

## **LAW 315 Topics in Legal History: Property in History and Law - Syllabus**

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### **Sept. 7<sup>th</sup>      Introductions**

### **Sept. 14<sup>th</sup>      Legal and Historical Methodologies**

#### **Required Reading:**

Matthew J. Festa, [“Applying a Usable Past: The Uses of History in Law”](#) (2008) 38 Seton Hall L. Rev. 479-553.

Arthur J. Ray, [“Native History on Trial: Confessions of an Expert Witness”](#) (2003) 84 Canadian Historical Review 253-275.

Philip Girard and Jim Phillips, [“Rethinking ‘The Nation’ in National Legal History: A Canadian Perspective”](#) (2011) 29 Law & History Review 607-626.

#### **Supplemental Reading:**

John G. Reid, William C. Wicken, Stephen E. Patterson, D.G. Bell, [“History, Native Issues, and the Courts: A Forum”](#) (1998) 28 Academics 3-26.

### **Sept. 21<sup>st</sup>      Property and the Common Law: Feudal Origins**

#### **Required Reading:**

J.H. Baker, *An Introduction to English Legal History*, 4<sup>th</sup> Edition (London: Butterworths, 2002), “Chapter 13 – Real Property: Feudal Tenure,” pp. 223-247, and “Chapter 14 – Real Property: Feudalism and Uses,” 248-258.

David J. Seipp, [“The Concept of Property in the Early Common Law”](#) (1994) 12 Law and History Review 29-91.

#### **Supplemental Reading:**

S.F.C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1981), 99-239.

Theodore F.T. Plucknett, *A Concise History of the Common Law*, 5<sup>th</sup> Ed. (Boston: Little, Brown and Company, 1956), 506-623.

### **Sept. 28<sup>th</sup>      Property and the Common Law: Intergenerational Transfers**

#### **Required Reading:**

J.H. Baker, *An Introduction to English Legal History*, 4<sup>th</sup> Edition (London: Butterworths, 2002), “Chapter 15 – Inheritance and Estates,” pp. 259-279, and “Chapter 16 – Real Property: Family Settlements,” pp. 280-297.

Eileen Spring, [“The Settlement of Land in Nineteenth-Century England,”](#) (1964) 8 American Journal of Legal History 209-223.

Eileen Spring, [“The Heiress-at-Law: English Real Property Law from a New Point of View,”](#) (1990) 8 Law and History Review 273-296.

**Oct. 5<sup>th</sup>      Property and Class**

**Required Reading:**

David Sugarman and G.R. Rubin, *Towards a New History of Law and Material Society in England, 1750-1914* (London: Butterworths, 1984), 1-13, 23-42.

Douglas Hay, “Property, Authority and the Criminal Law,” in Hay, Peter Linebaugh, John G. Rule, E.P. Thompson, and Cal Wilson, eds. *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), 17-63.

John H. Langbein, [“Albion’s Fatal Flaws,”](#) (1983) 98 Past and Present 96-120.

Peter Linebaugh, [“\(Marxist\) Social History and \(Conservative\) Legal History: A Reply to Professor Langbein,”](#) (1985) 60 New York University Law Review 212-243.

**Oct. 12<sup>th</sup>      “In the beginning all the world was America”**

**Required Reading:**

John Locke, “Of Property,” *Second Treatise on Government*, chapter 5, reprinted in C.B. Macpherson, *Property: Mainstream and Critical Positions* (Oxford: Blackwell, 1978), 15-27.

William Cronon, “Bounding the Land” in *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983), 54-81.

James Willard Hurst, “The Release of Energy” in *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956), 3-32.

Banner, Chapter 1, “Lost Property,” 4-22.

**Oct. 19<sup>th</sup>      The Legal Realists and Property**

**Required Reading:**

Morris Cohen, “Property and Sovereignty” [\(1927\) 13 Cornell L.Q.](#) 8-30.

Morton J. Horwitz, “The Progressive Transformation in the Conception of Property,” in *The Transformation of American Law, 1870-1960* (Oxford, 1992) 145-67.

Banner, Chapter 3, “A Bundle of Rights,” 45-72.

Banner, Chapter 5, “People, Not Things,” 94-108.

**Oct. 26<sup>th</sup>      Extending Ownership**

**Required reading:**

Banner, Chapter 2, “The Rise of Intellectual Property,” 23-44.

Banner, Chapter 4, “Owning the News,” 73-92.

Banner, Chapter 6, “Owning Sound,” 109-129.

Banner, Chapter 10, “Owning Wavelengths,” 202-219.

Banner, Chapter 12, “Owning Life,” 238-256.

**Nov. 2<sup>nd</sup>      Property**

**Required Reading:**

Banner, Chapter 8, “From the Tenement to the Condominium,” 162-180.

Banner, Chapter 9, “The Law of the Land,” 181-201.

Banner, Chapter 13, “Property Resurgent,” 257-275.

Banner, Chapter 14, “The End of Property,” 276-291.

**Nov. 9<sup>th</sup>      Property on Trial: Cases in Context 1**

**Nov. 16<sup>th</sup>      Property on Trial: Cases in Context 2**

**Nov. 23<sup>rd</sup>      Student Presentations**

**Nov. 30<sup>th</sup>      Student Presentations**