

OUTLINES OF LEGAL HISTORY

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Outlines of legal history by Archer M. White

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ARCHER M. WHITE

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LEGAL HISTORY**

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OF
LEGAL HISTORY

BY

ARCHER M. WHITE

Of the Middle Temple and of the Midland Circuit

BARRISTER-AT-LAW

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1872-1873

Dedicated

(BY PERMISSION)

TO

SIR EDWARD CLARKE, Q.C., M.P.

1872-1873

PREFACE.

A COMPLETE history of the English Law has yet to be written. Such a work would fill more than one ponderous volume, and would be beyond the reach of many who may find in the short sketch contained in these pages some help in getting an elementary knowledge of Legal History.

Among the compulsory subjects for the Bar Final Examination Legal History is now included. From India and the Colonies comes a large and ever increasing number of students to the Inns of Court. For them it is especially difficult to become acquainted with the history of the Law which they come to study. With a clear knowledge upon this subject it would be easier for them to understand the lectures they attend and the books they read. In legal examinations at the Universities of Oxford and Cambridge and elsewhere a knowledge of Legal History is always of great value.

There is not, however, any special book upon this subject.

In attempting to supply the want which my experience in preparing pupils for legal examinations has convinced me exists, I have followed a method of exposition which I have always found most intelligible to my pupils.

First, I briefly describe the outlines of the judicial system of the present day, so that the general knowledge of the everyday legal life which is acquired partly

by conversation and partly through newspapers and other desultory reading may become accurate and clear.

The student will thus have acquired a settled and clear basis of knowledge from which to work and upon which he can build.

He will then learn how the present state of things came to exist, the origin and evolution of the Courts.

Next in order he will find the history of the lesser Courts dealt with, and obsolete Courts which once were of great importance described.

The Saxon legal system is separately considered (Chap. IV.), as being the cradle of the English Law; and the distinctions and changes between it and the Norman system will be evident after reading the following chapter (Chap. V.).

A careful comparison of these two chapters after a previous acquaintance with the existing system and its evolution, gleaned from the preceding chapters, will enable the student to appreciate the respective influence of the Saxon period and the Norman period upon English Law.

The last chapter is designed to contain a brief chronological summary of certain leading principles and matters in the law. Each topic is treated separately, and traced from its origin through various periods and changes to the present day.

It has been a general complaint to me by pupils that historical works deal with periods and therein of every legal topic that calls for notice in the period, with the result that to get a coherent account of any one topic reference must be made to many different chapters in a book and often to more than one book. The labour of collecting these scattered references and

piecing them together into a connected account is too great for the average student.

My initial attempt to meet this difficulty has involved far greater labour than I anticipated; and even now I am conscious that some of the topics may appear to be dealt with in a desultory manner. The dearth of accurate learning and precise statement upon many of these topics is remarkable.

I have tried on the one hand to condense the information supplied, and on the other not to be too terse, with the object of making it easier to understand and to remember.

What is intended to be a sketch must not be taken as being exhaustive.

The division of the last chapter into sections has merely been for convenience, and it has been impossible to treat the sections strictly and exclusively. It often happens that one topic might be considered under different sections, and that two or more topics are difficult of definite separation.

The Appendices are chiefly the results of my labours when reading for my own examinations.

The line between mere antiquarianism and legal history is very difficult to define with precision; and I cannot hope that I have been more than only moderately successful in that respect. But the object of this work will have been obtained, if a perusal of it encourages the student to seek further information as to the history of that indigenous system of Law which prescribes the legal rights and duties of half the civilised world, and which shares with the Roman Law a peculiar pre-eminence as a complete exposition of Law. My object is to interest the student in the dry

bones of past periods of legal evolution, to awaken and stimulate in him that intelligent curiosity which is the parent of all useful knowledge and of all intellectual progress.

He will, I hope, be induced to refer from this book to the pages of Blackstone, a mine of historical learning, or to the excellent modern reproduction of Blackstone in Stephen's *Commentaries*. For the history of the Common Law he must consult Reeves. For Equity and Early Law—Spence. And for Criminal Law the learned volumes of Stephen's *History of the Criminal Law*, which every student should obtain and read, a work far more exciting and more interesting than any novel. Amongst other historical works to be consulted, I may mention Coke's *Reports* and his *Institutes*, the *State Trials*, particularly the Appendices to the volumes in the new series, Holmes' *Essays on the Common Law*, Digby's *History of Real Property*, and the various Yorke Prize Essays, especially those by Scrutton and the one by Kerly. Two volumes of the great work of Pollock and Maitland on *Legal History* have appeared since this little book was written and when it had nearly passed through the press. They should prove a priceless store of accurate learning for the scholar, but will be perhaps too bulky for the ordinary student. I have endeavoured where necessary and practicable to add references to this work under the letters P. and M.

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2 ESSEX COURT, TEMPLE,

May, 1895.