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History 135 and 335: The History of European Law, Medieval to Contemporary

History 135/335 is a survey course of the history of European law from the fall of the Roman Empire (5th century) to the establishment of the European Community (20th century). Organized chronologically, it engages with the sources and nature of Law, the organization of legal systems and the relationship between law and society, law and law-maker, law and the legal professions.

The following text will be available for purchase at the bookstore:

Manlio Bellomo. *The Common Legal Past of Europe 1000-1800*. Wash. D.C.: The Catholic University of America Press, 1995.

A.P. d'Entrève. *Natural Law. An Introduction to Legal Philosophy*, Transaction, 1994.

Program

January 10 Introduction

January 15 No class – Martin Luther King Jr. day

January 17 Roman Law

Nicholas Barry. *An Introduction to Roman Law*. Oxford: Clarendon Press, 1962, pp.1-45.

Sources:

“The laws of the Twelve Tables.” In *The Historical Context of Roman Law*. Michael Lambiris. North Ryde (Australia): LBC Information Services, 1997, pp.169-183.

"The Institutes of Justinian." In *The Western Idea of Law*. J.C. Smith and David N. Weisstub, eds. London: Butterworths, 1983, pp.352-353.

January 22 Early Medieval Law I

Maurice Keen. *The Pelican History of Medieval Europe*. N.Y.: Penguin Books, 1976 [1968], pp.11-83.

Sources:

“Lords, Vassals and Tenants in the Norman Summa de Legibus (1258),” in *University of Chicago Readings in Western Civilization 4: Medieval Europe*. Julius Kirshner and Karl F. Morrison eds. Chicago: University of Chicago, 1986, pp.68-76.

* **Graduate students: first book report due**

January 24 Early Medieval Law II

Wendy Davies. “Local Participation and Legal Ritual in Early Medieval Law Courts.” In *The Moral World of the Law*, Peter Cross ed. Cambridge: Cambridge University Press, 2000, pp. 48-61.

Robert Bartlett. *Trial by Fire and Water. The Medieval Judicial Ordeal*. Oxford: Clarendon

Press, 1986, pp.153-166.

Sources:

“Dictatus Papae (Gregory VII), Letter of Gregory VII to Henry IV, Henry IV's Position and Renunciation of Gregory VII by the German Bishops (Synod of Worms), AND “The Concordat of Worms” In *University of Chicago Readings in Western Civilization 4: Medieval Europe*. Julius Kirshner and Karl F. Morrison eds. Chicago: University of Chicago, 1986, pp.142-150 AND 169-170.

Bigelow, “History of procedure in England.” In *Readings on the History and System of the Common Law*. Roscoe Pound, comp. Boston: The Boston Book Company, 1913, pp.104-107.

January 29 Ius Commune: The revival of Roman Law

Manlio Bellomo. *The Common Legal Past of Europe 1000-1800*. Wash. D.C.: The Catholic University of America Press, 1995, pp.55-166 and 195-202.

Source:

Rogerious, “Questions on the Institutes.” In *University of Chicago Readings in Western Civilization 4: Medieval Europe*. Julius Kirshner and Karl F. Morrison eds. Chicago: University of Chicago, 1986, pp.215-218 (read and compare to the "Institutes" we read for the Roman Law Class)

January 31 English Common Law

Ellen Goodman. *The origins of the Western Legal Tradition from Thales to the Tudors*. Sydney: The Federation Press, 1995, pp.221-245.

Sources:

Leges Edwardi Confessoris; Extracts from Pollock, The King's Peace and Blackstone, Commentaries III. In *Readings on the History and System of the Common Law*. Roscoe Pound comp. Boston: Boston Book Company, 1913, pp.34-44.

"Ashby vs. White and others." In *Thomas and Bellots Leading Cases in Constitutional Law (with Introduction and Notes)*. E. Slade ed., London: Sweet and Maxwell, 1934, p.47.

