

## First Steps in Legal Historical Research, Mainly for Law Students

Whether you are interested in ‘tracing back’ a particular point, or doing a more in-depth piece of writing on legal history or the law as it stood at a particular time, you will probably be aware that you are moving into new territory, intellectually and practically. This short guide (which is a work in progress, and will be updated from time to time) is intended to help you avoid some of the more obvious pitfalls, and to point out some of the useful resources for this sort of research.

### ‘Health Warnings’

#### The dangers of apparent familiarity

As a law student, you have been drilled in researching the law using formal legal sources – statutes and cases – perhaps with the aid of textbooks. Travelling backwards in the history of the law in England and Wales, you will find that roughly equivalent sources exist, but the differences really do need to be borne in mind. Thus, the further back you go, the less like modern law reports you will find ‘law reports’ to be. Prior to the mid-nineteenth century, they are ‘unofficial’; they may be short and they may not give you the information you are looking for. If you get back before the 1700s, you will find that some original legal materials are not in English, but in ‘law French’ or Latin. Even after that, they may be peppered with terms in these languages. As far as statutes are concerned, there are disagreements or uncertainties about the texts of many early statutes, and, again, they are in Latin (and sometimes French) before the Tudor period. The idea of writing a comprehensive textbook on a particular branch of law, of the sort you would recognise from, say, Tort, or Contract, was, on the whole, a relatively late development. There are certainly important treatises and attempts to describe large swathes of the law – you may encounter names like *Glanvill*, *Bracton*, *Coke* and *Blackstone* but these are not quite what you would expect, if you are looking for a modern-style text book. They may be concerned more with procedure than with substantive law, and their legal categories may not be those with which you are familiar.

#### The dangers of ‘time-hopping’

A very tempting way of starting off in this sort of research is to take a modern case on the point in which you are interested, and to trace back via the authorities used in argument. That is not wrong, but it needs to be approached with care. You need to bear in mind that lawyers in a later case are not interested in historical truth, in giving the most accurate possible picture of the older case in its own legal context: in an adversarial system, they are interested in using the text of the report to the advantage of their present client. This will not necessarily amount to the same thing. Even leaving aside the distortions likely to come from the use of historical materials

within the adversarial context, modern lawyers do not always appreciate important points about older legal materials. In particular, I have observed a lack of understanding of the relevance, in interpreting older records and reports, of forms of action (writs etc.) and of the very different position with regard to jurisdictions, hierarchies and appeals, which prevailed before the late 19<sup>th</sup> century.

A certain circumspection, and a degree of humility, are, therefore, required in moving into territory which is co-owned with scholars from a historical background. There is a lot of wonderful work in legal history (including 'recent' legal history, which lawyers may sometimes think of as not history at all): it is surprising how often it is not consulted.

### Actually doing it

All of those warnings having been given, it is time for the positive part. There is no reason that a good law student cannot do good legal historical research. Just do some preliminary reading on the legal system and law of the period in which you are interested, and approach the sources with a degree of caution.

It is wise to make sure you have a good secondary text to hand – there is nothing quite so comprehensive as J.H. Baker's *Introduction to English Legal History* (5<sup>th</sup> edn, Oxford, 2019). This is not really an 'introduction' – it runs to about 600 pages – though its coverage of different topics is at different levels (much more detail on land law than crime and family, for example). For later periods, the *Oxford History of the Laws of England* vols 11-13 are very useful.

Once you have got the basic idea of your area, you will want to find out what others have written about it. Baker has good references at the end of each chapter. Beyond this, you can approach this via the usual Law databases and catalogues, but also consider using the *Bibliography of British and Irish History* or more specialised historical bibliographies. I include a starter-list for several different areas at the end of this guide.

The next logical step is to engage with some primary sources. Here are some notes and thoughts on that process.

### The classical sources: cases, statutes, treatises

See Baker c. 11 for a run-through of types of legal literature. Older statutes can be approached via the *Statutes of the Realm* volumes (though these have their faults) and cases via a variety of sources, from original manuscripts, through edited collections by organisations like the Selden Society, to electronic databases. Online searches are a very good place to start, since, in the past few years, a large amount of information relating to legal history has been made available on the internet.

