

THE UNIVERSITY OF CHICAGO

History 81401 (or 55301) & 81402
Autumn 2014 and Winter 2015
TU 1:30–4:20
JRL 133, Special Collections Research Center

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SEMINAR: EARLY MODERN EUROPEAN LEGAL AND POLITICAL THOUGHT

SYLLABUS

This is a two-quarter graduate seminar designed to introduce you to the study of early modern legal and political thought and put you in a position to conduct original research in the field. We are going to pay special attention to the medieval background of early modern legal and political thought and to the relationship between law and politics. By challenging the chronological boundary between medieval and modern history as well as the modern distinction between law and politics, I will try to give you a broad conceptual perspective on what is typical and what is distinctive about the understanding of law and politics in the early modern West.

In the first quarter we are going to do four things.

First, we are going to read a few classic accounts of the nature of modern states and their law, including excerpts from Hegel's *Philosophy of History*, Ernest Gellner's *Nations and Nationalism*, Otto Brunner's *Land and Lordship*, and Norbert Elias's *Civilizing Process*. This will help to lay out the fundamental issues involved in understanding the formation of modern states and their law.

Second, having laid a conceptual foundation, we are going to examine more specialized scholarship on the transfer of political authority from the clergy to the laity, the development of a distinction between public and private affairs, and the concept of sovereignty. Our focus will be on comparing and contrasting different conceptual and historiographical approaches to the subject under investigation, not on covering what is an impossibly large body of literature.

Third, we are going to read selections from some paradigmatic primary sources, ranging from ancient Roman Law and medieval Canon Law, via writings by such major figures as John of Salisbury, Eike von Repgow, Bracton, Alfonso X, Thomas Aquinas, Philippe de Beaumanoir, and Bartolus of Sassoferrato, to the writings of Luther, Machiavelli, Jean Bodin, and John Locke. Our aim will be to clarify fundamental differences in the categories that contemporaries brought to bear on their understanding of law and politics.

Fourth, you will develop a topic for the research paper you are going to write in the Winter quarter of the seminar (this does not apply to students who are taking this course as a one-quarter colloquium). You should identify possible leads in the sources and the secondary literature as early as possible, and report regularly to the seminar (orally and in writing) on your on-going library research.

In order for me to be able to assist and supervise you at every stage of this process, I expect you to keep in close contact with me and to meet the deadlines for the submission of drafts 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 manageable in the time allowed and with the resources available.

The second quarter of the seminar is meant to give you the opportunity to turn the research you started in the first quarter into a seminar essay that will satisfy the standards of professional historical scholarship. We will meet on a regular basis in order to discuss the progress of your research and writing.

Requirements

If you are taking this course as a **two-quarter seminar**, you will be expected to:

- Complete the assigned readings
- Write a brief (1–2 pages) statement on the readings for a given week and post it on the appropriate thread in the discussion board on Chalk by 12 noon on Monday of that week
- Read the statements posted by all other students before class meets on Tuesday
- Participate in discussions and answer questions about both the readings and the statements on the readings
- Consult with me in and out of class about an appropriate topic of research for your seminar paper
- Draft a paper proposal and post it on the appropriate discussion board on Chalk by 12 noon on Monday of fifth week
- Read the draft proposals posted by the other students
- Meet at a separately scheduled time in sixth week in order to receive feedback on your draft proposal and give feedback to everybody else
- Revise your draft of the paper proposal and post it on Chalk by 12 noon on Monday of ninth week
- Read the revised draft proposals posted by the other students
- Prepare an outline of your seminar paper and post it on Chalk by 12 noon on Monday of the first week in the Winter quarter
- Read the outlines posted by everybody else
- Meet as scheduled in the Winter quarter to report on the progress of your research and writing, receive feedback on your work, and give feedback to everybody else
- Write a first draft of your seminar paper and post it on Chalk by 12 noon on Monday of fifth week in the Winter quarter
- Read everyone's first draft of their seminar paper and give them your feedback in class
- Revise the draft of your seminar paper and post the revised draft on Chalk by 12 noon on Monday of eighth week in the Winter quarter
- Submit the final version of your seminar paper to the History Department by the deadline set by the Department, and post it on Chalk.

The most important requirement for the first quarter is the formulation and submission of a research paper proposal. This, and the paper you will go on to research and write, will determine your success in this seminar.

In order to make sure that you get started early, I have set the deadline for a first draft of your paper proposal in fifth week of the Autumn quarter. I do not expect a finished product at this point. The purpose of scheduling the draft so early is to give you an opportunity to try out your ideas and to leave you with sufficient time to modify your proposal in the course of your research. Modifications are a natural by-product of research. You may even have to change course completely and start on an altogether different subject. If you keep in touch with me, I will do my best to steer you in a direction designed to avoid such an outcome.

I do expect a first draft that will identify, however roughly, the subject on which you plan to do your research, place that subject in an appropriate intellectual context, and offer a preliminary list of primary and secondary literature to be considered in your research. Describe the subject of your research and state the reasons why you have focused on it, what is already known about it, and what you intend to find out about it. You must include both a brief review of the existing secondary literature as far as you understand it at this point, and a basic bibliography divided into primary and secondary sources.

I will schedule a special meeting in the sixth week in order to discuss each proposal and make suggestions for changes.

If you want to take the first quarter of this course as a graduate colloquium without taking the second quarter, you need to obtain my consent. If you take the colloquium for **letter credit**, you will be expected to do the same work as students taking the full two-quarter seminar, except that at the end of the quarter you will write a paper of anywhere from 10–20 pages (instead of a full-length seminar paper). Your paper will be due by 12 noon on Monday of twelfth week. If you only want **R credit**, you will be expected to do the same work as students taking the full seminar, but will not write a paper.

