

Law as Politics in England and the Empire, ca. 1600-1830

Folger Shakespeare Library
Spring Seminar, 2013

Paul Halliday
University of Virginia
ph4p@virginia.edu; 434-924-6385

Schedule

We will convene on **nine Fridays**, from 1:00 to 4:30, January 25 to March 29 (9-4:30), inclusive, with the exception of February 8. In keeping with Folger tradition, we will take a tea break from 3:00 to 3:30.

Themes and Readings

Because I want to be responsive to interests in the group and ideas that arise as we proceed, I ask that you consider the plan for each successive week's meeting to be more provisional than the one preceding. I will make adjustments as we go. I am leaving meeting 10 blank now to allow us to plan the best way to bring the experience to a satisfying conclusion.

I have put together extensive lists on each week's themes. I do not expect us to read them all. I have made these lists in part with an eye to the variety of interests I know we have and to provide some guideposts into areas you might like to know better. **I have placed an asterisk next to those items on which we will probably concentrate during our discussions.**

Presentations

As the seminar description noted, I would like this seminar to provide opportunities to consider participants' work in progress. I would like to use the hour after tea break for this purpose. We are a larger group than I anticipated. If most or all of you would like to present, I will give preference to grad students and to presentations that can be most readily tied into the readings and themes of the week in question. If we are pressed for time, we can perhaps decide on pairings of abbreviated presentations some weeks. I want to encourage all grad students to present. I am sure we will be a collegial group, and I imagine this will provide you an unusual opportunity to present your work to a more highly varied audience than you could find in your home institutions or in conferences in your own field.

1. January 25: Mapping Law's Terrains

Folger Board Room, Main Folger Building, 201 East Capitol Street, Basement level

Early Modern Views of Jurisdiction:

*Christopher St. German, *Doctor and Student*, Plucknett and Barton, eds., *Selden Society* 91 (1974), ch. 5-10 (the grounds of the law of England)

*Sir William Blackstone, *Commentaries on the Laws of England*, facsimile of 1st edition (1765-69; among modern printings, I prefer the University of Chicago Press facsimile, 1976), book 1, ch. 2 (of parliament) and book 3, chs. 3-6 (of courts)

Sir Edward Coke, *The Fourth Part of the Institutes of the Laws of England*, chs. 1 (esp. pp 21-25, 36-38), 2, 5, 7-11, 22, 30-31, and 74 (1st edition, 1644; but I suggest we consult the 6th

edition of 1681 as a bit more legible: Wing C4933; paginations are the same; there are also plenty of modern printings, most of which retain the original pagination or indications of those paginations by which standard references are made to the text)
*Sir Matthew Hale, *Prerogatives of the King*, Yale, ed., *Selden Society* 92 (1976), ch. 3 (19-44)

Recent Views of Jurisdiction:

*Bradin Cormack, *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law, 1509-1625* (Chicago, 2008), Prologue and Introduction

*Shaun McVeigh, ed., *Jurisprudence of Jurisdiction* (Routledge, 2007), ch. 1, "Questions of Jurisdiction," by Shaunnagh Dorsett and McVeigh, and ch. 8, "Mapping Territories," by Dorsett

*Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, 2010), ch. 1

Richard T. Ford, "Law's Territory (A History of Jurisdiction)," *Michigan Law Review* 97 (1998-99), 843-930

Legal Pluralism Debate:

*John Griffiths, "What is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 24 (1986), 1-55

*Brian Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism," *Journal of Law and Society* 20 (1993), 192-217

Tamanaha, "A Non-Essentialist Version of Legal Pluralism," *Journal of Law and Society* 27 (2000), 296-321

Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30 (2008), 375-411

2. February 1: Materials, Genres, Languages

Foulke Conference Room, Folger Haskell Center for Public Programs, 301 East Capitol Street, Ground floor

*Peter M. Tiersma, *Parchment, Paper, Pixels: Law and the Technologies of Communication* (Chicago, 2010), esp. Introduction and ch. 1

*Miles Ogborn, "The Power of Speech: Orality, Oaths, and Evidence in the British Atlantic World, 1650-1800," *Transactions of the Institute of British Geographers* (2010), 1-17

*John Baker, "Why the History of English Law has not been Finished," *Cambridge Law Journal* 59 (2000), 62-84

*Mary Bilder, "The Lost Lawyers: Early American Legal Literates and Transatlantic Legal Culture," *Yale Journal of Law and the Humanities* 11 (1999), 47-117

