

Medieval Law

Seminar: English Legal History

SYLLABUS AND ASSIGNMENTS

History 2080
(Medieval Law)

Spring 2021

Law 2166
(Legal History Seminar
English Legal History)
Spring 2021

Requirements	Syllabus	Week 1	Week 2	Week 3
Week 4	Week 5	Week 6	Week 7	Week 8
Week 9	Week 10	Week 11	Week 12	Papers

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.

Background generalities: We need to review some basic history, some basic constitutional history, and some basic legal history. I have to assume that you have read some of these books, but here’s one way of getting at these topics relatively painlessly. Three quick paperbacks on basic history: Christopher Brooke, *From Alfred to Henry III, 871–1272* (New York: Norton, 1961); George Holmes, *The Later Middle Ages, 1272–1485* (New York: Norton, 1962); A.F. Myers, *England in the Late Middle Ages (1307–1536)* (Baltimore: Penguin, 1952). Two short but not so quick books on constitutional history: W. L. Warren, *The Governance of Norman and Angevin England* (Stanford: Stanford U. Press, 1987); A. L. Brown, *The Governance of Late Medieval England* (Stanford: Stanford U. Press, 1989). A first-class (but long) book on legal history: J. H. Baker, *An Introduction to English Legal History*, 5th ed., (Oxford: OUP, 2019) (Baker carries the story well beyond the Middle Ages) ([online e-book](#)).

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 couple of key pieces of secondary literature. Look at them in the order presented.)

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

Secondary reading: H. R. Loyn, *Governance of Anglo-Saxon England* (Stanford: Stanford U. Press, 1984) (HLS: JN131 .L69x 1984b, Widener: WID-LC JN131 .L69x 1984). Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century* (Oxford: Blackwell, 1999) (2 copies at Law School, one in the reference collection of Special Collections, Widener: KD554 .W67 1999). *id.*, *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London: Hambledon, 1999) (HLS: KD554 .W668 1999, Widener: KD554 .W668 1999) (collected essays of which the following are particularly important: “*Lex Scripta and Verbum Regis: Legislation and Germanic Kingship, from Euric to Cnut*,” “*Inter cetera bona . . . genti suae*’: Law-Making and Peace-Keeping in the Earliest English Kingdoms,” “Lordship and Justice in the English Kingdom: Oswaldslow Revisited”). Lisi Oliver, *The Beginnings of English Law* (Toronto: University Press, 2002) (HLS: KD542 .O45x 2002, Widener: KD542 .O45x 2002). Two recent and quite remarkable online publications: Patrick Wormald, *Papers Preparatory to The Making of English Law: King Alfred to the Twelfth Century Volume II From God’s Law to Common Law*, Stephen Baxter and John Hudson ed. (2014) ([online](#)) and an entire [website](#) devoted to reediting the early English laws. Even more recently: Tom Lambert, *Law and Order in Anglo-Saxon England* (Oxford: Oxford University Press, 2017). C. Donahue, “The Status of Women in the Laws of Æthelberht,” in *Languages of the Law in Early Medieval England* (Leuven: Peeters, 2019).

Week 2— Tue., 2 Feb.

The Conquest, Domesday Book, and Administration

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

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

numerous places on the Internet). Peter Sawyer (ed.), *Domesday Book: A Reassessment* (London: Edward Arnold, 1985) (Law School and Widener: DA190.D7 D656 1985 [HD]). Robin Fleming, *Domesday Book and the Law* (Cambridge: CUP, 1998) (Law School and Widener: KD558.F58 1998) (esp. the introduction). S.B. Chrimes, *An Introduction to the Administrative History of Mediaeval England* (Oxford, 1966) (esp. chs. 1–3) ([online](#)).

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

Primary reading: Extracts from *Glanvill* (*Mats.* §§ 4B, 7B, pp. VII–3 to VII–4). The Polstead Saga (*Mats.* § 4C).

Secondary reading specifically for the seminar session: S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge: Cambridge University Press, 1976). 201 p. ([online](#)) (to be read in conjunction with the Palmer review in *Mats.* § 4D).