Deadlines

- Your short statement on the readings assigned for the week is due by 12 noon on Monday of each week, starting Monday of 2nd week
- The first draft of your paper proposal is due by 12 noon on Monday of 5th week
- Discussion of paper proposals will take place at a special meeting in 6th week
- The revised draft of your paper proposal is due by 12 noon on Monday of 9th week
- The paper of students taking only the first quarter for letter credit, is due by 12 noon on Monday of 12th week
- The outline of your seminar paper is due by 12 noon on Monday of 1st week in the Winter quarter
- The first draft of your seminar paper is due by 12 noon on Monday of 5th week in the Winter quarter
- The revised draft of your seminar paper is due by 12 noon on Monday of 8th week in the Winter quarter

- The final version of your seminar paper is due in the office of the Department of History by the deadline set by the Department

Weekly written statements

In order to lay a good foundation for discussions in class, you will prepare a brief written statement—no longer than two pages, double-spaced—on the readings for each week. In that statement I want you to answer the following question in the most straightforward language you can: "What do you believe you learned from the readings for this week?"

In order to answer this question well, you will need to be honest. I am not asking you to decide whether whatever you learned is true or not. I am asking you to tell all of us what you *believe* you learned. Reflect on whatever effect the readings had on you and put the result into writing. The effects may be surprise, a change of perspective, a wealth of new facts about some issue, understanding the uses of a certain concept, learning about the thesis of a certain writer, entering into a certain scholarly controversy—whatever. Don't tell me anything you wish you had learned, or what you tried to learn, and especially not what you believe you ought to have learned. What you wished to learn, tried to learn, or ought to have learned may be very impressive. But since you did not actually learn it, it won't be of much use. Stick to the facts. It's what historians are supposed to do.

Try to organize your statement around some central point or points, particularly if the readings come from different authors. Don't just summarize the readings blow by blow. Two pages are not nearly enough to provide a meaningful summary. They certainly are enough to make a few important points. If you can offer reasons why you chose to organize your thoughts around those points, so much the better. If you can place what you believe to have learned into some historiographical context, better still. Don't aim at being a scholar. Aim at treating the readings with attention and respect, and then articulate your understanding in your own words.

If you are curious about the reason why I am asking you to write statements that are likely to be personal, opinionated, and subjective, it is this: the pursuit of objectivity in historical scholarship has been carried to such lengths that it often extinguishes the ability of historians to formulate judgments.

I don't mean moral judgments. I mean the ability to say "this is that" without adding so many qualifications that nobody can tell *what* "this" is supposed to be. The ability to say "this is that"—as in "Luther was an Austin friar" or "the Reformation was an earth-shaking event in the history of Europe" or "the Council of Trent was an authoritative gathering of the entire Catholic Church"—is an essential precondition of scholarship. Without that ability, you will not be able to say what you mean, let alone mean what you say, because there won't *be* anything that you *could* mean. There will be nothing to debate, nothing to criticize, and nothing to measure against the standards of objectivity. You will either say nothing or say nothing meaningful. That is why it is important to train the intellectual muscles that make it possible for you to say "this is that" *even if you have nothing other than your personal opinion to go by*.

This is particularly urgent for graduate students. Graduate students are often confused, if not downright intimidated, by the intellectual authority they are supposed to wield, but do not actually have. This is perfectly understandable. You have been admitted to graduate school because of what

you know, and you find yourself competing for attention with other graduate students who have been admitted for exactly the same reason. As a result you're very likely to keep placing a great deal of emphasis on what you do know, and you are equally likely to give in to the temptation to pretend that you have some kind of knowledge you do not actually have.

Understandable, but ass-backwards, if you will pardon the expression. Though you were admitted to the program because of what you do know, you are now sitting in this class because of what you DO NOT KNOW. If you already knew it, this class would have no purpose. At this point in the game (barring whatever previous training you may already have had), you have nothing to go on except your own opinion, based on whatever you may or may not have learned in whatever place you came from and whatever other places you have been to in the meantime. Your personal opinion may very well need to be improved, even if you do the readings carefully. That's what this class is about. But in the long run I hope you will realize that you yourself are the only one who can do the improving. Scholarship does not consist of eliminating personal opinions. It consists of developing the judgment required to distinguish what you know from what you merely believe.

The purpose of the two-page weekly statements is to force you to put your opinion into writing, so that we can talk about it. That's also the reason why your statement must be no longer than two pages. The longer it is, the easier it would be for you to hide your judgment behind some kind of seemingly objective account. Don't worry about the subjectivity of your opinion before you've even had a chance to figure out what your opinion is. First figure out what you actually think and learn to put that into writing. There will be plenty of time for you to improve it later on. If you don't learn how to put your own thinking into writing in the first place, you will never know what you think, and if you don't know what you think, you won't be able to improve it either.

Your statement should be submitted by 12 o'clock noon on Monday. Post it on Chalk in the discussion group I have set up for this purpose, so that everybody can read it. I expect everybody to read everybody else's statement before we meet. That will get discussions more quickly off the ground because that way everybody will have a preliminary idea of what the other people in class think about the readings.

The paper proposal

The first version of your paper proposal should be simply this: a proposal for the paper that you would like to write. There is no specific limitation on its length. But there are some crucial requirements regarding its substance.

At the most general level, a good paper proposal will have four main features.

1. It will raise a question that is really interesting, first and foremost to yourself, but also to others, especially to other historians in the field.
2. The question that it raises will not have been answered before, and will perhaps not even have been posed before.
3. The question that it raises will be possible to answer with the means you have at your disposal.

