

## THE UNIVERSITY OF CHICAGO

History 734: Autumn 2000 and Winter 2001  
W 9:00-12:00  
JRL 130

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### SEMINAR

#### EARLY MODERN EUROPEAN LEGAL AND POLITICAL THOUGHT

This is a two-quarter seminar designed to introduce beginning and advanced graduate students to research into the historical background behind the principles of political order that governed the European and American worlds from the eighteenth to the twentieth century. Such principles consist of the distinction between public and private spheres of action, sovereignty, subjectivity, constitutional government, individual rights, toleration, and the trinity of natural, international, and positive law.

Our approach to this subject matter will be both thematic and historical. We shall seek to establish a broad perspective on what is typical and what is unique about political order in the modern West; what is genuinely modern and what is owed to traditions of long standing; what may be expected to be easy to change and what will most likely prove enduring. Though we shall naturally have to focus on particular writings and specific issues, we shall do so in a conscious attempt to reflect upon the subject as a whole, respecting neither geographical boundaries (between England and the Continent) nor chronological divisions (between medieval and modern history) nor even the distinction between legal and political thought itself.

The first quarter of the seminar will serve two different, but concurrent and equally important purposes. First, it will give you a systematic introduction to the fundamental issues and the basic tools of research in this field of inquiry. We shall begin by reading works with a broad perspective and/or a clear thesis on the nature of modern states and their law, such as Ernest Gellner's Nations and Nationalism, Otto Brunner's Land and Lordship, Harold Berman's, Law and Revolution, and Norbert Elias' Civilizing Process. Thereafter we shall consider some of the more specialized scholarship and read some of the paradigmatic writings from the period in question, from Gratian and Bartolus of Sassoferrato via Machiavelli, Luther, and Calvin, to Jean Bodin and John Locke.

Second, the first quarter of this seminar will also furnish you with both the opportunity and the challenge to develop a research topic of your own design. For this purpose you will have to start thinking about a topic early on in the seminar, identify possible leads in the sources and the secondary literature, pursue those leads in the library, and report regularly to the seminar (orally as well as in writing) on your on-going research. In order for me to be able to assist and supervise you at every stage of this process, you will be expected to keep in close contact with me and to meet certain deadlines (to be established during the seminar) for the submission of outlines and research proposals. That will be the most effective way for you to develop a topic that will be not only of interest to you, but also clearly delimited, meaningfully related to the current state of the scholarship, and above all else manageable for you in the time allowed and with the resources available.

The second quarter of the seminar will allow you to turn the research you started in the first quarter into a successful seminar essay. We will continue to meet on an ad-hoc basis in order to discuss the progress of your research and writing.

The following books have been placed on reserve in Regenstein Library and ordered at the Seminary Co-op (5757 University Ave.):

- Berman, Harold J. Law and Revolution: The Formation of the Western Legal Tradition. (Cambridge/Mass.: Harvard University Press, 1983).
- Bodin, Jean. On Sovereignty: Four Chapters from Six Books of the Commonwealth. Cambridge texts in the history of political thought. (Cambridge: Cambridge University Press, 1992).
- Brunner, Otto. Land and Lordship: Structures of Governance in Medieval Austria. (Philadelphia: University of Pennsylvania Press, 1992).
- Cochrane, Eric and Julius Kirshner, eds. The Renaissance. (Chicago: University of Chicago Press, 1986).
- Cochrane, Eric, Charles M. Gray and Mark A. Kishlansky, eds. Early Modern Europe: Crisis of Authority. (Chicago: University of Chicago Press, 1987).
- Elias, Norbert. The Civilizing Process. (Oxford: Blackwell, 1994).
- Gellner, Ernest. Nations and Nationalism. (Ithaca: Cornell University Press, 1983).
- Gratian. The Treatise on Laws: Decretum DD. 1-20, with the ordinary gloss. (Washington, D.C.: Catholic University of America Press, 1993).
- Locke, John. Political Writings. Ed. and with an introduction by David Wootton. (New York: Mentor Books, 1993).
- Luther and Calvin on Secular Authority. Cambridge Texts in the History of Political Thought. (Cambridge: Cambridge University Press, 1991).
- Machiavelli, Niccolò. The Prince. 2nd ed. Trans. Harvey Mansfield, Jr. (Chicago: University of Chicago Press, 1998).
- More, Thomas. Utopia. Cambridge texts in the history of political thought. (Cambridge - New York: Cambridge University Press, 1989).
- Oakley, Francis. Omnipotence, Covenant and Order: An Excursion in the History of Ideas from Abelard to Leibniz. (Ithaca, N.Y.: Cornell University Press, 1984).
- Tierney, Brian. Foundations of the Conciliar Theory. (Cambridge: Cambridge University Press, 1955).

