

History 4013: The History of English Constitutional Law to 1688

Syllabus • Spring 2008

MWF, 2-2:50pm
Hale 230



Professor Lester
Hellem 348
Office Hours:
W: 3:30-4:30
& R: 11-12
And by appointment
E-mail:
alester@colorado.edu

Course Description

This course explores the development of English constitutional law and the English legal tradition from the Norman Conquest through the English Revolution (ca. 1066-1688). Through lectures and discussion we will trace the impact of the Norman Conquest of England and examine the origins and developments of English legal and political institutions such as kingship, the common law, the evolution of legal procedure, and the court and jury system as well as specific aspects of the law including the treatment of aliens, women, heirs, traitors and the legal framework for the emergence of the English Church in the fifteenth century. When applicable the implications of these institutions for developments in the contemporary American and English legal systems will be addressed.

Goals of the Course

The overarching goals of the course are threefold: (1) to offer students a synthesis of the place and meaning of law and legal change within the larger framework of the social history of pre-modern England. (2) The course also seeks to introduce students to the techniques and practices of reading and interpreting the law in the past. This involves a considerable commitment to patient, careful, detailed reading of primary sources, many of which can be terse and initially impenetrable. In turn, to see how the law both evolved and functioned in the lives of individuals, students will gain the skills of reconstructive reading, reading as historians do with an eye to the world that lies behind and beyond the text at hand. Finally, (3) through the written assignments and exams required for the course students will gain an expertise in writing focused, clear, thesis-driven analytic papers. This type of writing will be pursued with an eye to legal writing and the importance of crafting a clear and convincing argument.

Course Requirements

Evaluation in this course is based upon four components:

(1) Regular attendance in lecture and active and engaged participation in the discussion meetings (this is participation above and beyond one's physical presence in the classroom). Students are expected to do a thorough reading of all course materials, to take notes in lecture and as they read and to generate questions that will propel discussion.

Lectures are intended to provide you with a broad historical framework that will aid you in contextualizing the weekly reading assignments. Because there is not a textbook for the legal aspects of this course lectures will be absolutely crucial to understanding many of the key components, terms, ideas and developments that lie at the heart of this class. The discussion meetings allow you to share your insights, questions and interpretations of the readings with your fellow students and to respond to the ideas raised by others. Discussion is also a time to review collectively general ideas and themes in the course. Although the law comes down to us in a written form that often appears quite stable it was a malleable tool created in dynamic circumstances to answer needs, redress wrongs, and craft political authority. One of the best reflections of this dynamic quality of the law is the discussion its creation and meaning must generate. To this end you should complete the readings in advance of the discussion meetings and allow time to reflect on their meaning and significance. You should come prepared to raise questions and participate. Always bring the weekly readings with you.

(2) Performance on two exams: a midterm and a final. Both exams will follow the same format for which there will be a section devoted to terms from lectures and readings and a essay portion that asks students to synthesize a theme from the course. The list of possible terms and essay questions will be pre-circulated at least two weeks before the exam. Time will also be set aside for review.

(3) Two short (3-pages each) legal brief assignments. For this exercise you are asked to give a cogent and clear explanation of the meaning and significance of an aspect of English constitutional law using one of the primary documents in the course packet. You will present the facts of a specific case or statute and explain why it came into being and what its intended effects were. Your conclusions should be supported by an assessment of the pertinent historical circumstances and other legal documents or decisions that pertained to the creation of the new law. A description of these assignments will be pre-circulated in the week prior to the due date. Parenthetical citations will suffice for the briefs. In contrast to the exams and final paper, the briefs will be graded on a scale of A-B-C-F.

(4) Finally, students must complete a final research paper of 12-15 pages in length. The research paper is a thesis-driven essay on an aspect of English law of your choosing due Tuesday May 6th 2008 by 5pm. The paper must focus on one or more primary source documents and offer an interpretation and contextualization of these sources. All students must arrange to discuss their proposed research topic with the instructor **before 14 March 2008**. A formal paper prospectus is due **Friday 21 March 2008**. The prospectus (worth 10% of your final paper grade) should include a one-page overview of your topic, a preliminary thesis, and a preliminary bibliography of no fewer than ten sources including, but not limited to primary sources and secondary books and articles. Footnote citations are required for the final draft. For guidance the instructor will circulate several handouts relating to citation styles, resources for research papers and further details about this assignments. Please also take advantage of the many research resources

available through Norlin library and consult the History department's guidelines for writing research papers at www.colorado.edu/history/students/index.htm