4. It will anticipate the possibility that you may have to change your plans.

Let me comment on this. First of all, you really need to be interested in whatever question you propose to research, or whatever problem you propose to solve. This is crucial. Do not make the mistake of working on a 'safe' subject, merely because you are afraid that you will not be able to do justice to a subject you would love to work on. If you do make that mistake, you will get bored, your energy will flag, and the result will be lifeless or incomplete, regardless of how accurate it is. You have to love your subject. That is especially important for a major project, such as a dissertation or a book, which will keep you preoccupied for several years. But it is also true of a seminar paper.

At the same time the question should not merely be your private hobby. It should be of interest to other people, and especially to other historians in the field, because these are the people who make up the profession and whose judgment of your work will have a huge impact on your career. They do not have to love the subject as you do. If they did, they would have worked on it already. But they should care about it.

That leads directly to the second main feature. In order to be interesting, the question you raise must promise to change what we already know. It must therefore fit into the current state of knowledge and reflect a current problematic. The best kind of question is one that has never occurred to anyone before, but that fits directly into an issue in which everyone is interested. For example, everyone studying the history of the Reformation is interested in understanding what brought it about. But until Bernd Moeller wrote a famous article, nobody had ever quite asked the question that it occurred to him to ask first: why did the Reformation spread so rapidly in the cities in the Southwest of the Holy Roman Empire? Once he did ask that question, and published his answer, what followed was a veritable explosion of historical scholarship on the Reformation, because everybody realized: looking at the cities is a great way of figuring out what caused the Reformation.

Put differently, in order to formulate an interesting question, it is not enough merely to be curious. Your curiosity must be informed. You need to know what other historians have already figured out, and you need to know what they are really interested in. Otherwise you run the risk of raising a question that has already been answered or that does not interest anyone—and it is difficult to say which of these alternatives is worse.

Third, the most interesting question imaginable is a waste of time unless it can be answered. Whether or not it can be answered depends on two factors: the materials available to you and your ability to master those materials in the available time. It might be interesting to know whether trial by fire and water actually did convict the guilty and set the innocent free. But we will never know, because trial by fire and water was only used in cases in which there was no other way to tell who was guilty and who was innocent. Since there was no other way to tell at the time, there obviously is no other way to tell today. The question is unanswerable. It would also be interesting to know what caused the expansion of Europe. But it's not possible for any one person to figure that out in a two-quarter seminar. A huge number of historians have worked on this question, and even today they have not come to any real agreement. In this case there is simply too much evidence that is too complicated. It would also be interesting to know how the manuscripts of Bartolus' commentaries on Roman law differ from the published edition, but unless you know Latin paleography, and know where the manuscripts are, and have time to read them, you won't be able to answer that question either.

Lack of material that is both accessible and manageable is one of the most common pitfalls in which students get trapped when they forget that an interesting question is not to be confused with an answerable question. One of your main priorities should therefore be to formulate a question that is not merely interesting, but also answerable. Cover the ground. Make sure you know what materials there are with which you could answer your question, make sure that you can get your hands on them, and make sure that you have what it takes in terms of time and skill in order to read them. Otherwise you may be taking on an impossible task and waste too much time on it before you realize that it is in fact impossible.

You might even consider going all the way to the opposite extreme: don't start with an interesting question, and figure out afterwards whether it's possible to answer with the materials available. Start with some material that's available and figure out if it's possible to ask an interesting question about it. Walk along the shelves in our fantastic library. Look at what's there. There is a lot. If you give it some time, it will be eye-opening to you, and it may very well suggest a topic you had never thought about before.

The biggest danger here is that you can simply find no way to make the material interesting. So there's a tradeoff to be made. If you start with a really interesting question, you run the risk of winding up with nothing because you cannot find the material you need to answer the question. In that case, you'll have to backtrack, ask a different question or reformulate your old question, and look for different material. If you start with the available material, you run the risk of winding up with a boring topic, because you could not think of an interesting question this material could be used to answer. In that case you won't be forced to backtrack, because you have written something you can turn in. But you'll be disappointed that it doesn't amount to anything exciting. The ideal lies somewhere between these two equally unpleasant opposites.

And that's why there is a fourth characteristic that goes into a good paper proposal. Do not overcommit yourself. Do not imagine you know what you are going to find out before you have done the research. You're not supposed to know what you are going to find out. If you did know, you wouldn't have any reason to do the research.

Not knowing what you will find out is obviously a source of anxiety, and the anxiety may become very intense. But it is also completely normal. Indeed, it is more than normal. It is necessary. It is the coin in which you pay for the originality of your research. The whole point of doing the research is that you do *not* know what the answer will be. So you have to give yourself some leeway to change the direction, and maybe even the subject, of your research in case it turns out that you run into some problems. Good research is *supposed* to deal with problems, and the thing about problems is that sometimes they *cannot* be solved.

A lot of students never seem to get this point, especially in dissertation proposals. They keep trying to convince their professors that they already know what the dissertation is going to establish, along the lines of "my dissertation is going to show that, contrary to wide-spread belief, the French monarchy had a well-established system of copyrighting printed books well before the reign of Francis I." That's putting the cart before the horse. If it were possible to tell what your dissertation will prove, the research would be pointless. Since it isn't possible, it's also pointless to try and state what you have yet to find out later on. As Wittgenstein was fond of saying, even though you cannot *hang* a man who is not there, you can *look* for a man who is not there.