## **Legislation and records of government activity**

Pre-1215 laws are being placed online via Early English Laws project:

<http://www.earlyenglishlaws.ac.uk/>

Statutes of the Realm (to 1713) can be found via Heinonline > English Reports.

British History Online <http://www.british-history.ac.uk/Default.aspx> has some content available free, (including the Victoria County Histories, Calendar of Papal Registers, parts of Rymer's Foedera and journals of the early modern houses of parliament). Other items, such as the Parliament Rolls of Medieval England and the Calendars of Close Rolls, however, are only available with the 'premium' subscription service.

Calendars of Fine Rolls from the reign of Henry III have been made available free as part of the Fine Rolls Project: <http://www.frh3.org.uk/home.html>

The National Archives website gives links to freely downloadable images of its class SC8 ('Ancient Petitions') which include many petitions to the king, his council, Parliament and royal officers. These documents are usually in Norman French. The National Archives catalogue, Discovery, <https://discovery.nationalarchives.gov.uk/> is itself a useful resource, with helpful descriptions of documents and classes of documents, and a number of research guides.

Eighteenth to twentieth-century parliamentary papers can be found at:

<http://parlipapers.chadwyck.co.uk/home.do>

## **Court cases**

A major project led by R.C. Palmer and E.K. Palmer at the University of Houston has made available, free of charge, high-quality images of the rolls of the royal courts of medieval and early modern England (and, to a limited extent, Wales):

<http://aalt.law.uh.edu/>. There are King's Bench, Common Pleas, Exchequer, eyre records and other categories. This material is not, however, particularly 'user-friendly', since there is no index or search facility, and in order to understand it, some knowledge of Latin and palaeography is required.

Another American project, led by D.J. Seipp at Boston University, has catalogued and cross-referenced all of the Year Books (lawyers' reports of the pleading in notable cases in the central courts in medieval and early-modern England): <http://www.bu.edu/law/seipp/>. Links to images of the printed 'black letter' Year Books are included where appropriate. The search facility is particularly good. This resource is mainly in English, though the original records themselves are in 'Law French' – a version of Norman French. A working knowledge of modern French and recourse to J.H. Baker, *A Manual of Law French* (1979) usually suffices for their translation.

Bracton's Note Book (thirteenth century cases, Latin) is available in HeinOnline's Legal Classics Library: <http://www.heinonline.org/HOL/Index?collection=beal>

The English Reports, the great collection of 'nominate' law reports covering cases from medieval times to the Victorian period, are available via Westlaw and as part of

the Library's subscription to HeinOnline. Note that some of the earlier English Reports are, in fact, in Law French, with occasional formulaic Latin.

An important resource for criminal law is the Old Bailey Project, with many reports of criminal trials from the seventeenth to the early-twentieth century:

<http://www.oldbaileyonline.org/>

Miscellaneous records from a variety of courts (especially London's local courts) are available in British History Online.

Twentieth century cases are found in the normal series of law reports, many of which can be found online.

### **Treatises**

*Bracton* can be found at <https://amesfoundation.law.harvard.edu/Bracton/> (Harvard University Library).

Many other treatises, including Blackstone's *Analysis and Commentaries*, and Coke's *Institutes* are included in HeinOnline's Legal Classics Library. Note that the versions of 'classics' on HeinOnline are not necessarily either the earliest or the latest version, nor, in the case of works originally not in English, are they necessarily the best translation available.

Also extremely useful, with thousands of scans of out-of-copyright books, including treatises and some reports are:

archive.org,

Early English Books Online

Project Gutenberg <http://www.gutenberg.org/>

### **Journalism**

Newspapers, pamphlets, periodicals can be good sources – lively and opinionated, if not always reliable. These are published online in various 'packages' to which university and some civic libraries will subscribe. I have found the collection 19th Century British Periodicals, to which my library subscribes – particularly helpful for teaching purposes, particularly for pictures and satirical accounts from periodicals like *Punch*, *Funny Folks* and *Judy, the Conservative Comic*.