Critics of Milsom: Susan Reynolds, *Fiefs and Vassals* (Oxford: Clarendon, 1994) (chapters on the *libri feudorum* and on England) ([online e-book](#)). John Hudson, *Land, Law and Lordship in Anglo-Norman England* (Oxford: Clarendon, 1994) (Widener, Law School: DA195 .H83 1994). Paul Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY: Cornell University Press, 2003) (Law School, Widener: KD608.H95 2003). Thomas N. Bisson, *The Crisis of the Twelfth Century: Power, Lordship, and the Origins of European Government* (Princeton: UP, 2000), xxviii, 677 p. (History Dept., Widener, Lamont: D201.8 .B57 2009).

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.

Secondary reading specifically for the seminar session (Bartlett and Hyams are the most important): Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986), 182 p. Widener, Law School: KJ1018 .B36x 1986 ([online](#)). John Baldwin, “The Intellectual Preparation for the Canon of 1215 against Ordeals,” *Speculum*, 36 (1961) 613–636 ([online](#)). Paul R. Hyams, “Trial by Ordeal: The Key to Proof in the Early Common Law,” in *On the Laws and Customs of England* (Chapel Hill, NC, 1981) 90–126 ([online](#)). Charles Donahue, “Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law”, in *id.*, 127–58 ([online](#)). T. A. Green, *Verdict According to Conscience* (Chicago: Chicago U. Press, 1985) xx, 409 p. Lamont, Law School,

Widener: KD8400 .G73 1985 ([online e-book](#)) (you may need to review Baker, *Introduction*, pp. 570–608 to make sense out of this). (If you can't make it through the whole Green book, the medieval part is derived from his article, "Societal Concepts of Criminal Liability for Homicide in Mediaeval England," *Speculum*, 47 (1972) 669–694 ([online](#)).

General background reading: R. W. Southern, *Western Society and the Church in the Middle Ages* (Harmondsworth: Penguin 1970). James A. Brundage, *Medieval Canon Law* (London: Longman, 1996), 264 p. (pp. 120–54 are particularly important). Either Paul Vinogradoff, *Roman Law in Medieval Europe* (Oxford: Clarendon, 1929) or Manlio Bellomo, *The Common Legal Past of Europe* (Washington, DC: Catholic University, 1995), xix, 252 p.

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](#)).

Secondary reading specifically for the seminar session: J. C. Holt, *Magna Carta and Medieval Government* (London, 1985), ix, 316 p. (HLS (HD), Widener, History Dept, Lamont: JN147 .H642 198 (first essay). Michael Blecker, "The King's Partners in Bracton," *Studi Senesi* 96 (1984) 66–118 ([online](#)).

General background reading: J. C. Holt, *Magna Carta*, 2d ed. (Cambridge: Cambridge University Press, 1992), xxii, 553 p. HLS (HD), Widener, History Dept, Lamont (2 copies) JN147 .H64 1991. Charles T. Wood, *Joan of Arc and Richard III* (New York: OUP, 1988), pp. 48–100 (Widener WID-LC DA176 .W66 1988). G. O. Sayles, *The King's Parliament of England* (London, 1975) (History Dept: Hist 1766.379, Widener: WID-LC JN515.S35, Lamont: JN515.S35 1975, Law School UK 905.65 SAY).

The statute De Donis:

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

General background reading: Paul Brand, *Kings, Barons, and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England* (Cambridge: CUP, 2003) (Widener, Law School: KD608.B735 2003). Joseph Biancalana, *The Fee Tail and the Common Recovery in Medieval England, 1176-1502* (Cambridge: CUP, 2001), 498 p. (Widener, Law School [HD]: KD762.B66 1983).

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).

Secondary reading: James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) (Andover-Harv, Lamont, Law School, Widener, and others: KJ985.S48 B78 1987) ([e-book online](#)).

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](#)).

Secondary reading specifically for the seminar session: R. H. Hilton, *The English peasantry in the later Middle Ages: The Ford lectures for 1973 and related studies* (Oxford: Clarendon Press, 1975) 256 p. Widener (3 copies), Hilles, Lamont HD594.H54 ([online e-book](#)).