These general considerations translate directly into the requirements for your paper proposal. Your paper proposal must include:

- A title
- A general description of the topic in which you are interested
- The specific question(s) that you would like to answer with your research
- An explanation of the reasons why this is the question you would like to answer
- An account of what you intend to do in order to find the answer
- An account of what other historians have already contributed to answering the question you have posed and of the reasons why they have not yet answered it
- A description of the main difficulties you anticipate and how you think you might deal with them
- And a list of the primary sources and the secondary literature you plan to use

Your paper proposal must address each of these points, though not necessarily in this order. The length at which you will be able to address them will depend on how much you already know. Don't let that worry you—and especially don't let it discourage you from tackling an ambitious project. You do not need to be completely confident that you are exactly on the right track. It may well turn out that you are not. You may run into a dead end. And even if you don't, you will doubtless gather a great deal of material that you will never be able to use, because it is boring, besides the point, or otherwise recalcitrant.

Do not regard any of that as a failure. So far from being a failure, that is precisely what must happen in order for you to make real progress. You cannot tell a dead end from a promising road forward until you have actually gone there. Sometimes the fear of running into a dead end can keep researchers from exploring what will turn out to have been a tremendous missed opportunity, just as soon as some intrepid soul decides to give it a try. What makes the difference between a gifted researcher and an ordinary one is not the confidence they have in the hypothesis with which they start out, but the courage and the ingenuity with which they try to nail it down until they are forced to change course.

There is only one thing that really matters, namely, that you take no shortcuts. So long as you follow the requirements for the proposal that I have listed above, you will do well. These requirements, simple as they are, frame the substance of research. They can be refined in many ways. But none of them can be left out. If you deal with them in a sustained and methodical way, your initial, tentative, preliminary paper proposal will gradually turn into a long and substantial piece of original research. That will be your seminar paper.

Readings

The list of readings is divided into five sections:

1. Required Readings on Reserve in Regenstein Library
2. Required Readings on Electronic Reserve
3. Required Primary Sources on Electronic Reserve
4. Primary Sources on Reserve in Regenstein Library
5. Recommended Readings

1. Required Readings on Reserve in Regenstein Library

- Barracough, Geoffrey. *Papal Provisions: Aspects of Church History, Constitutional, Legal, and Administrative in the Later Middle Ages*. Oxford: B. Blackwell, 1935. BX1955.B3. ISBN 0837141982. OUT OF PRINT
- Bartlett, Robert. *Trial by Fire and Water: The Medieval Judicial Ordeal*. Brattleboro, VT: Echo Point Books, 2014. XXKJ1018.B370 1986. ISBN 978-1626549142
- Brunner, Otto. *Land and Lordship: Structures of Governance in Medieval Austria*. Trans. Howard Kaminsky and James Van Horn Melton. Philadelphia: University of Pennsylvania Press, 1992. JN1623.B75130 1992. ISBN 0812281837. OUT OF PRINT, NOT AVAILABLE FOR SALE.
- Brunner, Otto. *Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*. 5th ed. Vienna: R. M. Rohrer, 1965. JN1623.B89 1973. If you can read German, you may substitute this for the English translation.
- Elias, Norbert. *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*. Ed. Eric Dunning, Johan Goudsblom, and Stephen Mennell. Trans. Edmund Jephcott. Rev. ed. Oxford: Blackwell Publishers, 2000. CB83.E413 2000. ISBN 978-0631221616
- Fasolt, Constantin. *Council and Hierarchy: The Political Thought of William Durant the Younger*. Cambridge: Cambridge University Press, 1991. JC513.F370 1991. ISBN 978-0521894081
- Gellner, Ernest. *Nations and Nationalism*. 2nd ed. Ithaca: Cornell University Press, 2006. JC311.G482 2008. ISBN 978-0801475009. The body of the text is the same in the first edition.
- Hegel, Georg Wilhelm Friedrich. *The Philosophy of History*. Trans. J. Sibree. New York: Dover, 1956. D16.8.H48. ISBN 978-0486437552
- Langbein, John. *Torture and the Law of Proof: Europe and England in the Ancien Regime*. Chicago: University of Chicago Press, 1977. HV8593.L37. ISBN 978-0226468945. The body of the text is the same in later editions.
- Oakley, Francis. *The Mortgage of the Past: Reshaping the Ancient Political Inheritance (1050–1300)*. New Haven, CT: Yale University Press, 2012. JC375.O342 2012. ISBN 9780300176339
- Tierney, Brian. *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism*. Cambridge: Cambridge University Press, 1955. BR270.T56. ISBN 978-0521143684.
- Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625*. Atlanta, Georgia: Scholars Press, 1997. XXK445.T54 1997. ISBN 978-0802848543

2. Required Readings on Chalk or Online

- Clanchy, Michael. "Law and Love in the Middle Ages." In *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy, 47–67. Cambridge: Cambridge University Press, 1983. XX KJ147.D57 1983. ISBN 978-0521534451
- Fasolt, Constantin. "Magnus Ordo Differentie." In *Council and Hierarchy: The Political Thought of William Durant the Younger, 177–216*. Cambridge: Cambridge University Press, 1991. JC513.F370 1991 ISBN 978-0521894081
- Fasolt, Constantin. "Visions of Order in the Canonists and Civilians." In *Past Sense: Studies in Medieval and Early Modern European History*, 467–92. Leiden: Brill, 2014. D203.H360 1994. ISBN 978-9004268920

