

# History 308: History of the Common Law

Professor William A. Percy III

Fall 2006

Class Meeting Times: Tuesday and Thursday, 5:30-6:45 PM  
Class Location: McCormack, 2<sup>nd</sup> Floor, Room 616  
Office Hours: Tuesday and Thursday, 3:55-5:25 PM, and by appointment  
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The course surveys the evolution of law from the apodictic codes of Hammurabi and Moses through the rational jurisprudence of the Greeks and Romans. No other people except these Europeans tried to make law conform to reason and to give each his due (Plato's 4<sup>th</sup> century B.C. definition of Justice). In the 6<sup>th</sup> century A.D., Justinian, reiterating Plato, summarized Roman Law. The Germans, who overran the western half of the Roman Empire during the fifth century, introduced their primitive judicial ways and when converted to Christianity had priests write down their oral rules in Latin in the so-called barbarian codes. After 850 feudal customs evolved orally in Western Europe. They were subsequently blended with Germanic, Christian and Roman concepts and reduced to writing to produce "customaries" for baronies, counties, and duchies. The Canon Law was elaborated for all Catholic Europe, written in Latin by clerics for laymen, as they related to the Church, as well as for other clerics. Both secular and ecclesiastical were enhanced by a revival of Roman Law by professors on the continent and in England. The Common Law (common to the whole realm rather than just to a shire or earldom) was evolved by English judges during the High Medieval Age (1000-1300 A.D.).

Subsequently the statutes of Parliament and before and after 1776 of American legislatures amended our common law but judges still have to interpret those statutes and our constitutions (state and federal) as well as to adapt the Common Law, in which English cases as early as 1191 can still be cited, for modern conditions. I hope that students will find this comprehensive legal history useful in everyday life because it concerns every field of law, civil, from marriages and divorce to inheritance, contracts, real estate, defamation and debt, and criminal, from misdemeanors such as petty larceny, assault, and usury to felonies, as well as torts which arise out of negligence. I always try to compare and contrast our present laws with those of the past. Take it to learn your legal rights and responsibilities as well as to help determine whether you want to go to law school.

## About Me

I am a Southerner; an Episcopal atheist; a Naderite who first began as a Democrat backing civil rights and opposing the Vietnam War, then became a Reagan-supporting Republican, and finally left the GOP due to George W. Bush's crusading policies; a capitalist; a refugee from the Ku Klux Klan, the Southern Baptists, and other members of the fundamentalist Protestant right; and a gay activist. I am also the senior professor of history and the senior pre-law advisor at UMB. I attended nine universities and have taught in nine. I have published 5 books, a dozen articles, about 100 notes (short articles), and 100 book reviews. From me you will gain a different perspective. On this politically-correct campus I am diversity itself: a semi-expired white male of the old school.

## Method and Grading

Each session a member of the class presents an oral report, having given it in outline to me during office hours a week or two weeks before. The other class members challenge it verbally. Then I sum up with instructions for criticism and suggestions to the presenter about how to expand the class presentation or improve the report, before it is typed into about 20 pages (double-spaced). Read Strunk and White's *Elements of Style* (in 78 brief and witty pages) to improve your writing. A version of the book can be found online at <[www.bartleby.com/141/](http://www.bartleby.com/141/)>. In addition, we will try to go together one day to a local district court and one evening to a local House of Corrections for first-hand observation. There will not be a final exam. The final grade will be based on the oral presentation, the term paper, and extra credit for notable contributions in class, including looking up disputed points or facts arising during discussion.

## Readings

Disseminating scholarship on the printed page in the twenty-first century is analogous to publishing it on manuscripts during the sixteenth century. The Internet is now no longer like *Cunabula* (books printed before 1500)—rare commodities even then. It is in fact now rapidly displacing print on paper. Look at what Wikipedia is doing to the *Encyclopædia Britannica*! Printed dictionaries and bibliographies likewise are becoming obsolete because their online counterparts are so easy to update. Expenses, delays, and storage problems are also forcing scholarly journals to go online. Why not monographs (which sell too few copies to be cost-effective), syntheses, and textbooks, as well? In light of the changing publishing landscape, the formerly required texts listed below **are now optional**:

Hogue. *Origins of the Common Law* (paper), Liberty Fund.  
Justinian. *The Institutes* (paper), Cornell University Press.  
Knight, Alfred H. *The Life of the Law* (paper), Oxford University Press.  
Foucault, Michael. *Discipline and Punish* (paper), Random House, Inc.

Any edition of the books above is suitable for this course. They can be found, at great discount, online on Amazon, (see used prices for each book), Ebay, and half.ebay.com. In addition, all editions (including those from 60 years ago) of *The Encyclopedia of World History*, whether by William L. Langer or Peter N. Stearns, are highly recommended.