General background reading: J. L. Bolton, *The Medieval English Economy, 1150–1500* (London: Dent, 1981), 400 p. (not a classic but a solid modern overview). Paul R. Hyams, *King, Lords, and Peasants in Medieval England: The Common Law of Villeinage in the Twelfth and Thirteenth centuries*, Oxford historical monographs (Oxford [Eng.]: Clarendon Press, 1980) xxii, 295 p.

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](#)).

Secondary reading: Paul Brand, *The Origins of the English Legal Profession* (Oxford: Blackwell, 1992) (Widener WID-LC KD460 .B7 1992). C. Donahue, “The Legal Professions of Medieval England,” ([online](#)).

The Old Personal Actions:

Primary reading: *Mats.* [§ 7B](#).

Secondary reading: Baker, *Introduction*, pp. 338–349, 386–390. S. F. C. Milsom, *Historical Foundations of the Common Law*, 2d ed. (London: Butterworth, 1981) 289–329,

Week 9—Tue., 23 Mar.

Trespass. The Rise of Equity

Trespass:

Primary reading: *Mats.* [§ 7C](#).

Secondary reading: Robert Palmer, *English Law in the Age of the Black Death* (Chapel Hill: UNC Press, 1993) ([HeinOnline](#)) (you may need to read Baker, *Introduction*, pp. 350–368, 427–450, perhaps in reverse order, to make sense out of this).

The Rise of Equity:

Primary reading: *Mats.* [§ 9A](#), [9C](#).

Secondary reading: Baker, *Introduction*, pp. 105–125. M. E. Avery, “History of the Equitable Jurisdiction of the Chancery Before 1460,” *Bulletin of the Institute of Historical Research*, 42 (1969) 129–144. *Id.*, “An Evaluation of the Effectiveness of the Court of Chancery under the Lancastrian Kings,” *Law Quarterly Review*, 86 (1970) 84–97. Z. Rueger, “Gerson’s Concept of Equity and Christopher St. German,” *History of Political Thought*, 3 (1982) 1–30. J. H. Baker, “Equity and Conscience,” in *id.*, *Oxford History of the Laws of England*, vol. 6 [1483–1558] (Oxford: OUP, 2003) 39–48; *id.*, “The Court of Chancery,” in *id.*, pp. 142–152.

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](#)'.

Secondary reading: Chris Given-Wilson, ed., *Chronicles of the revolution, 1397-1400: The reign of Richard II*, Manchester medieval sources series (Manchester, England: Manchester University Press c1993), xv, 266 p. Widener, Lamont DA235 .C54 1993.

Week 11—Tue., 13 Apr.

The Tudor Revolution in Government. Property in the Early Modern Period.

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*].)

Secondary reading: Christopher Coleman and David Starkey, *Revolution Reassessed: Revisions in the History of Tudor Government and Administration* (Oxford: Clarendon, 1986). viii, 219 p. (Widener: WID-LC JN181.R48 1986, Lamont: JN181.R48 1986, Hilles: JN181.R48 1986). J. H. Baker, *Introduction to Spellman's Reports*, vol. II, Selden Society No. 94 (London, 1988), pp. 23–346 (available through HeinOnline) (Some of this is pretty tough going, but it's a remarkable piece of work [it earned the Ames prize for the best "book" about law in five years]; if you understand this, you really have mastered English legal history; a more up-to-date version of Baker's account of the story is found in his volume in the *Oxford History of the Laws of England*, but that's even longer).

Property:

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

Secondary reading specifically for the seminar session: Lloyd Bonfield, *Marriage Settlements, 1601-1740: The Adoption of the Strict Settlement* (Cambridge: CUP, 1983), 136 p. Widener, Law School (HD) KD762.B66 1983 ([online](#)).

Week 12—Tue., 20 Apr.

Law, Politics and Society. The Hay-Langbein Debate.

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).

Secondary reading: Ernst Hartwig Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton Univ. Press, 1957), xvi, 568 p. (Hilles: 321.6 K16, Littauer: JC385.K25 Reserve=Gov2022 F'87, Lamont: JC385.K25, Widener: Gov 210.257, Child Memorial: JC385.K25) ([e-book online](#)).

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 Dancesor: 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?).