

History 6376-Law 5331: English Legal History**Robert C. Palmer: Spring 2014****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 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.

Required Readings:

Materials, Parts I and II, from the Copy Center

Session Assignments:**January 14-16***Introduction*

(a) Materials, Pt. 1, Section I: "General Material," pp. 1-8.*

Before the Common Law: Feudal Relationships and Family

(b) 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.

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

January 21-23*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

(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).

January 28-30

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

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

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

February 4-6

- (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 11-13

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

February 18-20

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

February 25-27

- (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.

March 4-6

- (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
- (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 18-20

- (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
- (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 25-27

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

(b) Materials, Pt. 1, Section XXVIII: “The Nation,” pp. 212-220

April 1-3

(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

April 8-10

(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 15-17

(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 22-24

Materials, Pt. 1, Section XXXV (again): “Parliamentary Sovereignty,” pp. 286-294