- Hegel, Georg Wilhelm Friedrich. *The Philosophy of History* (Selections). Trans. J. Sibree. New York: Dover, 1956. D16.8.H48. ISBN 978-0486437552
- Langbein, John. *Torture and the Law of Proof: Europe and England in the Ancien Regime*. Chicago: University of Chicago Press, 1977. XXKD8225.T6 L36 1977eb. ISBN 978-0226468945. Available online through the library catalog.
- Oakley, Francis. "General Introduction." In *The Mortgage of the Past: Reshaping the Ancient Political Inheritance (1050–1300)*, by Francis Oakley, ix–xiii. New Haven, CT: Yale University Press, 2012. JC375.O342 2012. ISBN 9780300176339
- Tierney, Brian. *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Selections). Cambridge: Cambridge University Press, 1955. BR270.T56. ISBN 978-0521143684.
- Tierney, Brian. "Hierarchy, Consent, and the 'Western Tradition'." *Political Theory* 15 (1987): 646–52. Available online on JSTOR. This is a critical response to Samuel Beer, "The Rule of the Wise and the Holy: Hierarchy in the Thomistic System," *Political Theory* 14 (1986): 391–422, available online on JSTOR.
- Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* (Selections). Atlanta, Georgia: Scholars Press, 1997. XXK445.T54 1997. ISBN 978-0802848543

3. Required Primary Sources on Chalk or Online

- Alfonso X. "Part 1, Title 1." In *Las Siete partidas*, ed. Robert I. Burns, trans. Samuel Parsons Scott, 1:1–9. 5 vols. Philadelphia: University of Pennsylvania Press, 2001. XXKKT142 2001. ISBN 0812217381
- Bartolus of Sassoferrato. "On the Tyrant." In *University of Chicago Readings in Western Civilization*, 5:7–30. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U640 1986 vol. 5. ISBN 978-0226069456
- Beaumanoir, Philippe de. "Prologue and Chapter 1." In *The Coutumes de Beauvaisis of Philippe de Beaumanoir*, trans. F. R. P. Akehurst, 1–32. Philadelphia: University of Pennsylvania Press, 1992. KD1124.E16C613 1992. ISBN 0812231058
- Bodin, Jean. "Six Books of a Commonweale." In *University of Chicago Readings in Western Civilization*, 6:222–67. 9 vols. Chicago: University of Chicago Press, 1987. CB245.U640 1986 vol. 6. ISBN 978-0226069487
- Bracton, Henry de. "Introduction." In *De legibus et consuetudinibus Angliae. On the Laws and Customs of England*, ed. George E. Woodbine, trans. Samuel E. Thorne, 1:19–41. 4 vols. Harvard: Harvard University Press, 1968–77. JN137.B79. ISBN 1575883864
- Constitution of the United States*. Available online at http://www.archives.gov/exhibits/charters/constitution_transcript.html
- Declaration of Independence*. Available online at http://www.archives.gov/exhibits/charters/declaration_transcript.html
- "Decrees of the National Assembly (10–11 August 1789). The October Days; Declaration of the Rights of Man and the Citizen. The Civil Constitution of the Clergy (12 July 1790)." In *University of Chicago Readings in Western Civilization*, 7:226–42. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U640 1986 vol. 7. ISBN 978-0226069500
- Eike von Repgow. *Der Oldenburger Sachsenspiegel: Codex picturatus Oldenburgensis CIM I 410 der Landesbibliothek Oldenburg*. (Selected passages from the manuscript and the translation.) Ed. Ruth Schmidt-Wiegand, Wolfgang Milde, and Werner Peters. Trans.

- Wolfgang Wallbraun. 2 vols. Graz: Akademische Druck-u. Verlagsanstalt, 2006. XXXK205.45.O43 2006. ISBN 9783201018685
- Gratian. "Distinctions 1–6." In *The Treatise on Laws: Decretum DD. 1–20, with the ordinary gloss*, trans. Augustine Thompson and James Gordley, 1–23. Washington, DC: Catholic University of America Press, 1993. BX1935.G737 1993. ISBN 978-0813207865
- John of Salisbury. "Policraticus." In *University of Chicago Readings in Western Civilization*, 4:180–214. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U640 1986 vol. 4. ISBN 978-0226069432
- John of Viterbo. "On the Government of Cities (1240s)." In *University of Chicago Readings in Western Civilization*, 4:102–4. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U640 1986 vol. 4. ISBN 978-0226069432
- Justinian. "Institutes (Selections)." In *University of Chicago Readings in Western Civilization*, 2:207–16. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U640 1986 vol. 2. ISBN 978-0226069371
- Justinian. "Justice and Law." In *The Digest of Justinian*, Bk. 1, Title 1, pp. 1–3. Ed. Theodor Mommsen and Paul Krueger. Trans. Alan Watson. 4 vols. Philadelphia: University of Pennsylvania Press, 1985. XXKJA1192.2.D54 1985. ISBN 978-0812279450
- Luther, Martin. "The Freedom of a Christian." In *Luther's Works*, ed. Jaroslav Pelikan, Hilton C. Oswald, and Helmut T. Lehmann, trans. William A. Lambert and rev. by Harold J. Grimm, 31:327–77. Philadelphia: Fortress Press, 1957. BR330.E5 1955. ISBN 978-0800603311
- Luther, Martin. "Preface to the Complete Edition of Luther's Latin Writings, 1545." In *Luther's Works*, ed. Lewis W. Spitz and Helmut T. Lehmann, 34:327–38. Philadelphia: Fortress Press, 1960. BR330.E5 1955 vol. 34. ISBN: 978-0800603342
- Luther, Martin. "The Twelve Articles and Luther's Admonition to Peace." In *Luther's Works*, ed. Jaroslav Pelikan and Helmut T. Lehmann, trans. Robert C. Schultz, 46:3–43. Philadelphia: Fortress Press, 1967. BR330.E5 1955 vol. 46. ISBN: 978-0800603465
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- Scala, Bartolomeo. "Dialogue on Laws and Judgments." In *University of Chicago Readings in Western Civilization*, 5:171–4. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U640 1986 vol. 5. ISBN 978-0226069456
- Thomas Aquinas. "Treatise on Law." In *On Politics and Ethics: A New Translation, Backgrounds, Interpretations*, trans. Paul E. Sigmund, 44–60. New York: Norton, 1988. BX890.T62E60 1988. ISBN 978-0393952438