### **Schedule of readings**

First week:

Introductory

Second week:

Gellner, Ernest. Nations and Nationalism. (Ithaca: Cornell University Press, 1983).

Third week:

Elias, Norbert. The Civilizing Process. (Oxford: Blackwell, 1994).

Fourth week:

Brunner, Otto. Land and Lordship: Structures of Governance in Medieval Austria. (Philadelphia: University of Pennsylvania Press, 1992).

Fifth week: **hand in draft of paper proposals**

Berman, Harold J. Law and Revolution: The Formation of the Western Legal Tradition. (Cambridge/Mass.: Harvard University Press, 1983).

Selznick, Philip, Leon Mayhew, Philippe Nonet, Jerome E. Carlin and Paul Bohannon. "Law." In: David L. Sills, ed. International Encyclopedia of the Social Sciences. (New York: Macmillan, 1968-1979), 9:49-78. (Call

number H41.I6, available in the Regenstein and Law Library's permanent reference collections, as well as in Special Collections).

Gratian. The Treatise on Laws: Decretum DD. 1-20, with the ordinary gloss. (Washington, D.C.: Catholic University of America Press, 1993).

Sixth week:

Tierney, Brian. Foundations of the Conciliar Theory. (Cambridge: Cambridge University Press, 1955).

Oakley, Francis. Omnipotence, Covenant and Order: An Excursion in the History of Ideas from Abelard to Leibniz. (Ithaca, N.Y.: Cornell University Press, 1984).

Fasolt, Constantin. "Visions of Order in the Canonists and Civilians." In: Thomas A. Brady, Jr., Heiko Oberman and James Tracy, eds. Handbook of European History, 1400-1600: Late Middle Ages, Renaissance and Reformation. (Leiden: Brill, 1995), 2:31-59

Seventh week:

Bartolus of Sassoferrato. "On the Tyrant." In: Eric Cochrane and Julius Kirshner, eds. The Renaissance. Trans. Julius Kirshner. University of Chicago Readings in Western Civilization, vol. 5. (Chicago: University of Chicago Press, 1986), 7-30.

Machiavelli, Niccolò. The Prince. 2nd ed. Trans. Harvey Mansfield, Jr. (Chicago: University of Chicago Press, 1998).

Eighth week:

More, Thomas. Utopia. Cambridge texts in the history of political thought. (Cambridge - New York: Cambridge University Press, 1989).

Luther and Calvin on Secular Authority. Cambridge Texts in the History of Political Thought. (Cambridge: Cambridge University Press, 1991).

Ninth week: **hand in revised draft of paper proposals**

Bodin, Jean. On Sovereignty: Four Chapters from Six Books of the Commonwealth. Cambridge texts in the history of political thought. (Cambridge: Cambridge University Press, 1992).

Jean Bodin, "Six Books of a Commonweale," in: Eric Cochrane, Charles M. Gray and Mark A. Kishlansky, eds. Early Modern Europe: Crisis of Authority, University of Chicago Readings in Western Civilization, vol. 6 (Chicago: University of Chicago Press, 1987), 222-67

Tenth week:

Locke, John. Political Writings. Ed. and with an introduction by David Wootton. (New York: Mentor Books, 1993).

## Requirements

Students taking this course as a **two-quarter seminar** will be expected to:

- complete the assigned readings
- submit a brief (1-2 pages) statement on the readings for a given week by Monday evening of that week for dissemination to the rest of the class
- participate in class discussion on Wednesday morning
- report in class on their progress in researching and writing a seminar paper
- submit a draft and a revised draft of a research paper proposal for discussion in class
- meet regularly in the winter quarter to report orally and in writing on the progress of their research
- submit a draft and revised draft of their seminar paper for discussion by the class during the winter quarter

Students who do not need to fulfill a two-quarter seminar requirement may register for the first quarter of the course without taking the second quarter. Students who wish to take

only the **first quarter for letter credit** will be expected to do the same work as students taking the full seminar, except that they will write a paper of about 15-20 pages length instead of a full-length seminar paper (or Master's Thesis). Students who wish to take only the **first quarter for R credit** will be expected to do the same work as students taking the full seminar, except that they will write no paper.