February 5 The European Expansion and the Law of Nations

J.H. Parry. *The Age of Reconnaissance*. Berkeley: University of California Press, 1981 [1963], pp.303-319.

Stuart Banner. “Why Terra Nullius? Anthropology and Property Law in Early Australia.” *Law and History Review* 23(1) (2005): 95-131 (available online).

Sources:

The Requirement (1510), Vitoria, On the justice of the conquest (1539) and Sepúlveda, On the justice of the conquest. In *New Iberian World: A Documentary History of the Discovery and Settlement of Latin America to the Early 17th Century*. J.H. Parry and Robert G. Keith eds. N.Y.: Times Books, 1984, v. 1, pp. 289-327.

February 7 - History and the Legal Sciences

J.G.A. Pocock. *The Ancient Constitution and the Feudal Law. A Study of English Historical*

Thought in the 17th Century. New York: W.W. Norton and Company, 1967, pp.1-29.
Julian H. Franklin. *Jean Bodin and the Sixteenth Century Revolution in the Methodology of Law and History*. New York: Columbia University Press, 1963, pp.7-35.

* **Undergraduates: paper due – Historical truth/juridical truth.**

* **Graduate students: second book report due.**

February 12 The English Constitution

J.G.A. Pocock. *The Ancient Constitution and the Feudal Law. A Study of English Historical Thought in the 17th Century*. New York: W.W. Norton and Company, 1967, pp.30-55.

J.C. Holt. *Magna Carta*. Cambridge: Cambridge University Press, 1964, pp.1-22.

George L. Haskins. *The Growth of English Representative Government*. Philadelphia: University of Pennsylvania Press, 1948, pp.109-127.

Sources:

“The Magna Carta, 1215” and “Bill of Rights (1689). In *The Roots of the Bill of Rights*. Bernard Schwartz, ed. New York: Chelsea House Publishers, 1971, v.1, pp.8-16 AND 40-46.

February 14 Eighteenth- and Nineteenth-Century American Law and American Constitution

William Huse Dunham. "A Transatlantic View of the British Constitution 1760-1776." In *Legal History Studies 1972. Papers Presented to The Legal History Conference, Aberystwyth 18-21 July 1972*. Dafydd Jenkins, ed., Cardiff: University of Wales Press, 1975, pp.50-63.

Julius Goebel. "Constitutional History and Constitutional Law." *Columbia Law Review* 38 (1928): 129-151.

Sources:

Elizabeth G. Brown. "The View of a Michigan Territorial Jurist on the Common Law." *The American Journal of Legal History* 15(4)(1971): 307-316 (available online).

The 10 first Amendments to the Constitution of The U.S.A. (1791), reproduced, for example, in *Reading in American Constitutional History*. Allen Johnson ed. Boston: Houghton Mifflin Company, 1912, pp.138-140.

Neil A. Lewis. "Impeach Those Liberal Judges! Where are they?" *The New York Times*, May 18th, 1997, p.E5.

February 19 No class – Presidents day

February 21 The French Revolution

Polasky Janet. "The Legacy of the French Revolution." In *The Transformation of Modern France. Essays in Honor of Gordon Wright*. William B. Cohen ed. Boston: Houghton Mifflin Company, 1997, pp.5-25.

Isser Woloch. *The New Regime. Transformations of the French Civic Order, 1789-1820's*. New York: W.W. Norton and Company, 1994, pp.297-354.

Sources:

The Parliament's view of the Fundamental Laws; The August Decree and the Constitution of 1793 AND “The Declaration of the Rights of Man” In *The French Revolution Sourcebook*. John Hardman ed. London: Arnold, 1999, pp.55, 111-112, 117-129

AND173-174.

*** Graduate students: Third book review due**

February 26 Natural Law, and (Natural) Rights

A.P. d'Entrève. *Natural Law. An Introduction to Legal Philosophy*. New Brunswick: Transaction Publisher, 1994 [1951].