*James Burrow, *Reports of Cases Adjudged in the Court of King's Bench* (London, 1766), Preface (part four, vol. 1, i-x) (Later editions, including that republished in the *English Reports*, does not contain Burrow's preface)

*A. W. B. Simpson, *Leading Cases in the Common Law* (Oxford, 1995), ch. 1

*Ian Williams, "'He credited more the printed booke': common lawyers' receptivity to print, c.1550 – 1640," *Law and History Review* 28 (2010), 39-70

Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago, 2007), esp. chs. 1-3

Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge, 2004), esp. chs. 1-2 and 4-5

Douglas Hay, "Property, Authority, and the Criminal Law," in Hay et al., eds., *Albion's Fatal Tree: Crime and Society in 18th-Century England* (1975), 17-63

Richard Ross, "The Commoning of the Common Law: The Renaissance Debate over Printing English Law, 1520-1640," *U. Pennsylvania Law Review* 146 (1998), 323-461

Harold Love, *Scribal Publication in Seventeenth-Century England* (Oxford, 1993), part I
Walter Ong, *Orality and Literacy: The Technologizing of the Word* (London, 1982), chs. 1, 4, 5
Andrew Zurcher, *Spenser's Legal Language: Law and Poetry in Early Modern England* (Boydell
and Brewer, 2007), esp. chs. 1-3

February 8: No Meeting

3. February 15: King and Subject

Foulke Conference Room

- *Coke's Report of Calvin's Case (1608), 7 Co. Rep. 1, 77 *English Reports* 398 (a full text with annotations is available in *The Selected Writings of Sir Edward Coke*, Steve Sheppard, ed., vol. 1, 166-232; this is available free through OLL: http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=913&Itemid=28)
- *Hale, *Prerogatives of the King*, chs. 2 (government in general) and 4 (Concerning Allegiance)
- *Blackstone, *Commentaries*, bk. 1, chs. 1, 6, and 10
- *Sudipta Sen, "Imperial Subjects on Trial: On the Legal Identity of Britons in Late Eighteenth-Century India," *Journal of British Studies* 45 (2006), 532-55
- Polly Price, "Natural Law and Birthright Citizenship in Calvin's Case," *Yale Journal of Law and the Humanities* 9 (1997), 73
- Mark D. Walters, "'Your Sovereign and Our Father': The Imperial Crown and the Idea of Legal-Ethnohistory," in *Law and Politics in British Colonial Thought: Transpositions of Empire*, Shaunnagh Dorsett and Ian Hunter, eds. (Palgrave, 2010), 91-108
- Victoria Kahn, *Wayward Contracts: The Crisis of Political Obligation in England, 1640-1674* (Princeton, 2004), esp. chs. 1-3
- Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (UNC, 2005), esp. chs. 1, 3, and 4

4. February 22: Peoples and Property

Foulke Conference Room

Peoples

- *Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Harvard, 2010)
- R. v. Ballard (NSW, 1832): <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWSupC/1829/26.html?stem=0&synonyms=0&query=ballard>

Property

- *Andrew Fitzmaurice, "The Genealogy of Terra Nullius," *Australian Historical Studies* 129 (2007), 1-15
- *The Case of Tanistry, in Sir John Davies, *A Report of Cases and Matters in Law* (1762), 78-115 and 134-38
- *Shaunnagh Dorsett, "'Since Time Immemorial': A Story of Common Law Jurisdiction, Native Title, and the Case of Tanistry," *Melbourne University Law Review* 32 (2002), 32- 59
- Lauren Benton and Benjamin Straumann, "Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice," *Law and History Review* 28 (2010), 1-38
- Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Harvard, 2007), esp. Introduction and chs. 1-3

Peter Karsten, *Between Law and Custom: 'High' and 'Low' Legal Cultures in the Lands of the British Diaspora* (Cambridge, 2002), ch. 1

5. March 1: Constituting Empire: The Atlantic

Foulke Conference Room

*Ken MacMillan, *Sovereignty and Possession in the English New World* (Cambridge, 2006)

*Mary Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Harvard, 2004), esp. Introduction and parts I and II

Daniel Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *LHR* 21 (2003), 439-82

Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775* (Cambridge, 2011), esp. chs. 1, 3, 5-6

Ken MacMillan, *The Atlantic Imperial Constitution: Center and Periphery in the English Atlantic World* (Palgrave, 2011), esp. chs. 1, 5, and 6