### Deadlines

Written draft of paper proposals is due fifth week

Revised draft of paper proposals is due ninth week

Paper of students taking the first quarter only (for letter credit) is due tenth week

### The following items have also been placed on reserve:

- Allen, John William. A History of Political Thought in the Sixteenth Century. (London: Methuen, 1928).
- Black, Antony. Political Thought in Europe, 1250-1450. Cambridge medieval textbooks. (Cambridge: Cambridge University Press, 1992).
- Bossy, John, ed. Disputes and Settlements: Law and Human Relations in the West. Past and present publications. (Cambridge: Cambridge University Press, 1983).
- Brady, Thomas A., Jr., Heiko A. Oberman and James D. Tracy, eds. Handbook of European History, 1400-1600: Late Middle Ages, Renaissance and Reformation. 2 vols. (Leiden - New York - Köln: E. J. Brill, 1994-95).
- Burns, J. H. and Mark Goldie, eds. Cambridge History of Political Thought, 1450-1700. (Cambridge: Cambridge University Press, 1991).
- Burns, J. H., ed. Cambridge History of Medieval Political Thought, c. 350 - c. 1450. (Cambridge: Cambridge University Press, 1988).
- Carlyle, Robert Warrand and Alexander James Carlyle. A History of Mediaeval Political Theory in the West. 6 vols. (Edinburgh - London: Blackwood, 1903-36).
- Figgis, John Neville. Political Thought from Gerson to Grotius, 1414-1625: Seven Studies With an introduction by Garrett Mattingly. (New York, 1960).
- Franklin, Julian H. Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History. (New York: Columbia University Press, 1963).
- Justinian. Justinian's Institutes. Trans. with an introduction by Peter Birks and Grant McLeod. (Ithaca, New York: Cornell University Press, 1987).
- Koselleck, Reinhart. Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society. Studies in Contemporary German Social Thought. Ed. Thomas McCarthy. (Cambridge, Mass.: MIT Press, 1988).
- Oakley, Francis. Politics and Eternity: Studies in the History of Medieval and Early-Modern Political Thought. Studies in the history of Christian thought, 92. Ed. Heiko A. Oberman. (Leiden - Boston: Brill, 1999).
- Oakley, Francis. The Political Thought of Pierre d'Ailly: The Voluntarist Tradition. (New Haven: Yale University Press, 1964).
- Roberts, Simon. Order and Dispute: An Introduction to Legal Anthropology. (New York: St. Martin's Press, 1979).
- Robinson, O. F., T. D. Fergus and William M. Gordon. An Introduction to European Legal History. (Abingdon, Oxon.: Professional Books, 1985).
- Skinner, Quentin. The Foundations of Modern Political Thought. 2 vols. (Cambridge: Cambridge University Press, 1978).
- Tierney, Brian. "Hierarchy, Consent, and the 'Western Tradition'." Political Theory, 15 (1987) 646-652.

- Tierney, Brian. Religion, Law, and the Growth of Constitutional Thought, 1150-1650. The Wiles Lectures given at the Queen's University of Belfast. (Cambridge: Cambridge University Press, 1982).
- Tierney, Brian. The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625. Emory University Studies in Law and Religion, 5. Ed. John Witte, Jr. (Atlanta, Georgia: Scholars Press, 1997).
- Tuck, Richard. Natural Rights Theories: Their Origin and Development. (Cambridge - New York: Cambridge University Press, 1979).
- Ullmann, Walter. The Relevance of Medieval Ecclesiastical History: An Inaugural Lecture. (Cambridge: Cambridge University Press, 1966).
- Vitoria, Francisco de. Political Writings. Ed. and transl. by Anthony Pagden and Jeremy Lawrance. (Cambridge: Cambridge University Press, 1991).
- Weber, Max. "The Types of Authority and Imperative Co-ordination." In: Max Weber, The Theory of Social and Economic Organization. Ed. with an introduction by Talcott Parsons. Transl. A. M. Henderson and Talcott Parsons. (New York: Oxford University Press, 1947), pp. 324-423.