

**History 6376-Law 5331: English Legal History****Robert C. Palmer: Spring 2013****Subject Matter**

This course examines English legal history from the twelfth century to the eighteenth century. For the purposes of this course, English legal history includes the development of legal doctrine and legal forms, the social roots of those doctrines and forms, the ways in which people manipulated the law, the effect of the law on the family and on society generally, and the nature of legal change; it does not include the history of criminal behavior. In addition to introducing you to English legal history, the course is important for understanding the development of the English state, feudal relationships, the history of the family, property law, and English constitutional and intellectual history. It is also very useful background for understanding American (colonial, state, and national) legal and constitutional history through the nineteenth century.

**Requirements**

Neither language skills nor legal training (or interests) are required. Some Latin and French words show up in the secondary source materials, but not in ways that will hinder the non-medievalist or non-historian. Training in working with the documents in the original languages is the task of a separate course. The papers require work in no sources outside those assigned for the course.

**Law Students**

Law students registered under the law course number will only take a test. Law students may opt to omit the test and instead fulfil the requirements set for History graduate students. For those who do, the papers produced would be 10 pages instead of 12-15 pages. Writing papers will produce a more integrated understanding of the material but is a far more difficult option.

**History Graduate Students**

History graduate students may not sign up under the law course number; law students who are also working toward an M.A. may or may not. All History students are required to write three papers, 12-15 pages of text (calculated in 11 point), with endnotes in addition (or footnotes, but not to shorten the text requirement), one inch margins all around. They should be elaborately noted, with references to both documents and readings, because the task is to draw the general arguments out of the documents. Endnotes may well be explanatory, showing how a particular case proves the point. Although for exceptional reasons special topics may be agreed upon by consultation, normally the papers will be on set topics:

1. *"From Discretion to Rules of Law, 1153-1220."* This paper concerns the origins of the common law in the late twelfth century and early thirteenth century. You have readings precisely on point, and we will discuss the subject at length in class. You must explain the major characteristics of law prior to 1176, then explain the mechanism of change and the defining characteristics of the law by 1220, including a treatment of Magna Carta. The grade on this paper will depend in large part on your ability to synthesize the argument and demonstrate it from the cases.
2. *"The Expansion of Royal Justice, 1272-1386."* This paper concerns two major topics: the elaboration of the legal system under Edward I and the transformation of English law after the Black Death. As before, you have readings precisely on point. The thesis must compare and contrast the two periods.
3. *"The Royalist Agenda: 1495-1575."* The thesis for this paper must tie together the major common law and statutory changes of the period, including but not limited to the Reformation.

**Please note the university rules on plagiarism; I adhere rigidly to university policy.**

**If medical accommodations are necessary, please make those needs known.**

**Required Readings:**

I. Materials, Parts I and II, from the University Copy Center

**Recommended and Auxiliary readings:** Recommended readings are purely voluntary and merely indicate good literature on the subject that is available. Auxiliary readings are highly recommended for those who find

that the subject matter is getting confusing. Readings cited only to Baker refer to J[ohn] H[amilton] Baker, An Introduction to English Legal History, 3rd. ed. (London, 1990).

## Session Assignments:

### January 15, 17

#### *Introduction*

Materials, Pt. 1, Section I: "General Material," pp. 1-8.

*Before the Common Law: Feudal Relationships and Family*

(a) Robert C. Palmer, "The Feudal Framework of English Law"

Michigan Law Review vol. 79 (1981), pp. 1130-40 (in Materials, Pt 2).

This article sets out the basic differences between a Maitland and a Milsom approach. You must understand the difference. Note that I have now diminished, but not eliminated, the emphasis here on the compromise of 1153. That analysis remains important, but is slightly different from that you will find in class.

(b) Materials, Pt. 1, Section II: "The Nature of Courts and the Law before 1176," pp. 9-26

### January 22, 24

*The First Era of Change (1176-1200): The Origins of Property*

(a) Robert C. Palmer, "The Origins of Property in England." Law and History Review, vol. 3 (1985), pp. 1-8 (in Materials, Pt 2). (The analysis here should track, almost exactly, the analysis in class, although I have now added some additional work on the origins of the grand assize in 1179.)