Evaluation in the course is as follows:

Midterm Exam	(20%)
Final Exam	(20%)
Legal Briefs (2, 3-pages each)	(15%)
Research Paper	(25%)
Attendance and Participation	(20%)

NB: ****Students must complete ALL assignments to receive a passing grade in the course****



COURSE TEXTBOOKS AND READINGS

All of the books and articles and the packet necessary for the course are available on reserve in Norlin Library. The following books are also available for purchase at the CU Bookstore:

C. Hollister, et al., The Making of England: To 1399, 8th edition (New York: Houghton Mifflin, 2001). [ISBN: 0-618-00101-8]

L. Smith, The Realm of England, 1399-1688, 8th edition (New York: Houghton Mifflin, 2001). [ISBN: 0-618-00102-6]

William Shakespeare, Richard III revised edition (New York: Signet Classics, 1998) [ISBN: 9780451526953]

A **Required** Course Packet is available for purchase at the CU Bookstore. This packet will be absolutely indispensable for success in the course.

Several selected articles have also been placed on **e-reserve** and we will draw on these texts during the course of the semester.

OTHER IMPORTANT MATTERS

Academic Integrity and the Course Environment

Academic integrity means upholding the highest standards in the performance of your course work. Taking pride in the formation, acknowledgement, and execution of your own ideas, from conception through to the final written product, is part of the academic and intellectual process. To violate or alter this by taking ideas or written material from another source (be it a fellow student, a published book, article or website) is both morally dishonest as well as breach of the University's Honor Code. Moreover, it compromises the goals and purposes of academic study under any circumstances. Academic integrity is as much about your own personal moral responsibilities as it is about your grade in this course.

Plagiarism and the Honor Code

All students of the University of Colorado at Boulder are responsible for knowing and adhering to the academic integrity policy of this institution. Violations of this policy may include: cheating, plagiarism, aid of academic dishonesty, fabrication, lying, bribery, and threatening behavior. All incidents of academic misconduct shall be reported to the Honor Code Council (honor@colorado.edu; 303-725-2273). Students who are found to be in violation of the academic integrity policy will be subject to both academic sanctions from the faculty member and non-academic sanctions (including but not limited to university probation, suspension or expulsion). Additional information on the Honor Code can be found at <http://www.colorado.edu/policies/honor.html> and <http://www.colorado.edu/academics/honorcode/>

If you are found to be in violation of the Honor Code in this course, specifically if you plagiarize any material whatsoever, you will receive a **Grade of F** for *the course*.

Personal Conduct and Behavior

Students and faculty each have responsibility for maintaining an appropriate learning environment. Students who fail to adhere to such behavioral standards may be subject to discipline. Faculty have the professional responsibility to treat all students with understanding, dignity and respect, to guide classroom discussion and to set reasonable limits on the manner in which they and their students express opinions. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. See policies at <http://www.colorado.edu/policies/classbehavior.html> and http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code at

The University of Colorado at Boulder policy on Discrimination and Harassment, the University of Colorado policy on Sexual Harassment and the University of Colorado policy on Amorous Relationships apply to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of discrimination or harassment based upon race, color, national origin, sex, age, disability, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about the ODH, the above referenced policies and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh>

Students with Disabilities

If you qualify for accommodations because of a disability, please submit a letter to me from Disability Services in a timely manner so that your needs may be addressed. Disability Services determines accommodations based on documented disabilities. Please contact: 303/492-8671, Willard 322 or <http://www.colorado.edu/disabilityservices>

Religious Observances/Class Absences

Attendance in this course is required for both lectures and discussion. Please notify me early in the semester if you anticipate that you may miss a class meeting so that there is adequate time to make necessary arrangements. If you are absent for more than three unexcused class meetings your participation grade will be an automatic **F**.

Campus policy regarding religious observances requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. See policy details at: http://www.colorado.edu/policies/fac_relig.html and <http://www.interfaithcalendar.org/>

SCHEDULE OF LECTURES, DISCUSSIONS AND COURSE READINGS

[P] = Course Packet



Week I: The Origins of the Common Law

M: Jan 14 – Lecture 1: Introductions -- Where to begin?

