History 6241 Transformations of Law in the Age of Empire and Enlightenment

Thursdays, 2:20-4:25
B14 White Hall

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Fall semester office hours: Wednesdays 2:15-3:30 or by appointment 434 McGraw Hall

Recent scholarship in the histories of such diverse subjects as empire, sexuality, international law, "truth" and "human rights" have grappled with the nature and significance of law, making important claims about transformations in the working of legal systems and notions of what law is occurring between the 16th and the early 19th centuries. The course readings will focus on four interrelated questions or themes: the emergence (or not) of a concept of human rights; changing standards of evidence; changes to the legal regulation of marriage, inheritance and sexuality; and the legal complexities associated with the acquisition of overseas empires (problems of sovereignty, native encounters with metropolitan legal systems, legal "hybridity" or pluralism, the emergence of international law).

This is a historiographical reading course, not a research course. Students wishing to develop a research paper on issues covered in this course are encouraged to sign up for History 6000 in the Spring.

Requirements

Attendance and participation in Class discussion (40%). This means completing the reading before class, showing up each week and on time, being prepared to listen and engage. In addition, each student will give one short presentation to kick off discussion in a week of his or her choosing. In your short presentation, tell us briefly what you think is important about the book, and come up with two or three meaty questions that will stimulate a discussion.

Four short Critical Essays (50%) : The syllabus is loosely divided into four sections, each of which brings together readings around a common set of questions. Within a few days after the completion of each section, you should turn in a critical review essay of not more than 8 pages doublespaced, which deals substantially with at least one of the books covered in that section. You may choose to focus your essay on a single book, or you may compare two books (one of which might come from a different section of the course). The purpose of this assignment is to give you a chance to better digest the readings, put the readings in dialogue with one another, and provide yourself with a usable set of notes for future reference. See syllabus for deadlines.
What is expected in a critical review essay? A critical review essay will usually contain a brief account of what the book says. But it should do more than that. You should also explain why the author bothered to say it: what are the questions the author is trying to answer, why does the author think those questions are important, in what ways do these questions and answers intervene in conversations that other scholars are having, or complicate or demolish arguments made by other historians (especially but not exclusively those you have encountered in this class). You should also, where possible, bring your own evaluative judgments into play. Were you convinced by the logic of the argument or the use of evidence? Do you find the author's questions compelling? Do you see biases, assumptions, political agendas in the work that might make you think twice about the arguments? Sometimes making a comparison to another book you have read will help you see or explain all this more clearly, in which case a comparative discussion is a good idea. You are welcome to do a 3-way comparison, but they are trickier to organize!

Final assignment, "A syllabus for myself" (10%). During the semester you will have had occasion to realize that there are many books and articles not assigned in this course that are important to your own intellectual development. Come up a one-semester course of reading for yourself: pick 13 books (you can use articles, counting three articles as one book), organized around a topic or problem. Be prepared to talk about why you chose what you chose on the last day of class.

Schedule of Readings, Discussions and Papers

Note: there is at least one copy of every book available on 24-hour reserve in Olin Library (ask at the circulation desk). But you are encouraged to buy your own or get a copy though Interlibrary Loan or Borrow Direct.

Part I: Law and Empire

What are the legal mechanisms that enable empire, how is empire justified or criticized in legal terms, from the Salamanca school to Locke and beyond? How do we describe the encounter of colonized with metropolitan law, or the encounters between legal regimes (legal hybridity and/or legal pluralism), how diverse legal systems interact in the context of imperial expansion?

August 27 Introduction to the Class: with some very short readings from John Locke's Second Treatise and Francisco de Vitoria's "On the Indians," to be distributed in advance (or read on the spot!).

September 3 Andrew Fitzmaurice, Sovereignty, Property and Empire, 1500-2000

September 10 Brian Owensby, Empire of Law and Indian Justice in Colonial Mexico

September 17 Lauren A. Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400-1900
September 24 Christopher L. Tomlins, Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865 [first essay due on Monday September 28]

Part II: Natural Law and the Emergence of Human Rights

Can we discover a historical point of origin for the concept of human rights, and account for its emergence? If so, where do we focus? Or is the search for an origin of human rights wrongheaded and dangerous?

October 1 Annabel S. Brett, Changes of State: Nature and the Limits of the City in Early Modern Natural Law

October 8 Paul Halliday Habeas Corpus: from England to Empire


Part III: Revolution, Enlightenment and the Sexual Order

How did the modernizing political revolutions of the 18th century affect laws regulating family and sexuality? Can we generalize more broadly from these studies about the relationship between the political and the private, or between political and legal change?

October 22 Holly S. Brewer By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority

October 29 Suzanne Desan, The Family on Trial in Revolutionary France

November 5 Isabel V. Hull, Sexuality, State, and Civil Society in Germany, 1700-1815 [third essay due on Monday November 9]

Part IV Law, Science and Enlightenment

Did the law get "smarter" after the Scientific Revolution (or for any other reason?) What did it mean to adopt a scientific approach to law (as Jeremy Bentham did) How did new practices of validating "truth" affect truth in the context of a courtroom? How do legal historians use or
misuse the insights of historians of science, culture, or anything else? What are the significant changes that occurred in Anglo-American law and legal thinking over the very long 18th century?

November 12 David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* [Note: we may need to reschedule class for this week, because I have to go to a conference].

November 19 John Langbein, *The Origins of Adversary Criminal Trial*

December 3 Barbara J. Shapiro, "Beyond Reasonable Doubt" and "Probable Cause": Historical Perspectives on the Anglo-American Law of Evidence [and also discussion of the "syllabus for myself" assignment]

[4th essay due on Monday December 7]