(b) Materials, Pt. 1, Section IV: "The Origins of the Common Law, Part One," pp. 26-32

(c) Materials, Pt. 1, Section V: "The First Major Transition," pp. 32-38

[highly recommended, not assigned: Paul A. Brand, "Multis Vigiliis Excogitatam et Inventam": Henry II and the Creation of the English Common Law" (Law reserve)

Note on Brand: This is an extraordinarily important article for what it proves about what happened in 1176. Brand concludes that he has disproved Milsom's basic insight, but he has not. The elements of his argument actually go far to support Milsom's perspective. Read this article with care, and query whether his final conclusion is appropriate. Also note, what about his characterization of law before 1176 as merely "inefficient?" Inefficient for what? [Question from Dier] Brand is following basically a Maitland model.]

(d) Materials, Pt. 1, Section VI: "The Early Structure of Tenurial Rights: Glanvill," pp. 38-50

(e) Robert C. Palmer, "The Origins of Property in England." Law and History Review, vol. 3 (1985), pp. 8-50 (in Materials, Pt 2).

### Jan 29, 31

(a) Materials, Pt 1, Section VII: Women and the Law: Dower," pp. 50-53

[Other Literature, not assigned, but worth being examined:

Paul R. Hyams, "Warranty and Good Lordship in Twelfth Century England." Law and History Review, vol. 5 (1987), pp. 437-503.

Joseph Biancalana, "For Want of Justice: Legal Reforms of Henry II." Columbia Law Review, vol. 88 (1988), pp. 433-536.

Note that I disagree vehemently with both these articles.]

(b) Materials, Pt. 1, Section VIII: "Rules of Law," pp. 53-59

[worth reading, but not assigned: Donald W. Sutherland, The Assize of Novel Disseisin (Oxford, 1973), pp. 1-42.

This portion of the book, by my doctoral advisor, is a good example of an approach dictated by Maitland's ideas. It thus provides an alternate view of what was happening, both in what Henry II was doing and in how strong feudal relationships were in society. You will find that Sutherland is one of the few legal historians whose writing style is actually enjoyable.}

(c) Materials, Pt. 1, Section IX: "The Assize of Novel Disseisin and the Origins of Property," pp. 59-62

### February 5, 7

- (a) Materials, Pt. 1, Section X: "Entry and Property Right," pp. 62-64
- (b) Materials: Pt. 1, Section XI, "The Writs of Entry," pp. 64-72.
- (c) Robert C. Palmer, "The Economic and Cultural Impact of the Origins of Property, 1180-1220." Law and History Review, vol. 3 (1985), pp. 375-96 (in Materials, Pt 2).
- (d) Materials: Pt. 1, Section XII, "Magna Carta," pp. 72-76; "Parliament," pp. 76-77; and "Extension of Property Law," pp. 77-79.

### February 12, 14

- (a) Materials, Pt. 1, Section XIII: "Elemental Legal Categories in the English Legal Tradition," pp. 79-89

[Recommended: Robert C. Palmer, "Trial by Ordeal." Michigan Law Review, vol. 87, (1989), pp. 1547-1556.]

- (b) Robert C. Palmer, "Conscience and the Law: the English Criminal Trial Jury." Michigan Law Review vol. 84 (1986), pp. 787-800 (Materials, Pt. 2).

- (c) Materials, Pt. 1, Section XIV: "The First Legal System," pp. 89-106 **IN COMBINATION WITH**

- (d) Robert C. Palmer, The Whilton Dispute (Princeton, 1984), pp. 1-86. (In Materials, Pt. 2)

[Recommended: Robert C. Palmer, County Courts of Medieval England

If you want to know about local administration for executing common law procedures, see chapter 2 of this book; if you want to know about early lawyers, see chapter 4. For the detailed description of the development of *justices* writs, the 40s rule, and the specialty rule in covenant, see chapters 7-8. For the relationship between the decline of the county court and the growth of the state, see chapter 9.]