### **Art**

Law and especially crime has inspired many works of art. A collection like *ArtStor* can be useful to locate relevant material.

## Biography

The *Oxford Dictionary of National Biography* is available, and fully searchable, online: <http://www.oxforddnb.com/>. This gives reliable biographies of many law-makers and lawyers as well as some notorious criminals and victims of crime.

## Bibliography

The *Bibliography of British and Irish History* is a good place to start for all British and Irish historical monographs and articles: <http://www.brepolis.net/>. Also at this address are specialised medieval international bibliographies.

## Journals

The major legal history journals, *Journal of Legal History* and *Law and History Review* are available online.

Relevant articles also appear in 'straight' history journals (many available online), though these are overwhelmingly about the history of criminal law rather than other aspects of legal history.

## Miscellaneous

The Internet Text Archive is worth a look if you are after older (printed) public records, local records or chronicles: <https://archive.org/> Whether or not a book is here is somewhat random, but I have used it a lot, when there are issues with library provision.

British history primary sources can be found at: [http://eudocs.lib.byu.edu/index.php/History\\_of\\_the\\_United\\_Kingdom:\\_Primary\\_Documents](http://eudocs.lib.byu.edu/index.php/History_of_the_United_Kingdom:_Primary_Documents)

.Also worth looking at for 18th and 19th C crime and criminal justice: <https://www.digitalpanopticon.org/>

Blogs: legal historians are slowly moving into the blogosphere. Always interesting are the posts on Legal History Miscellany <https://legalhistorymiscellany.com/> (specialising in criminal matters, though also includes other issues).

## Legal History Reference Reading List

January 2019 version, rev. Sept 2020

This list began as an additional reading list for use by students on the University of Bristol Law School undergraduate Legal History unit, but is included here as a general resource for those beginning research in law and history or legal history. It is a perpetual 'work in progress', and I am always happy for suggestions.

### Abbreviations

*AJLH*        *American Journal of Legal History*

*JLH*         *Journal of Legal History*

*JMH*         *Journal of Medieval History*

*LHR*         *Law and History Review*

*LQR*         *Law Quarterly Review*

*OHLE*       *Oxford History of the Laws of England*

*[These are all available online via the Library, with the exception of a few mid-20<sup>th</sup> C volumes of the LQR]*

*SS*           Selden Society volumes (*in WMB Library, ground floor*).

### Overview/Introduction/General

*What is Legal History?*

R. Auchmuty 'Legal History', in R Auchmuty (ed.), *Great Debates in Gender and Law* (London, 2018) 173-184

M. Lobban, 'The Tools and Tasks of the Legal Historian', in A. Lewis and M. Lobban (eds), *Law and History: Current Legal Issues* 6 (2003), 1-32.

I. Stramignoni, 'At the margins of the history of English law: the institutional, the socio-political and the 'blotted out'', *Legal Studies* 22 (2002) 420.

J. Rose, 'Studying the past: the nature and development of legal history as an academic discipline', *JLH* 31 (2010), 101-128.

*General works*

S.F.C. Milsom *Historical Foundations of the Common Law* (second edn., London, 1981)

A.H. Manchester, *A Modern Legal History of England and Wales 1750-1950* (London, 1980)

J.H. Baker & S.F.C. Milsom, *Sources of English Legal History: private law to 1750* (second edn, London, 2010).

A. Harding, *A Social History of English Law* (Harmondsworth, 1966)

J.H. Baker, 'English Law and the Renaissance', 94 *SS* 23-51

B. Shapiro, 'Law Reform in 17<sup>th</sup> C England' *AJLH*. 19 (1975) 280

D. Veall, *The Popular Movement for Law Reform 1640-1660* (Oxford, 1970).

Smith and McLaren, 'History's living legacy: an outline of 'modern' historiography of the common law', 21 *Legal Studies* (2001), 251-324.