4. Primary Sources on Reserve in Regenstein Library

- Alfonso X. *Las Siete partidas*, ed. Robert I. Burns, trans. Samuel Parsons Scott. 5 vols. Philadelphia: University of Pennsylvania Press, 2001. XXXKKT142 2001. ISBN 0812217381
- Beaumanoir, Philippe de. *The Coutumes de Beauvaisis of Philippe de Beaumanoir*, trans. F. R. P. Akehurst. Philadelphia: University of Pennsylvania Press, 1992. KD1124.E16C613 1992. ISBN 0812231058
- Bodin, Jean. *Bodin: On Sovereignty*. Trans. Julian Franklin. Cambridge: Cambridge University Press, 1992. JC327.B6625130 1992. ISBN 978-0521349925
- Boyer, John W., and Julius Kirshner, eds. *University of Chicago Readings in Western Civilization*. 9 vols. Chicago: University of Chicago Press, 1986–87. CB245.U64 1986

- Bracton, Henry de. *De legibus et consuetudinibus Angliae. On the Laws and Customs of England*, ed. George E. Woodbine, trans. Samuel E. Thorne. 4 vols. Harvard: Harvard University Press, 1968–77. JN137.B79. ISBN 1575883864
- Eike von Repgow. *Der Oldenburger Sachsenspiegel: Codex picturatus Oldenburgensis CIM I 410 der Landesbibliothek Oldenburg*. Ed. Ruth Schmidt-Wiegand, Wolfgang Milde, and Werner Peters. Trans. Wolfgang Wallbraun. 2 vols. Graz: Akademische Druck-u. Verlagsanstalt, 2006. XXKK205.45.O43 2006. ISBN 9783201018685
- Gratian. *The Treatise on Laws: Decretum DD. 1–20, with the ordinary gloss*. Trans. Augustine Thompson and James Gordley. Washington, DC: Catholic University of America Press, 1993. BX1935.G737 1993. ISBN 978-0813207865
- Locke, John. *Two Treatises of Government*, ed. Peter Laslett, 265–428. Cambridge: Cambridge University Press, 1988. JC153.L80 1988. ISBN 978-0521357302
- Locke, John. *A Letter Concerning Toleration*. Ed. James Tully. Indianapolis: Hackett Publishing Company, 1983. BR1610.L823 1983. ISBN 978-0915145607
- Luther and Calvin on Secular Authority*. Ed. Harro Höpfl. Cambridge: Cambridge University Press, 1991. BV629.L80 1991. ISBN 978-0521349864
- Machiavelli, Niccolò. *The Prince*. 2nd ed. Trans. Harvey Mansfield, Jr. Chicago: University of Chicago Press, 1998. JC143.M38 1998. ISBN 978-0226500447
- Thomas Aquinas. *On Politics and Ethics: A New Translation, Backgrounds, Interpretations*. Ed. Paul E. Sigmund. Trans. Paul E. Sigmund. New York: Norton, 1988. BX890.T62E60 1988. ISBN 978-0393952438

5. Recommended Readings on Reserve in Regenstein Library

If you can do any additional reading, read these three books:

- Tierney, Brian. *The Crisis of Church and State, 1050–1300*. Englewood Cliffs, NJ: Prentice Hall, 1964. BV630.T56. ISBN 978-0802067012
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge MA: Harvard University Press, 1983. JA81.B491; XXK150.B470 1983. ISBN 978-0674517769
- Bellomo, Manlio. *The Common Legal Past of Europe, 1000–1800*. Washington, DC: Catholic University of America Press, 1995. XXKJ147.B45130 1995. ISBN 978-0813208145

Tierney's *Crisis of Church and State* is an extraordinarily succinct and effective collection of excerpts from primary sources, transformed into a narrative history by Tierney's accompanying comments. Berman and Bellomo are standard surveys. Berman's *Law and Revolution* covers a lot more ground and makes a clear and compelling case for the importance of the church in European legal history, but it is long and sometimes plodding. Bellomo's *Common Legal Past of Europe* is concise, but sharply focused on the *ius commune*. I would read Tierney first, then parts of Berman (especially the beginning) and/or the whole of Bellomo.

Schedule of Readings

For the most part I have kept the readings to 300 pages per week or less, so that you will have enough time to read all of the assigned material carefully. Please do. The exceptions are two weeks early in the quarter: third week (400 pages) and fourth week (560 pages, including 80 pages of appendices and notes). Make sure you get a head-start on those weeks.

First week: Introduction to the Seminar

Second week: From Pre-Industrial Society to the Modern State

- Gellner, Ernest. *Nations and Nationalism*. 2nd ed. Ithaca: Cornell University Press, 2006.
- Hegel, Georg Wilhelm Friedrich. *The Philosophy of History*. Trans. J. Sibree. New York: Dover, 1956.
- xi–xvi: "Charles Hegel's Preface" and "Contents"
- 341–6: "The German World – The Principle of Spiritual Freedom"
- 412–27: "The Reformation"
- 427–38: "The Influence of the Reformation on Political Development"
- 438–57: "The Eclaircissement and Revolution"
- Oakley, Francis. "General Introduction." In *The Mortgage of the Past: Reshaping the Ancient Political Inheritance (1050–1300)*, by Francis Oakley, ix–xiii. New Haven, CT: Yale University Press, 2012.