### February 19, 21

- (a) Materials, Pt. 1, Section XV: "The Writs of Entry," pp. 106-115 (just through XIVA)
- (b) Palmer, The Whilton Dispute, pp. 87-151

#### **FIRST PAPER DUE, FOR THOSE DOING PAPERS**

- (c) Materials, Pt. 1, Section XVI, "The Statutes of Edward I," pp.115-124
- (d) Palmer, The Whilton Dispute, pp. 152-191
- (e) Materials, Pt. 1, Section XVII: "Miscellany: Evidence, Lawyers, Marriage," pp. 144-157

Recommended:

Helmholz, Marriage Litigation in Medieval England:. This is an excellent book in every way, examining the nature of medieval marriage. The only qualification is that contained in the article "Contexts of Marriage."

Donahue, "Introduction". Select Canterbury Cases, Selden Society vol. 95: This is the best introduction to ecclesiastical court procedure, including the oath to incriminate oneself.

### February 26, 28

- (a) Materials, Pt. 1, Section XVIII [Debt], pp. 133-140
- (b) Materials, Pt. 1, Section XIX: "Detinue," pp. 140-144
- (c) Materials, Pt. 1, Section XX: "Covenant," [with a single report on crime], pp. 144-152
- (d) Robert C. Palmer, "Covenant, Justices Writs, and Reasonable Showings." American Journal of Legal History, vol. 31 (1987), pp. 97-117. (In Materials, Pt. 2)

This article is useful (a) for the short presentation of the development of the 40s rule and the specialty rule and (b) for giving you at least an appreciation that there are other views.

[Recommended:]

Paul A. Brand, "Courtroom and Schoolroom: the Education of Lawyers in England prior to

1400" Historical Research, vol. 60 (1987), pp. 147-65. This is a nice treatment of the early history of legal education in England, the prehistory of the Inns of Court.]

### March 5, 7

- (a) Materials, Pt. 1, Section XXI: "Trespass," pp. 152-163
- (b) Materials, Pt. 1, Section XXII: "The Second Legal System," pp. 163-165
- (c) Materials, Pt. 1, Section XXIII: "Uses and Equity," 165-175  
[Recommended: Palmer, *English Law in the Age of the Black Death*, c. 9]
- (d) Palmer, The Whilton Dispute, pp. 192-220
- (e) Materials, Pt. 1, Section XXIV: "Trespass: *vi et armis* as a test," pp. 175-183

### March 19, 21

- (a) Materials, Pt. 1, Section XXV: "Personal Actions after the Black Death," pp. 183-193
- (b) Materials, Pt. 1, Section XXVI: "The Legislation of 1351-53," pp. 193-205  
[Recommended: Palmer, *English Law in the Age of the Black Death*, pp. 147-66.]
- (c) Palmer *English Law in the Age of the Black Death*, c. 7: "The Written Contract" (in Materials, Pt. 2 (next to last piece))

### March 26, 28

- (a) Materials, Pt. 1, Section XXVII: "The Trespass on the Case," pp. 205-212
- (b) Materials, Pt. 1, Section XXVIII: "The Nation," pp. 212-220

### April 2, 4

- (a) Materials, Pt. 1, Section XXIX: "Third Legal System: The Reformation and Royal Power," pp. 220-235
- (b) Materials, Pt. 1, Section XXX: "Property Law and the Reformation," pp. 235-241

### **SECOND PAPER DUE, FOR THOSE DOING PAPERS**

### April 9, 11

- (a) Materials, Pt. 1, Section XXXI: "Indebitatus Assumpsit," pp. 241-256
- (b) Materials, Pt. 1, Section XXXII, "Ejectment," pp. 256-264  
*The Development of Civil Rights at Law*
- (c) Materials, Pt. 1, Section XXXIII: "Rights," pp. 264-271

### April 16, 18

- (a) Materials, Pt. 1, Section XXXIV: "The Courts and Rights: Coke," pp. 271-280
- (b) Materials, Pt. 1, Section XXXV: "Parliament and Rights," pp. 280-286

### April 23, 25:

- Materials, Pt. 1, Section XXXV (again): "Parliamentary Sovereignty," pp. 286-294  
: **THIRD PAPER DUE FOR THOSE DOING PAPERS**