

LAWS3305 – Crime and State in History

Lecture 2: September 12/13

Bruno Leoni – wrote a book in 1969 called *Freedom and the Law*; said that “the law is something to be discovered, more than being an actor”

Mortgantaler (issues around women's rights as well as juries), Labellee (battered spouse syndrome), marijuana (social issues are shifting)

- there are individual personalities that contribution to the evolution of the law: Edwardians, suffragettes, campaigners who firebombed parliaments and post offices to get the vote after WW1 etc
- Jeremy Bentham: utilitarianism; championed the idea of women's rights in society and as being proportionate in society; transparent criminal code; certainty of punishment that deters crime
- War Measures Act; Winnipeg General Strike; FLQ crisis
- OJ Simpson: the jurors of LA County expressed their view of what reasonable doubt was – brought law to millions on TV (but probably not in a great light)
- Evidentiary procedures are so complex now
- what is or what is not considered a war crime / treachery / rape (how it's defined, how women's sexual history used to be brought up); elimination of spousal testimony (husbands no longer able to get off scot free because wives now allowed to testify against them)
- One thing that has remained the same is juries.

England, 1066:

- in the 1000s, the Duke of Normandy (William the Conqueror) descended on England
- Harold the Saxon too busy up north to become king
- William landed at Hastings
- in Xmas that year, William was in London and the Normans in England. He offloaded a lot of it in the communities
- William put down a lot of uprisings; most of England conquered; at every chance he got, William conquered Saxon land and gave it to normans
- there were rudimentary provisions that were customarily in place – not necessarily codified or set in stone

Determinate punishment:

- grievous bodily injury or pain for a misdeed
- not until Henry II who followed that the notion of peace was solidified
- notion of peace administered by the royal court of justice
- at the start, serious laws were considered to be felonies (now more known as indictable offence; more serious)
- we have a system of demarkation of crime; world courts instituted over the shires
- the system needed functionaries to carry this out
- justices of the peace created; locally based; administered local courts; supervised the taking of evidence
- at this time, no lawyers – if you thought you were penalized unfairly, you went to the justice of the peace
- JPs presided over their jurisdiction; sittings were called quarterly sessions (3/4 times a year)
- also appointed from London (the centre) were judges

Preliminary hearing: new version of the grand jury

- used to determine whether there is sufficient evidence and merit to continue a trial
- the grand jury in England changed from being upright citizens to petit; the jury we now know
- 18+19Cs: jury became the trier of fact; didn't determine the law, but the case
- juries and a lot of their functionaries were upstanding folks; more esteemed; felt more part of the process

It was during this period that the Magna Carta was created. The nobles essentially took over the divine right of kings. **Only three of the points in the Magna Carta are preserved** as law today: one defends the freedom and rights of the English church; another confirms the liberties and customs of London; but the most famous that still survives (1215): **no free man shall be seized, be stripped of his rights, etc: due process and trial by jury.**

There were about 61 provisions in the original first draft that was presented to John at Runnymede, one of them being no unreasonable taxes. In context, the Magna Carta had some key features that were seminal. It **effectively eliminated the divine right of kings** and put into place the footsteps of parliamentary institution. It was a document that required the king & queen to **adhere to the common law** and therefore put them directly under the thumb of the law.

Rudyard Kipling: so well known and synonymous w/the British Empire that he was used during WW1 to go overseas to the US to drum up support for the united cause. Son was killed in the battle of Loos in 1915. Eventually toured Europe w/his wife and set up an association for all the graves in the wars in Europe. Came up w/one line: "If you should ask us why we died, say it's because our fathers lied."