one case); cases A.8 and A.9 (online); other marriage cases in *Select Canterbury Cases* (HeinOnline).


Week 7—Tue., 9 Mar. (2 topics)

Town and country (herewith of merchants and villeinage)

Primary reading: *Lex mercatoria* (extracts online) and selected cases from the manorial, borough,
and mercantile courts \[Mats. § 7D;\] the manor court at Great Horwood (online).


No Class—Tue., 16 Mar. HLS spring break; FAS “wellness day.”

Week 8—Tue., 23 Mar.

The Legal Profession and Legal Education. The Old Personal Actions.

The Legal Profession and Legal Education

Primary reading: *Early Registers of Writs; Brevia Placitata; Novae Narrationes; Readings and Moots* (extracts online).


The Old Personal Actions:

Primary reading: *Mats. § 7B*.


Week 9—Tue., 23 Mar.

Trespass. The Rise of Equity

Trespass:

Primary reading: *Mats. § 7C*.


The Rise of Equity:

Primary reading: *Mats. § 9A, 9C*.


Week 10—Tue., 6 Apr. The king and the law (II)
Primary reading: The deposition of kings [Mats. § 6F (the Act of Succession of Henry VII is tucked in at the end); more recent editions, with parallel text and translation, of most of these documents can be found in a pdf packet called ‘DepositionsAll’.


Week 11—Tue., 13 Apr.

Tudor Revolution [This topic had to be skipped the last time that I did this seminar]:

Primary reading: G. R. Elton, The Tudor Constitution, 2d ed. (Cambridge: CUP, 1982) (Lamont, Law School, Widener: JN181 .T85 1982). (You don’t have to read all the documents, but read all the introductions and as much of the documents as you think are necessary to make sense of the introductions. Indeed, granted that we are also going to do some difficult material about property in this class, you can, if pressed for time, skip Elton and read his critics [below, Revolution Reassessed].)


Property:

Primary reading: Selected pre-Statute Cases, Lord Dacre of the South, Statute of Uses, The Duke of Norfolk’s Case. (Mats. § 9E).


Week 12—Tue., 20 Apr.


Primary reading: Calvin’s Case (online). The Hay-Langbein Debate (Mats. § 9F) (the second is, of course, not primary material as that term is normally understood, but we might want to finish with a discussion of method).


Final papers due—Tue. 5 May. To apply for an extension email CD.

Papers. You should prepare three five-page papers each focusing on one or more of the texts to be discussed in the course. (As the semester goes on we can broaden the texts to include texts in
which you are interested but which we will not be discussing in class.) The papers should offer an idea supported by an analysis of the text and by appropriate external evidence. You should prepare a draft of your paper before (preferably) or shortly after we take up your text in class. I will comment on your draft, and in the light of the comments, you should prepare a final draft. The final drafts are due by the end of reading period.

Here are some examples of suitable paper topics (all of these have been successful paper topics in the past):

- Preservation of Order in Aethelberht’s Code (social structure and social order in 7th century Kent)
- Aethelred’s London code as an indication of economic activity in London in the beginning of the 11th century
- Writs *precipe* before Glanvill (van Caenegem, *Royal Writs*) (revisited the old debate about whether these writs changed from “executive” to “judicial”)
- The *Stone Priory Case* (1150) (van Caenegem *Cases*) (complicated patronage relationships in a “truly feudal world”)
- The Assize of Mort Dancer: An Analysis (*Sources*, pp. 25–30) (can what it was being used for in 1200 be used to figure out the purpose was in 1176?)
- *Barr c. Parage* (Donahue *Canterbury Cases* (marriage c. 1200) Bracton on Kingship (Thorne ed.))
- The Statute Quia Emptores (1290) (argued that this was the only way possible to achieve its effect at this time)
- *Mortimer v. Mortimer* [(1292), *Sources*, p. 264] and the Writ of Detinue for a Charter (property and obligation in the 13th century)
- The court of the bishop of Ely at Littleport (from Maitland’s ed. in *Select Pleas in Manorial Courts*) (ecology in the 13th century)
- *Spicer v. Chapman* (*Mats.*) (can we get the numbers to add up and can we make sense of what it going on in this case?)
- *Kerseye v. Ferrers* (*Mats.*) (who were these folks and what light does that knowledge cast on this parliamentary appeal?)
- Case Nos. 160 and 204, Northamptonshire Supervisors’ Roll 1314–16 (*Derby v. Bonaventure*) (a couple of teenagers playing frisbee with a cartwheel injure a passer-by; is this something that the keepers of the peace should be concerned about?)
- The Statute of Labourers (1353) and the Action on the Case (YBB of Richard II)
- Mills and the *Miller’s Case* (*Mats.*, § 7C) (nice placing of the case in context by finding material on the changing business arrangements concerning mills in the late 14th century)
- The Legitimacy of Equity (*Mats.*, § 7C) (how did fifteenth-century equity justify what it did?)
- Chancellor Rotherham’s jurisprudence (based on cases in *Sources*) (argues that R’s view of equity was closer to St. German’s than it was to Wolsey’s)
• Laissez-Faire in the Fifteenth Century? (Case of Gloucester School (1410), Sources, p. 613) (the development of the concept of damnum absque iniuria, or the notion that economic competition is no wrong)

• Lord Dacre of the South (1535) (Sources, pp. 105–1) (an analysis of the arguments in an attempt to figure out how much of the case was “law” and how much “politics”).

• Marsilius of Padua and the prologue to the Ecclesiastical Appeals Act

• Carter v. Downish (1689) (is this when the common-law courts began to incorporate mercantile custom with regard to bills of exchange?).