Third week: Politics Without the State

- Brunner, Otto. *Land and Lordship: Structures of Governance in Medieval Austria*. Philadelphia: University of Pennsylvania Press, 1992.
- Clanchy, Michael. "Law and Love in the Middle Ages." In *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy, 47–67. Cambridge: Cambridge University Press, 1983.
- John of Viterbo. "On the Government of Cities (1240s)." In *University of Chicago Readings in Western Civilization*, 4:102–4. 9 vols. Chicago: University of Chicago Press, 1986–87.

Fourth week: The Individual and the State

- Elias, Norbert. *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*. Ed. Eric Dunning, Johan Goudsblom, and Stephen Mennell. Trans. Edmund Jephcott. Rev. ed. Oxford: Blackwell Publishers, 2000. Make sure not to overlook Elias's preface (pp. ix–xv) and his 1968 postscript (pp. 449–83).

Fifth week: The Formation of European Law

- Bartlett, Robert. *Trial by Fire and Water: The Medieval Judicial Ordeal*. Brattleboro, VT: Echo Point Books, 2014.
- BASIC SELECTIONS FROM MAJOR SOURCES OF MEDIEVAL LAW ARRANGED IN CHRONOLOGICAL ORDER:
- Justinian. "Justice and Law." In *The Digest of Justinian*, ed. Theodor Mommsen and Paul Krueger, trans. Alan Watson, 1:1–3. 4 vols. Philadelphia: University of Pennsylvania Press, 1985.
- Justinian. "Institutes (Selections)." In *University of Chicago Readings in Western Civilization*, 2:207–16. 9 vols. Chicago: University of Chicago Press, 1986–87.
- Gratian. "Distinctions 1–6." In *The Treatise on Laws: Decretum DD. 1–20, with the ordinary gloss*, trans. Augustine Thompson and James Gordley, 1–22. Washington, DC: Catholic University of America Press, 1993.
- John of Salisbury. "Policraticus." In *University of Chicago Readings in Western Civilization*, 4:180–214. 9 vols. Chicago: University of Chicago Press, 1986–87.
- Eike von Repgow. *Der Oldenburger Sachsenspiegel: Codex picturatus Oldenburgensis CIM I 410 der Landesbibliothek Oldenburg*. Ed. Ruth Schmidt-Wiegand, Wolfgang

Milde, and Werner Peters. Trans. Wolfgang Wallbraun. 2 vols. Graz: Akademische Druck-u. Verlagsanstalt, 2006. Selected passages from the manuscript, the commentary, and the translation. I do not expect you to 'read' these selections, because they are reproduced from a medieval manuscript written in German. But I would like you to look at the illustrations in the margins because I will comment on some of them in class. For those of you who can read German, I have included the corresponding German commentary on the illustrations and translation of the text.

Bracton, Henry de. "Introduction." In *De legibus et consuetudinibus Angliae. On the Laws and Customs of England*, ed. George E. Woodbine, trans. Samuel E. Thorne, 1:19–28. 4 vols. Harvard: Harvard University Press, 1968–77.

Alfonso X. "Part 1, Title 1." In *Las Siete partidas*, ed. Robert I. Burns, trans. Samuel Parsons Scott, 1:1–9. 5 vols. Philadelphia: University of Pennsylvania Press, 2001.

Thomas Aquinas. "Treatise on Law." In *On Politics and Ethics: A New Translation, Backgrounds, Interpretations*, by Thomas Aquinas, ed. Paul E. Sigmund, trans. Paul E. Sigmund, 44–60. New York: Norton, 1988.

Beaumanoir, Philippe de. "Selections from Prologue and Chapter 1." In *The Coutumes de Beauvaisis of Philippe de Beaumanoir*, trans. F. R. P. Akehurst, 3–5, 14–21. Philadelphia: University of Pennsylvania Press, 1992.

Sixth week: The Church

Barracrough, Geoffrey. *Papal Provisions: Aspects of Church History, Constitutional, Legal, and Administrative in the Later Middle Ages*. Oxford: B. Blackwell, 1935.

Tierney, Brian. *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism*. Cambridge: Cambridge University Press, 1955.

1–20: "Introductory: The Conciliar Theory and the Canonists"

23–46: "Pope and Church"

47–67: "Pope and General Council"

Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625*. Atlanta, Georgia: Scholars Press, 1997.

1–9: "Introduction: Modern Problems and Historical Approaches"

43–77: "Origins of Natural Rights Language: Texts and Contexts, 1150–1250"

343–8: "Conclusion"

Tierney, Brian. "Hierarchy, Consent, and the 'Western Tradition'." *Political Theory* 15 (1987): 646–52. This is a critical response to Samuel Beer, "The Rule of the Wise and the Holy: Hierarchy in the Thomistic System," *Political Theory* 14 (1986): 391–422, available on JSTOR, in case you're curious.

Seventh week: The Demotion of Law, A

Bartolus of Sassoferrato. "On the Tyrant." In *University of Chicago Readings in Western Civilization*, 5:7–30. 9 vols. Chicago: University of Chicago Press, 1986–87.

Scala, Bartolomeo. "Dialogue on Laws and Judgments." In *University of Chicago Readings in Western Civilization*, 5:171–4. 9 vols. Chicago: University of Chicago Press, 1986–87.

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

- Machiavelli, Niccolò. "Discourses on the First Ten Books of Titus Livius." *University of Chicago Readings in Western Civilization*, 5:185–210. 9 vols. Chicago: University of Chicago Press, 1986–87.
- Fasolt, Constantin. "Magnus Ordo Differentie (Selections)." In *Council and Hierarchy: The Political Thought of William Durant the Younger*, 177–84, 212–16. Cambridge: Cambridge University Press, 1991.
- Fasolt, Constantin. "Visions of Order in the Canonists and Civilians." In *Past Sense: Studies in Medieval and Early Modern European History*, 467–92. Leiden: Brill, 2014.

