

**OUTLINES OF  
ENGLISH  
LEGAL HISTORY**

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Outlines of English Legal History by A. T. Carter

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**A. T. CARTER**

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**OF**  
**ENGLISH LEGAL HISTORY**

BY

*Albert*  
**A. T. CARTER, M.A.**

OF THE INNER TEMPLE, BARRISTER-AT-LAW  
READER IN CONSTITUTIONAL LAW AND LEGAL HISTORY TO THE COUNCIL  
OF LEGAL EDUCATION  
D.C.L., STUDENT OF CHRIST CHURCH

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## PREFACE

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A YEAR ago it became my duty as one of the Readers to the Council of Legal Education, to deliver, at short notice, a course of lectures on Royal Justice in this country. The information which had to be gathered from many books, some out of print, others of great price, few to be found except in great libraries, I now place at the disposal of those who take, at the least, a passing interest in the subject.

Inaccuracies and inelegancies I am sure that I have not entirely avoided. If on some points I have spoken without certainty, it should be remembered that our information is not yet, and may never be, complete. On some topics, such as the Justices of the Forest and of the Jews, I have chosen to be silent and await the promised records of the Selden Society.

I desire here to acknowledge my great debt to the Rolls Series, the Acts of the Privy Council, and the invaluable volumes of the Selden Society. To none of the learned editors of that Series do I owe more than to Professor Maitland, to whom all scholars must wish complete restoration to health, and whose unwearied energy has illumined so many dark places of the law.

I have availed myself freely of the works, amongst others, of the Bishop of Oxford, my colleague Mr. Jenks, Mr. Bigelow, Mr. Pike, Sir F. Palgrave, Sir James Stephen, and a volume of essays contributed by Messrs. Henry Adams, Cabot Lodge, Young, and Laughlin.

To Sir William Anson and Mr. Paley Baildon I am beholden for valuable suggestion and criticism, and to any one who will trouble himself to point any of my mistakes out to me I offer my grateful thanks.

A. T. C.



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## CHAPTER I

### THE STATE, THE KING, AND JUSTICE

ON November 16, 1818, a remarkable scene occurred in the Court of King's Bench. Abraham Thornton had been tried at Warwick for the murder of Mary Ashford, and had been duly acquitted. Her brother, William Ashford, then 'appealed' Thornton in the King's Bench for the murder. The appellee, being brought into Court, pleaded as follows: 'Not guilty. And I am ready to defend the same by my body.' And thereon taking his glove, he threw it upon the floor of the Court, meaning thereby that he was ready to defend himself by battle. The appellant objected, but the Court held that the appellee had a right to wage his body, unless circumstances plainly inconsistent with his innocence appeared; and such did not appear on the pleadings. The appellant was not prepared to do battle, and the appeal was dismissed. As a consequence the Statute 59 Geo. III, ch. 46 was passed, which abolished 'appeals' in criminal cases. This incident, now only eighty years old, carries us back to the times of our ancestor Primitive Man, who when he conceived himself offended, went out to adjust his differences with his bow and his spear; and is referable to the private desire for vengeance, which was the source, and is still, some say, the strength of the criminal law.

It is only of late that the industry of scholars, of which we fortunately reap the fruits, has indicated the steps by