W: Jan 16 – Lecture 2: The Norman Conquest and English Kingship

F: Jan 18 – **NO CLASS** – Prof. Lester is at a conference

Read: Become familiar with the map of England (see back of front cover of Hollister, et. al.)
Hollister, et al, pp. 115-124 (*optional*)

[P] Stephenson and Marcham, nos. 5

Week II: Institutions of the Realm

M: Jan 21 – **NO CLASS** – Martin Luther King Jr. Holiday

W: Jan 23 – Lecture 3: Institutions of government and the jurisdictions of England

F: Jan 25 – **Discussion:** The French in England and the Domesday Book

Read:

Hollister et al, pp. 125-53

[P] Pollock and Maitland, I, pp. 79-87

[P] Stephenson and Marcham, nos. 16-18, 21-22.

THEME: Consider how the power of an outside culture is imposed. Was the Norman Conquest an act of colonization? If so, how and why? Consider the nature and meaning of hegemony in England between 1066-1087.

Week III: Domesday and Beyond

M: Jan 28 – Lecture 4: The Succession of Henry I

W: Jan 30 – Lecture 5: Norman Kingship and the Rise of New Men

F: Feb 1 – **Discussion:** The Coronation Charter and the “Good Old Law”

Read:

Hollister et al, pp. 154-72

Paul Hyams, “Trial by Ordeal: The Key to Proof in the Early Common Law,” in On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne, ed. Morris S. Alnold, et al. (Chapel Hill: The University of North Carolina Press, 1981), pp. 190-225 on e-reserve

[P] Stephenson and Marcham, nos. 23, 25, 29

THEME: Consider the nature of English kingship – how was it constituted in the time of Edward the Confessor; what was it like under Henry I? What does it mean for the law to look back at older laws? What is the nature of legal precedent? According to Hyams, how does a legal proof change during the twelfth century?

Week IV: Henry II – Part I: Land and its Holding

M: Feb 4 – Lecture 6: Stephen and the “Unlaw”

W: Feb 6 – Lecture 7: Restoring Justice and Order under Henry II

F: Feb 8 – **Discussion**: Juries and the Blessedness of Seissin

Read:

Hollister et al, pp. 172-88

[P] Pollock and Maitland, vol. I, pp. 136-73, 458-85

[P] Stephenson and Marcham, nos. 30-33

Optional: John Hudson, “Henry II’s Legal Reforms and the Development of Land Law, 1066-1189,” in Hudson, Land, Law, and Lordship in Anglo-Norman England (Oxford, Clarendon Press, 1994, reprinted 2004), pp. 253-81. – on **e-reserve**.

THEME: How did Stephen’s rule undermine or strengthen the need for and force of the law? What was the nature of restorative justice under Henry II? Why does possession, or seissin, matter? And who is denied access to the law? On what grounds?

Week V: Henry II – Part II: Criminous Clerks

M: Feb 11 – Lecture 8: The Law and Procedure – the nature of the Writ

**** FIRST BRIEF DUE ****

W: Feb 13 – Lecture 9: Thomas Becket and the limits of royal authority

F: Feb 15 – **Discussion**: Miracles of St. Thomas Becket and the Burdens of Proof

Read:

Hollister et al, pp. 188-201

[P] Stephenson and Marcham, review no. 30 and 33

The Miracles of Saint Thomas Becket – on **e-reserve**

Revisit Hyams – **e-reserve**

THEME: What were the limits of English royal power? What jurisdictions existed in England during the mid-twelfth century, or put another way, what types of law co-existed in the realm? What did the writ do for the king? What did access to a writ do for the common man?

Week VI: Parvus Rex et Magna Carta

M: Feb 18 – Lecture 10: The Reign of King John and Constriction of Royal Power

W: Feb 20 – Lecture 11: Magna Carta

F: Feb 22 – **Discussion**: Magna Carta and its Meaning

Read:

Hollister et al, pp. 201-212 (*pp. 213-256 optional*)

[P] Stephenson and Marcham, nos. 43-45

Optional: J. C. Holt, “The Charter and Its History,” in Holt, Magna Carta, 2nd edition (Cambridge: Cambridge University Press, 1992), pp. 1-22. – on **e-reserve**.

THEME: Consider what was new in the Magna Carta. What precedents did it appeal to and draw from? How did it change the nature of royal authority? Whose liberties did it protect?

Week VII: Bracton and Henry III

M: Feb 25 – Lecture 12: The Rise of the Petty Jury and the Power to Punish

W: Feb 27 – Lecture 13: The King, His Barons and the Law

F: Feb 29 – **Discussion**: Bracton and the Ideal of Justice

Read:

Hollister et al, pp. 257-85

[P] Stephenson and Marcham, nos. 45 (review) and 47

[P] Pollock and Maitland, I, 174-225

[P] Bracton, II, 1-42, 48, 109-10

[P] Carpenter, pp. 309-48

Optional: Scott L. Waugh, “Reluctant Knights and Jurors: Respites, Exemptions, and Public Obligations in the Reign of Henry III,” Speculum 58 (1983): 937-86 – on **e-reserve** and **JSTOR**.