Eliga Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *William and Mary Quarterly* 3rd ser., v. 60 (2003), 471-510

6. March 8: Labor: Servile and Slave

Foulke Conference Room

Penal Transportation and Servile Labor

*Lauren Benton, *In Search of Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, 2010), ch. 5

Douglas Hay and Paul Craven, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (UNC, 2004), chs. 1-3

Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge), esp. prologue and chs. 6 and 7

Bruce Kercher, "Perish or Prosper; The Law and Convict Transportation in the British Empire, 1700-1850," *LHR* 21 (2003), 527-84

Somerset's Case

*George Van Cleve, et al., Forum: "Somerset's Case Revisited," *Law and History Review* 24 (2006), 601-72

Granville Sharp, *An Appendix to the Representation* (1762)

The two main printed reports of the case are:

- Somerset's Case, T. B. Howell, *Complete Collection of State Trials* volume 20 (1816), cols. 1-82 (this is the fullest printed account)
- Lofft 1, 98 *English Reports* 499

James Oldham, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century* (UNC, 1992), vol. 2, 1221-44

7. March 15: Constituting Empire: India

Foulke Conference Room

*Phil Stern, *The Company State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford, 2011)

*Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* (Cambridge, 2007), Introduction and chs. 3 and 5

*Treaty of Allahabad (1765): http://en.wikisource.org/wiki/Treaty_of_Allahabad

- *Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley, 1998), Introduction and ch. 1
- Lauren Benton, *Law and Colonial Culture: Legal Regimes in World History* (Cambridge 2002), esp. chs. 1, 4, and 7
- David Ibbetson, "Sir William Jones as Comparative Lawyer," in Alexander Murray, ed., *Sir William Jones, 1746-1794: A Commemoration* (Oxford, 1998), 17-42
- Bhavani Raman, "The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras," *Comparative Studies in Society and History* 54 (2012), 229-50
- Bernard Cohn, "Command of Language and the Language of Command," *Subaltern Studies* 4 (1985), 276-329
- Phebe Gibbes, *Hartly House, Calcutta*

8. March 22: The Sea

Folger Board Room

Free Sea or Closed?

- *Hugo Grotius, *The Free Sea*, trans. Richard Hakluyt, with William Welwod's *Critique and Grotius's Reply*, ed. David Armitage (Liberty Fund, 2004)
- *John Selden, *Of the Dominion or Ownership of the Seas* (1652 English translation of *Mare Clausum*, orig. ca. 1618)
- David Armitage, *Ideological Origins of the British Empire* (Cambridge, 2000), chs. 1 and 4
- Lauren Benton, *In Search of Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, 2010), ch. 3

Admiralty Jurisdiction

- *M. J. Prichard and D. E. C. Yale, *Hale and Fleetwood on Admiralty Jurisdiction*, Selden Society 108 (1992), Hale, chs. 1-3 (pp4-18), 4-8 (pp18-58), and 15 (pp104-20)
- *Tara Helfman, "The Court of Vice Admiralty at Sierra Leone and the Abolition of the West African Slave Trade," *Yale Law Journal* 115 (2006), 1122-56
- Alexander Justice, *A General Treatise of the Dominion of the Sea* (1709?), chs. 2 (dominion), 4 (admiralty jurisdiction), and 11 (privateers)
- Helen J. Crump, *Colonial Admiralty Jurisdiction in the Seventeenth Century* (New York, 1931), ch. 1

9. March 29—Morning: War and Human Rights

Folger Board Room

*Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck

Book 1

1. What war is and what right is: 133-80
3. The division of war into public and private; and explication of supreme power: 240-336
5. Who may lawfully make war: 384-89

Book 2

22. Of the unjust causes of war: 1096-1115
23. Of the dubious causes of war: 1115-1133
26. Of the reasons that justify those who engage in war: 1167-82

Book 3

3. Of a just and solemn war...and declaration of war: 1246-1269
7. Of the right over prisoners: 1360-1374
8. Of the jurisdiction that victors gain over those they conquer: 1374-1381

14. Moderation in regard to prisoners: 1481-1498

15. Moderation in obtaining empire and sovereignty: 1498-1512

*Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (Zone, 2009),
Stephen C. Neff, *War and the Law of Nations: A General History* (Cambridge, 2005), ch. 3
Jenny Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford,
2012)

10. March 29—Afternoon: Open Session

Folger Board Room