



**The Boston Massacre (1770)**, in which British troops fired on a crowd, killing five men, is depicted here in a famous engraving by Paul Revere. Five of the soldiers were indicted and tried for murder. One was acquitted. The other four were convicted of manslaughter, pleaded benefit of clergy, and were branded on the thumb. The beyond-reasonable-doubt standard of proof was articulated in these trials, the earliest instance presently known.

Massachusetts Historical Society,  
Boston, MA, USA/The Bridgeman Art  
Library.

**Court of King's Bench.** In this image from an illuminated manuscript (c. 1450s), the court is seen sitting as a criminal trial court with a jury. The five judges are shown seated on an elevated bench at the rear. Below are court officers and clerks, seated at a table containing plea rolls. A pair of functionaries are shown standing, perhaps on the table; one of them (right) appears to be speaking, the other (left) is swearing the jurors (far left) on a Bible. A prisoner (center) stands facing the bench, in the custody of a bailiff. On each side is a serjeant, forerunner of the modern barrister (wearing a coif, the distinctive serjeant's headdress), seemingly counseling the prisoner. Although defense counsel was forbidden in criminal trials for cases of serious crime, defense counsel was allowed to raise objections of law at the arraignment stage. In the foreground are six other prisoners, chained together in leg irons and looking dejected, who are under the watch of a pair of bailiffs.

The Art Archive/Honourable Society of Inner Temple London/Eileen Tweedy.



## *A Yale Law School Course Becomes a (Lavishly Illustrated) Book*

A revered Yale Law School course has become a book. The course, "History of the Common Law," is the Law School's introductory curricular offering in legal history. Taught by John Langbein, Sterling Professor of Law and Legal History, the course has been a perennial favorite of Yale Law students. Across the years, Langbein based the course on photo-duplicated teaching materials, consisting of historical sources and extracts from the scholarly literature.

Three years ago, Langbein began refining the course materials for a textbook, which has just come into print, titled *History of the Common Law: The Development of Anglo-American Legal Institutions* (Aspen 2009).





**Compurgation.** This image from a fourteenth-century manuscript of the *Sachsenspiegel*, a German law book written about 1230, depicts a court conducting a trial by compurgation, also known as wager of law or oath helping. In England this ancient Germanic mode of proof became embedded in practice under the writ of debt. In a proceeding to which compurgation pertained, the defendant could defeat the plaintiff's complaint by denying it under oath, then producing a set number of witnesses (oath helpers), who swore not to the disputed facts, but to their belief in the credibility of the defendant's oath.

Herzog August Bibliothek Wolfenbüttel: Cod. Guelf. 3,1 Aug. 2, 31v.



**The European Law of Torture.** For centuries, European legal systems gathered evidence in criminal cases by investigating under torture. Rules of probable cause were developed to regulate the circumstances under which a suspect could be tortured, and what could be asked. This image, from a widely circulated practice manual, Joost Damhouder's *Praxis Rerum Criminalium* (Antwerp 1554), depicts a suspect being tortured in the presence of the court clerk (shown recording the suspect's statements) and the judge and other court functionaries.

University of Chicago Library

Langbein, a specialist in English legal history, was joined on the book by two co-authors, both Yale Law School graduates, who took the main responsibility for the chapters on American legal history: Renée Lettow Lerner '95, who is a professor at George Washington University in Washington, D.C.; and Bruce P. Smith '92, who is the dean and a professor at the University of Illinois College of Law in Champaign-Urbana.

A striking feature of the book is the enormous range of illustrations, many reproduced in full color. The book contains over 250 illustrations, some shown here, beginning with sixth-century mosaics and ranging over medieval illuminated manuscripts down to portraiture, caricatures, manuscripts, books, and photographs in later centuries. "We think that illustrations powerfully enliven and instruct," Langbein said, "and we made a determined effort to locate suitable images." The search for images took years, and was made possible in part by a grant from the Law School's Oscar M. Ruebhausen Fund, which helped defray some of the costs of obtaining copies and paying permission fees to archives and repositories that hold the originals. The quantity and quality of the images led the publisher to agree to produce the entire book in color—the first time that one of the main publishers of law school teaching materials has done so. A number of the illustrations come from Yale collections, including manuscripts and early printed books housed in the Law School's Paskus-Danziger Rare Book Room.



**Prison Hulks in Portsmouth Harbor, c. 1770s.** When the American Revolution interrupted the shipment of convicted felons to the North American colonies, the British government confined the convicts on derelict vessels moored in the river Thames and (as here) in Portsmouth Harbor. The loss of the American colonies forced the English to begin constructing a domestic prison system.

National Maritime Museum, Greenwich.

**Carlill v. Carbolic Smoke Ball Co. (1892).** The offering circular that gave rise to the celebrated case. The greater precision of jury instructions, as well as improvements in law reporting, help explain why so many leading cases in contracts and other fields are nineteenth-century precedents. Matters that would have been treated as questions of fact for the jury were recast as questions of law.

Mary Evans Picture Library/ The Image Works.

THE ILLUSTRATED LONDON NEWS

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**The Marriage Contract (1743),** by William Hogarth, from his series *Marriage a la Mode*, parodies an arranged upper-class marriage. A nobleman (seated right, pointing to his family tree) has negotiated for his son (far left) to marry the daughter of an affluent merchant (seated center, holding the draft marriage contract). The merchant's glum daughter is seated next to her future husband, from whom she turns away. When such an agreement made provision for the married woman to have property interests separate from the husband's, the Court of Chancery would enforce her interest even though contrary to the marital property regime at common law.

National Gallery.  
London, UK/The Bridgeman Art Library.



*Charles E. Clark (1889–1963), whose work as chief drafter of the Federal Rules of Civil Procedure of 1938 fused law and equity, prevailing on the model of equitable procedure. Clark was a procedure scholar, an adherent of the legal realist movement, Dean of the Yale Law School (1929–1939), and judge of the Second Circuit Court of Appeals (1939–1963).*

Yale Law School (this portrait hangs in the Law School's Room 127).



**Legal Education for Women.** Efforts to open legal education to women in the late nineteenth century led to the creation of law schools prevailing for women, including Washington College of Law (today, the law school of American University in Washington, D.C.), whose first graduating class is shown in this photograph from 1898.

American University, Washington College of Law Pence Law Library—Special Collection

Two great themes dominate *History of the Common Law*. One is the saga of the jury—the emergence and incessant transformation of the jury system, including judge/jury relations, across eight centuries of Anglo-American civil and criminal justice. The other central theme of the book is the law/equity division and its shaping influence on Anglo-American civil justice, from the emergence of the Court of Chancery in the fourteenth century down through the English Judicature Acts of the 1870s and equity's "conquest" of common law in the American Federal Rules of Civil Procedure of 1938. Other major subjects of the book include the development of the legal profession, from the serjeants, barristers, and attorneys of medieval times down to the transnational megafirms of twenty-first century law practice; the literature of the law, especially law reports and treatises, from the Year Books and Bracton down to the American state reports and today's electronic services; and legal education, from the founding of the Inns of Court to the emergence and growth of university law schools in the United States. **Y**