THEME: We have seen the considerable evolution of the relationship between the king and the law in England. How does Bracton come down on this dynamic? In turn, knights and land-holders also have an obligation to the law of the realm: Consider how you would describe these obligations. Does this change one’s commitment to society?

Week VIII: Diminishing the Common Law – Legal Statutes and Taxation

M: March 3 – Lecture 14: The Rise of Parliament

W: March 5 – Lecture 15: Edward I and the Constitutional Crisis

F: March 7 – **MIDTERM EXAM**

Read:

Hollister et al, pp. 286-300

[P] Stephenson and Marcham, no. 51(A)

[P] Carpenter, pp. 381-408

THEME: Discussion this week will be integrated into lecture; nevertheless, consider the power and effect of Parliament. What was it created to do? What relationship does it initially have to royal authority and prerogatives? Are their parallels in our own modern law that point to the tensions behind this relationship?

Week IX: Calamities of the Fourteenth Century

M: March 10 – Lecture 16: England under Three Edwards, 1272-1377

W: March 12 – Lecture 17: Crafting Treason and Finding Felons

F: March 14 – **Discussion**: Royal Authority and the Crime of Treason

Read:

Hollister et al, pp. 301-360

[P] Stephenson and Marcham, nos. 55-56, 58-59, 61(C), 62(D), 62(F)

THEME: How did the legal definition of treason and treasonous behavior affect royal power? How did the climate of events and social conditions in the 14th century affect the creation of law? What does fear do to political power and royal authority?

Week X: Rule through One Hundred Years of War

M: March 17 – Lecture 18: Royal Prerogative in the Reign of Richard II and Following

W: March 19 – Lecture 19: JPs, MPs, and all the common folk

F: March 21 – **Discussion**: The Means of Self Government

**** RESEARCH PAPER PERSPECTUS DUE ****

Readings:

Smith, pp. 3-47

[P] Stephenson and Marcham, nos. 63 (E), 66(A), 67 (C) (E) (F), 69 (G)

Optional: J. W. McKenna, “The Myth of Parliamentary Sovereignty in Late-Medieval England,” The English Historical Review 9 (1979): 481-506.

THEME: What effect did the peasant’s rebellion of 1381 have on royal authority? How does the common law, unlike other forms of law (one thinks of Roman law in particular) limit the power of the king? What does this limitation mean for England as a “nation”? How are the common interests given power in the realm?

SPRING BREAK -- enjoy!

Week XI: A Renaissance of the Common Law

M: March 31 – **NO CLASS** – Prof. Lester is at a conference

W: April 2 – Lecture 20: Inns of Court and the Rise of the Tudor Rose

F: April 4 -- **Discussion**: Richard III and the Nature of Kingship

Read:

Smith, pp. 56-70

William Shakespeare, *Richard III*

THEME: What was at stake with the rise of the Tudor Dynasty? How does Shakespeare’s presentation of events illuminate the legal nature of kingship? How do law and literature intersect? Consider the importance or power of imagination in reconstructing meaning in the past.

Week XII: Dominium regale (et politicum) – Henry VIII

M: April 7 – Lecture 21: Practice of Kingship – Technical Innovations

W: April 9 – Lecture 22: “By Divine Right”– Acts of Supremacy

F: April 11 – **Discussion**: The Tudor Constitution

Read:

Smith, (pp. 71-88 *optional*), pp. 89-145

[P] Stephenson and Marcham, nos. 73 (A)(B)(C)(F), 74 (B)(G)(J)(K)(L)(M)

THEME: How do Henry VII and Henry VIII reclaim political authority for the crown? Why are they successful? What is England’s place in the context of Europe by the 16th century? What types of legal power do the Tudors use as a basis of comparison? What is the nature of the “Anglican Church” on the eve of Henry VIII’s death?

