

LAWS 5006

Historical Perspectives on Law and Society

Professor Barry Wright

Term: Fall 2010

Time: Thursdays 11:30 - 2:30

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Office Hours: Thursdays, 3:00-6:00**

Course Objectives:

The course examines selected legal issues in British and Canadian history. It begins by reviewing the utility of historical forms of knowledge and methodologies within interdisciplinary legal studies projects and the developing interest in law amongst historians and social and political theorists. Issues and interpretations in selected areas of criminal, public and private law are surveyed. The objective is to provide an advanced overview of legal historical scholarship and key debates within the field. The course does not purport to provide a comprehensive examination of the diverse existing scholarship of this growing field but more modestly aims to provide a good jumping off point for further advanced research according to individual interests.

Course Organization:

Seminar style discussion and presentations. Students are expected to complete assigned readings and participate actively in class discussion.

Course Evaluation:

Class Participation: 10%

Presentation: 10% (November, on essay topic, 20 minutes)

Research Essay: 80% (topic selected by 21 October, due 6 December)

Administrative Notes:

Late essays will be marked down one half letter grade for each day submitted after the due date. Essays must be submitted to me or to the Department of Law (C473 LA) by 4:00 pm on the due date. Essays must be typed or wordprocessed in hardcopy (disk files or email attachments will not be accepted). Please retain a photocopy or secure file copy of the submitted essay. Please also note University regulations on academic integrity and academic offences as set out in the Graduate Calendar. Students with disabilities requiring academic accommodation are asked to contact the Paul Menton Centre before the term deadline for completion of the necessary forms.

Seminar Topics

1. **Introduction: The Historical Imagination**
2. **Legal and Historical Methods; Legal Historiographies;
Traditional common law/professional perspectives and whiggish history**
3. **Critical Perspectives:**
 - Utilitarianism (Bentham), legislative reform, and 19th c. liberalism
 - Legal Pluralism
 - Modern Social and Political Theory (Marx, Weber)
 - Postmodernism (Foucault)
4. **Criminal Law, the State, Social and Moral Regulation: 18th & 19th c. England**
5. **Criminal Law and Conquest: 18th & 19th c. Canada**
6. **Public Law and State Formation**
7. **Private Law and Economic Development**
8. **The Legal Regulation of Family and Gender Relations**

Remainder of Term: Presentations

Readings

Photocopies of the readings are available in the Chet Mitchell Reading Room and the Graduate Studies Room (C463 LA) and full bibliographical information is provided with them.

For Seminar 2 (16 September):

Thucydides, The History of the Peloponnesian War (excerpts) **or** Schama, "The Many Deaths of General Wolfe"

Parker, "The Masochism of the Legal Historian" **or** Smith & McLaren, "History's Living Legacy: An Outline of the Modern Historiography of the Common Law";

Pollock and Maitland, The History of English Law (excerpts) **or** Milsom, Historical Foundations of the Common Law (excerpts);

Pue, "Educating the Total Jurist" **or** Pue, "Lawyers and Political Liberalism in Eighteenth and Nineteenth Century England"

For Seminar 3 (23 September):

Hart, "The Demystification of the Law" Essays on Bentham (excerpts) **or** Rosenblum, "A Utilitarian Code of Law" Bentham's Theory of the Modern State (excerpts);

Arthurs, "Special Courts, Special law: Legal Pluralism in 19th Century England" (excerpts) **or** Glavin, The Nisga'a Treaty: Death of an Ideology;

Storch, "The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England" (excerpts) **or** Ignatieff, "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment" (excerpts);

Berman and Reid, "Max Weber as Legal Historian" **or** Dean, Critical and Effective Histories: Foucault's Methods and Historical Sociology (excerpts)

For Seminar 4 (30 September):

Hay, "Property, Authority and the Criminal Law";

Langbein, "Albion's Fatal Flaws";

Beattie, "The Scales of Justice: Defence Counsel and the English Criminal Trial in the 18th and 19th Centuries";

McGowan, "The Images of Justice and Reform in Criminal Law in Early 19th Century England";

Farmer, "Reconstructing the English Codification Debate: The Criminal Law Commissioners, 1833-45"

For Seminar 5 (7 October):

Hay, "The Meanings of the Criminal Law in Quebec, 1764-1774";

Foster, "Long-Distance Justice: The Criminal Jurisdiction of the Canadian Courts West of the Canadas, 1763-1859";

Loo, "The Road from Bute Inlet: Crime and Colonial Identity in British Columbia";

Parker, "The Origins of the Canadian Criminal Code"

For Seminar 6 (14 October):

Greenwood and Wright, "State Trials, the Rule of Law, and Executive Powers in Early Canada";

Bale, "Law, Politics and the Manitoba School Question: The Supreme Court and the Privy Council";

Tucker, "That Indefinite Area of Toleration: Criminal Conspiracy and Trade Unions in Ontario"; - MacCallum, "Labour and Arbitration in the Mowat Era"

For Seminar 7 (21 October): (NB Essay topics to be selected, presentation dates allocated)

Tushnet, "Lumber and the Legal Process";

Holt, "Morton Horwitz and the Transformation of American Legal History";

Risk, "The Law and Economy in Mid-Nineteenth Century Ontario: A Perspective";

Young, "Dimensions of a Law Practice: Brokerage and Ideology in the Career of George-Etienne Cartier"

For Seminar 8 (28 October):

Gavigan, "Petit Treason in England";

Backhouse, Petticoats and Prejudice: Women and the Law in 19th Century Canada, (excerpts) "Prosecutions of Abortions under Canadian Law, 1900-50";

Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930";

Ursel, "The State and the Maintenance of Patriarchy"

Presentations 4, 11, 18, 25 November (and 2 December if necessary; essay due 6 December)