Helpful reference works (on shelves at the Healey and other libraries):

Cantor, N., *Imagining the Law*.  
Ganshof, *Feudalism*.  
Hilberg, Raoul, *Destruction of the European Jews*.  
Pollack & Maitland, *The History of English Law to the Reign of Edward I*.  
Ross & Ross, *Handbook of Everyday Law*, 4<sup>th</sup> ed.  
Stephenson & Marcham, *Sources of English Constitutional History*, Vol. 1.

### Contact Policy

Although I have provided my e-mail address and home telephone number, please e-mail or call me only if you have an urgent matter to discuss with me (MWF 7AM-1PM). Understand that if you e-mail me, it may take me several days to see your e-mail as I am computer illiterate and must rely on others to access my e-mail. Therefore, call me in case of an emergency. There is, however, no need for you to e-mail or call me to let me know that you will miss or have missed a class. I fully understand that events out of your control will arise from time to time and may cause the occasional absence. So explanations are unnecessary. If you would like to find out what you missed in class while you were absent, ask a classmate.

	<b>Date</b>	<b>Topic(s) of Lecture</b>	<b>Readings</b>	<b>Presenter</b>	
1	5 Sept. Tuesday	Introduction: Hammurabi, Moses, Plato, Aristotle	Leviticus, Hammurabi and Moses	William Percy	
2	7 Sept.	Roman law, to Cicero and Gaius	The Institutes: 1-28, 148-157	William Percy	
3	12 Sept. Tuesday	Justinian, Tribonian, <i>The Institutes</i> <b>[Add/Drop Period Ends]</b>	The Institutes: I, II, III and IV. (Skim the four books)		
4	14 Sept. Thursday	German Law and Anglo-Saxon dooms: Aethelbant: Ine. :Alfred; Offa; Cnut	Hogue, Preface; Knight, 1-15; “History of England (to 1066)” — <i>Encyclopedia Britannica</i> and/or Wikipedia		
5	19 Sept. Tuesday	Charlemagne; Charles the Bald; Feudal law; Norman law; Rollo and William the Bastard; Inerius; Accursins, Bartolus; Canon law	“Feudalism” — <i>Encyclopedia Britannica</i> and/or Wikipedia		
6	21 Sept.	Norman and Plantagenet Kings	Hogue, 3-32; Knight, 16-25		
7	26 Sept. Tuesday	The Magna Carta, Baronial revolt, and Parliament; John sans terre through Edward I	Hogue, 33-55		
8	28 Sept. Thursday	The Common Law; Glanville and Bracton	Hogue, 56-84, 185-237; Knight, 26- 32		
9	3 Oct. Tuesday	Tenure; Frankalmoin, Knights' service; Sergeantry; Burgage Ownership and Possession; Seisin; Conveyance; Term of Years; Gage of Land	Hogue, 85-144		
10	5 Oct.	Incorporeal Things; Movables	The Institutes II, 1-6		
11	10 Oct. Tuesday	Ecclesiastical Sins & Sorts of Men; Religious; J. Slowe Clergy; Aliens	The Institutes I, 1-9		
12	12 Oct. Thursday	Medieval Courts: Baronial, Canon, Piepowder	Hogue, 145-165		
13	17 Oct.	Later Middle Ages and the Tudors	Knight, 33-61		
14	19 Oct.	Capital Punishment	Foucault, 3-32, 135-194		
15	24 Oct.	Equity and Chancery	Hogue, 166-184		
16	26 Oct.	Evidence	Foucault, 33-69		
17	31 Oct. Tuesday	The Stuarts, and the Glorious Revolution	Knight, 62-99; Foucault, 73-131		
18	2 Nov.	Contract	The Institutes III, 13-29		
19	7 Nov. Tuesday	Insurance Negotiable Instruments; Agency Forms of Business Ownership	“Insurance” — <i>Encyclopedia Britannica</i> and/or Wikipedia		
20	9 Nov.	Family Law, Marriage, Dowry; Guardianship; <b>Pass/Fail &amp; Course Withdrawal Deadline</b>	The Institutes I, 10-26		
21	14 Nov.	Torts and Obligations	The Institutes IV, 1-18		
22	16 Nov.	Probate	The Institutes II, 7-25; III, 1-12		
23	21 Nov.	Felony, Treason, and Trespass	Foucault, 73-131, 195-308		
24	28 Nov.	Early American Developments	Knight, 100-151		
25	30 Nov.	Middle Period in American Law: Equality	Knight, 152-266		
26	5 Dec.	Last Period in American Law	Knight, 152-266		
27	7 Dec.	Outside lecturer, Visit to correctional institution (dates TBA)			
28	12 Dec.	<b>Discussion and Review</b>			
	18-22	<b>FINALS PERIOD (Monday-Friday)</b>			