Week XIII: Religion in the Service of its Rulers

M: April 14 – Lecture 23: England Under Tudor Rule: The Reign of Elizabeth I

**** SECOND BRIEF DUE ****

W: April 16 – Lecture 24: Between Catholics and Puritans

F: April 18 – **Discussion**: The King's Two Bodies – Her Majesty and the State

Read:

Smith, pp. 149-86

[P] Stephenson and Marcham, nos. 77, 78 (A)(C), 81(A)(B)(D), 82 (P)

THEME: Consider the tensions surrounding class (that is, the distribution and political benefits of wealth) during the Tudor period. How do innovations in the law deepen these tensions? What role does Parliament play in this regard? Does it matter that the Queen is a woman? When does gender in this case play a role?

Week XIV: The Stuart Dynasty

M: April 21 – Lecture 25: James I and the Politics of Taxation

**** DRAFT OF RESEARCH PAPERS DUE ****

W: April 23 – Lecture 25: Government, Governance, and the Killing of a King

F: April 25 – **Discussion**: Stuart Cases – the King before the Law

Read:

Smith, pp. 243-315

[P] Stephenson and Marcham, nos. 91 (A), 92 (D)(E)(F), 94 (A)(B)(C)

THEME: What are the issues that divide the king from his realm? Why does taxation matter? Ultimately, what are the limits of royal power? When does the Common Law trump a tyrant? How do you kill a king in the 17th century?

Week XV: Restoration and the Leviathan

M: April 28 – Lecture 26: Finding a Social Contract

W: April 30 – **Discussion** – The Putney Debates and a Final Review

F: May 2 – **FINAL EXAM** in Class

Read:

Smith, pp. 319-60

[P] Kenyon, pp. 310-17, 426-38.

THEME: What is the nature of good government? What is justice before the law according to 17th century theorists and law-makers? Why does the Common Law persist?

**** FINAL PAPERS due TUESDAY MAY 6TH 2008 ****

They must be in my box (LESTER) in the History office, Hellems 204 by 5 pm.

GUIDELINES RELATED TO GRADING AND WRITTEN ASSIGNMENTS IN THE COURSE:

An **A** or **A-** paper, written assignment or exam demonstrates an exemplary command of the course material. Such assignments offer a close and critical reading of the texts and a consideration of issues raised in the course as a whole, offer a synthesis of the readings, discussions, and lectures and present a perceptive, compelling, independent argument. They are clearly written and well-organized. The argument or thesis shows intellectual originality and creativity (a willingness to take risks with ideas and interpretations), are attuned to historical context, supported by a well-chosen variety of specific examples from the texts, and (in the case of papers) rely upon a critical reading of primary material.

A **B+** or **B** paper, written assignment, or exam shares many aspects in common with A-level work, but falls short in either the organization and clarity of its writing (stylistically), the formation and presentation of its argument (organizationally), or in the quality and level of critical engagement (substantively).

A **B-** paper, written assignment or exam demonstrates a command of the course material and a general understanding of the historical context but offers a less than thorough presentation of the writer's independent thesis due to weakness in writing, argument, organization or presentation of evidence.

A **C+**, **C**, or **C-** paper, written assignment, or exam offers little more than a summary of ideas and information covered in the course or presented in the specific question. They are insensitive to the historical context, do not respond to the assignment adequately, suffer from factual errors, unclear writing, lack of organization, or inadequate use of evidence, or a combination of these problems.

Papers, written assignments and exams that belong to the **D** or **F** categories demonstrate inadequate command of the course material:

A **D** paper, written assignment, or exam demonstrates serious deficiencies or clear flaws in the student's command of the course material or readings at hand.

And **F** paper, written assignment, or exam demonstrates NO competence in the course or reading materials. It indicates a student's neglect or lack of effort in the course.

*I strongly encourage you to come to my office hours if you have questions or concerns either **before** an assignment is due, or concerning your performance in the course. Graded assignments and exams will be returned in class. After two weeks you can come by my office during office hours to pick up your assignments if you have not picked them up in class. I do not e-mail grades during the semester or at the end of the course. We address a great deal of material in this course, and at times it will feel overwhelming. Please come and talk with me if that is the case.*

Legal Brief: A document used to submit a legal contention or argument to a court. A brief typically sets out the facts of the [case](#) and a [party's](#) argument as to why she should prevail. These arguments must be supported by legal authority and [precedent](#), such as [statutes](#), regulations and previous court decisions.

Course Development Bibliography:

Prestwich, Michael, Richard Britnell, and Robin Frame, eds.
><i>Thirteenth Century England X: Proceedings of the Durham Conference
>2003</i>. Woodbridge, Suffolk: Boydell Press, 2005. Pp. xii, 226.
>\$90.00. ISBN 9781843831228. – several useful articles.