Eighth week: The Demotion of Law, B

- Luther, Martin. "Preface to the Complete Edition of Luther's Latin Writings, 1545." In *Luther's Works*, ed. Lewis W. Spitz and Helmut T. Lehmann, 34:327–38. Philadelphia: Fortress Press, 1960.
- Luther, Martin. "The Freedom of a Christian." In *Luther's Works*, ed. Jaroslav Pelikan, Hilton C. Oswald, and Helmut T. Lehmann, trans. William A. Lambert and rev. by Harold J. Grimm, vol. 31:327–77. Philadelphia: Fortress Press, 1957.
- Luther, Martin. "The Twelve Articles and Luther's Admonition to Peace." In *Luther's Works*, ed. Jaroslav Pelikan and Helmut T. Lehmann, trans. Robert C. Schultz, 46:8–43. Philadelphia: Fortress Press, 1967.
- Luther and Calvin on Secular Authority*. Ed. Harro Höpfl. Cambridge: Cambridge University Press, 1991.

Ninth week: The Arrival of the State

- Bodin, Jean. *On Sovereignty: Four Chapters from Six Books of the Commonwealth*. Cambridge: Cambridge University Press, 1992.
- Bodin, Jean. "Six Books of a Commonweale." In *University of Chicago Readings in Western Civilization*, 6:222–40, 262–7. 9 vols. Chicago: University of Chicago Press, 1987.
- Langbein, John. *Torture and the Law of Proof: Europe and England in the Ancien Regime*. Chicago: University of Chicago Press, 1977. Read the prefaces and pp. 1–69.

Tenth week: The Limits of the State

- Locke, John. *A Letter Concerning Toleration*. Ed. James Tully. Indianapolis: Hackett Publishing Company, 1983.
- Locke, John. "Second Treatise of Government." In *Two Treatises of Government*, ed. Peter Laslett, 265–428. Cambridge: Cambridge University Press, 1988.
- Declaration of Independence*. Available online at http://www.archives.gov/exhibits/charters/declaration_transcript.html
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Some Major Pieces of Scholarship That You Should Also Know About

- Allen, John William. *A History of Political Thought in the Sixteenth Century*. London: Methuen, 1928.

- Bartlett, Robert. *The Making of Europe: Conquest, Colonization, and Cultural Change, 950–1350*. Princeton, NJ: Princeton University Press, 1993.
- Berman, Harold J. *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition*. Cambridge, MA: Belknap Press, 2004.
- Bloch, Marc. *The Royal Touch*. London: Routledge and Kegan Paul, 1973.
- Bossy, John H., ed. *Disputes and Settlements: Law and Human Relations in the West*. Past and present publications. Cambridge: Cambridge University Press, 1983.
- Burns, John H., and Mark Goldie, eds. *Cambridge History of Political Thought, 1450–1700*. Cambridge: Cambridge University Press, 1991.
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- Calasso, Francesco. *I glossatori e la teoria della sovranità*. 3rd ed. Milan: Giuffrè, 1957.
- Carlyle, Robert Warrand, and Alexander James Carlyle. *A History of Mediaeval Political Theory in the West*. 6 vols. Edinburgh: Blackwood, 1903–36.
- Conrad, Hermann. *Deutsche Rechtsgeschichte*. 2nd ed. 2 vols. Karlsruhe: C. F. Müller, 1962–66.
- Cortese, Ennio. *La norma giuridica: Spunti teorici nel diritto comune classico*. 2 vols. Milan: Giuffrè, 1962–64.
- Costa, Pietro. *Iurisdictio: Semantica del potere politico nella pubblicistica medievale, 1100–1433*. Milan: A. Giuffrè, 1969.
- Davis, Kathleen. *Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time*. Philadelphia: University of Pennsylvania Press, 2008.
- Feine, Hans Erich. *Kirchliche Rechtsgeschichte: Die katholische Kirche*. 5th ed. Cologne: Böhlau, 1972.
- Figgis, John Neville. *Studies of Political Thought from Gerson to Grotius, 1414–1625*. 2nd ed. Cambridge: Cambridge University Press, 1916.
- Fournier, Paul, and Gabriel Le Bras. *Histoire des collections canoniques en Occident depuis les Fausses Décrétales jusqu'au Décret de Gratien*. 2 vols. Paris: Recueil Sirey, 1931–32.
- Franklin, Julian H. *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History*. New York: Columbia University Press, 1963.
- Gagnér, Sten. *Studien zur Ideengeschichte der Gesetzgebung*. Uppsala: Almqvist & Wiksell, 1960.
- Gierke, Otto Friedrich v. *Das deutsche Genossenschaftsrecht*. 4 vols. Berlin: Weidmann, 1868–1913.
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- Kantorowicz, Ernst. *The King's Two Bodies: A Study in Medieval Political Theology*. Princeton: Princeton University Press, 1957.
- Kantorowicz, Hermann. *Studies in the Glossators of the Roman Law: Newly Discovered Writings of the 12th Century*. Ed. Peter Weimar. Aalen: Scientia-Verlag, 1969.
- Kelley, Donald R. *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance*. New York: Columbia University Press, 1970.
- Kisch, Guido. *Erasmus und die Jurisprudenz seiner Zeit: Studien zum humanistischen Rechtsdenken*. Basel: Helbing & Lichtenhahn, 1960.
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