Law as Politics in England and the Empire, ca. 1600-1830
Folger Shakespeare Library
Spring Seminar, 2013

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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, Plunkett and Barton, eds., Selden Society 91 (1974), ch. 5-10 (the grounds of the law of England)
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
*Lauren Benton, A Search for Sovereignty: Law and Geography in European Empires, 1400-1900 (Cambridge, 2010), ch. 1

Legal Pluralism Debate:

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
*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

**February 8: No Meeting**

**3. February 15: King and Subject**
Foulke Conference Room


*Hale, *Prerogatives of the King*, chs. 2 (government in general) and 4 (Concerning Allegiance)
*Blackstone, *Commentaries*, bk. 1, chs. 1, 6, and 10


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


Property
*Andrew Fitzmaurice, “The Genealogy of Terra Nullius,”* Australian Historical Studies 129 (2007), 1-15


Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Harvard, 2007), esp. Introduction and chs. 1-3

5. March 1: Constituting Empire: The Atlantic  
Foulke Conference Room

Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775* (Cambridge, 2011), esp. chs. 1, 3, 5-6  
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  
Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge), esp. prelogue 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

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)  
- Loftt 1, 98 *English Reports* 499


7. March 15: Constituting Empire: India  
Foulke Conference Room

*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
Phebe Gibbes, *Hartly House, Calcutta*

8. March 22: The Sea
Folger Board Room

Free Sea or Closed?
*John Selden, Of the Dominion or Ownership of the Seas* (1652 English translation of *Mare Clausum*, orig. ca. 1618)
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)
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


10. March 29—Afternoon: Open Session
Folger Board Room