

Fall 2019

HIST 585-9: Special Topics in History:
(cross-listed with the School of Law)

Topic: English Legal History

Instructor	Day(s)	Time(s)	Maximum Enrollment
Volokh	MW	2:00 – 3:30 pm	10

Semester Description:

English legal history began around the year 600, when King Aethelberht of Kent promulgated his famous legal code: "If a person strikes off a thumb, 20 shillings. If a thumbnail becomes off, let him pay 3 shillings. If a person strikes off a forefinger, let him pay 9 shillings. If a person strikes off a middle finger, let him pay 4 shillings. . . ." From Aethelberht to modern-day workers compensation codes (in Georgia, \$60,000 for the loss of a hand) is but a brief step. But in between, we get to cover Domesday Book, Magna Carta, the dissolution of the monasteries, the Instrument of Government, and the Bill of Rights.

More precisely: this course is a survey of the law of England between, approximately, the years 600 and 1800. Why study English legal history? There are at least two possible reasons: (1) to know "how we got here from there" and thus to better understand our modern legal system, or (2) to understand the period on its own terms, that is, to see what it was like to be a lawyer in the 14th century. I'm personally partial to approach (2), but there will be plenty for those who favor approach (1) as well.

We'll cover some private law, some criminal law, and some constitutional law (and we'll discuss why it's correct to talk of "constitutional law" when a country has no written constitution). I anticipate that we'll spend less time on criminal law than on private or con law. The theme of private law is that our law of property, torts, and contracts is largely the result of unplanned accidents, lawyers seeing how far they could stretch existing legal remedies to cover situations they were never designed for. The theme of con law is that we have our democratic representative institutions thanks to irresponsible, high-spending kings: the more irresponsible the king, the more often he would call an assembly to ask for more money. Little by little, the legal system will come to resemble what we learned as 1Ls.

Required Textbooks, Articles, and Resources:

The readings will be a mix of primary sources (in modern English translation) and secondary sources. No knowledge of foreign languages or English history is required or assumed.

Grading:

TBA