Sources:

Please reconsider and re-read: the Magna Carta (1215), The Bill of Rights (1689), The Declaration of the Rights of Man and Citizen (1789), The 10 first Amendments to the Constitution of The U.S.A. (1791).

February 28 Codification

Manlio Bellomo. *The Common Legal Past of Europe 1000-1800*. Wash. D.C.: The Catholic University of America Press, 1995, pp.1-29.

Andre Tunc. "The Grand Outlines of the Code," AND Jean Limpens. "Territorial Expansion of the Code." Both in *The Code Napoleon and the Common Law World. The Sesquicentennial Lectures Delivered at the Law Center of New York University December 13-15, 1954*. Bernard Schwartz, ed., New York: New York University Press, 1956, pp.19-33 AND 92-107.

Sources:

Law of March 21, 1804; Code Napoleon: Preliminary Title.

March 5 Codification in the Common Law Countries

Angelo Piero Sereni. "The Code and the Case Law." In *The Code Napoleon and the Common Law World. The Sesquicentennial Lectures Delivered at the Law Center of New York University December 13-15, 1954*. Bernard Schwartz, ed., New York: New York University Press, 1956, pp.55-79.

Elizabeth Kolsly. "Codification and the Rule of Colonial Difference: Criminal Procedure in British India." *Law and History Review* 23 (3) (2005): 631-683 (available online).

March 7 The present I: Common Law and Continental Law Compared

Jeremy Rabkin. "Revolutionary Visions in Legal Imagery: Constitutional Contrasts between France and America." In *The Legacy of The French Revolution*. Ralph C. Hancock and L. Gary Lambert eds. Lanham: Rowan and Littlefield, 1996, pp.219-255.

J.H. Baker. *The Common Law Tradition. Lawyers, Books and the Law*. London and Rio Grande: The Hambledon Press, 2000, pp.107-114 (chapter 8: "Case-Law in England and Continental Europe.") * **Graduate student: fourth (and last) book review due.**

March 12 The Present II: The European Union

Thijmen Koopmans. "Towards a New "Ius Commune."" In *The Common Law of Europe and the Future of Legal Education*. Bruno de Witte and Caroline Forder eds. The Netherlands: Kluwer Law and Taxation Pubs., 1992, pp.43-51.

Luke Nottage. *Convergence, Divergence and the Middle Way in Unifying or Harmonizing Private Law*. San Domenico (FI): EUI, 2001 (EUI Working Paper Law No. 2001/1).

Sources:

“Treaty Establishing the European {Economic} Community as Amended by Subsequent Treaties. Rome, 25 March, 1957.” For example, in *Basic Community Laws*. Bernard Rudden and Derrick Wyatt, eds. Oxford: Clarendon Press, 1993, pp.24-25 (preliminary narrative and arts. 1-2).

“Maastrich Treaty on European Union (1992).” For example, in *European Union Law in a Nutshell*. Ralph H. Folson, ed. St. Paul (Minn.): West Publishing Co., 1995, pp.346-351, (arts. A-C and 1-3).

March 14 The Present III: Provincializing Europe – Contemporary Debates regarding Human Rights

Rebecca Wallace. “Human Rights: The Time for Reassessment.” In *Human Rights Protection: Methods and Effectiveness*. Frances Butler ed. London: Kluwer Law International, 2002, pp.227-242.

Kirsten Hastrup. “Accommodating Diversity in a Global Culture of Rights: An Introduction.” In *Legal Cultures and Human Rights; The Challenge of Diversity*. Kirsten Hastrup ed. London: Kluwer Law International, 2001, pp.1-23.

Sources:

The Universal Declaration of Human Rights (1948) available on-line at www.un.org/Overview/rights.html

The Vienna Declaration and Programme of Action (1993) available online at www.hri.ca/vienna+5/vdpa.shtml