W.S. Holdsworth, *A History of English Law* (16 volumes, 1922-66)<sup>1</sup>

M. Mulholland, B and A Pullan and R Melikan (eds) *The trial in history* 2 volumes, (Manchester, 2003).

G.R. Rubin and D. Sugarman (eds), *Law, Economy and Society, 1750-1914: essays in the history of English Law* (Abingdon, 1984)

P. Brand et al. (eds) *Adventures of the Law* (Dublin, 2005).

J. Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill, 2004).

J.A. Guy and H.G. Beale, *Law and Social Change in British History* (London, 1984).

*Oxford History of the Laws of England* - series, with various authors and editors, projected to cover Legal history from Anglo Saxon times to the twentieth century, including:

W. Cornish, M. Lobban, K. Smith, S. Anderson, P. Polden, *Oxford History of the Laws of England* vol. XI 1820-1914 English Legal System (Oxford, 2010).

W. Cornish, S. Anderson, R. Cocks, M. Lobban. P. Polden, K. Smith, *OHLE* vol XII and vol XIII, 1820-1914

## *Wales*

T.G. Watkin, *A Legal History of Wales* (2<sup>nd</sup> edn, Cardiff, 2012).

## *Europe*

J.M. Kelly, *A Short History of Western Legal Theory* (Oxford, 1992)

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<sup>1</sup> rather old fashioned but useful for reference

O.F. Robinson, T.D. Fergus and W.M. Gordon, *European Legal History* (3<sup>rd</sup> edn, London, 2000).

## **A. Institutional Development 1066-1875**

### **I: Courts**

*Non-common law tribunals*

OHLE XI, part III c.5.

*Centralisation of justice in medieval England*

Milsom, *Historical Foundations of the Common Law* c.1.

Baker, *IELH* c.1 & 2.

R. Van Caenegem, *Birth of the English Common Law*, second edition (Cambridge, 1988).

J. Hudson, *The Formation of the English Common Law* (London, 1996).

[F. Pollock and F.W. Maitland, *History of English Law before the time of Edward I* (second edn, Cambridge, 1968)]

*Courts of common law (development, specialisation, survival and eventual merger of the separate courts)*

Baker, *IELH* cc. 1-3

Milsom, *HFCL*, cc.1-3

Manchester, *MLH*, cc. 4-8, 12.

G.O. Sayles, *The Court of King's Bench in Law and History* (Selden Society Lecture, 1959)

R.V. Turner, 'Origins of the Common Pleas and King's Bench' 21 *AJLH* 238-54.

C.W. Brooks, 'Litigants and attorneys in King's Bench and Common Pleas 1560 – 1640' in J.H. Baker (ed.), *Legal Records and the Historian* (London, 1978) 41-59.

M. Hastings, *The Court of Common Pleas* (1948) , cc. 15-16, c. 3 - (good description of day in court in 15th C.) (KL 224 HAS)

M. Blatcher, *The Court of King's Bench 1450-1550: a Study in Self-Help*, 17-21 (figures re bench profits 1350-1560), and c.7. Blatcher c.2 (on rival theories of



Maitland & Holdsworth & methods of calculating loss of business); c.9 - (KB improvements).

J. Oldham, 'Law –making at nisi prius in the early 1800s' *JLH* 25 (2004) 221-247.

H. Wurzel, 'The origin and development of *Quominus*': 49 *Yale LJ* 39-64.

R.M. Ball, 'The Exchequer of Pleas, Bills & Writs' *JLH* 9 308-23

C.A.F. Meekings – King's Bench Bills (1977) *Legal Records and the Historian*, 97 -139.

C.A.F. Meekings, 'A King's Bench formulary' *JLH* 6 (1985) 86-104.

74 SS xxvi-lxvi; 48 SS, introduction; 55 SS xi-xl (medieval KB); 57 SS xxiv-lxxii (jurisdiction)

S Jenks, 'Bills of custody in the reign of Henry VI' *JLH* 23 (2002) 197-222.

*OHLE* XI part III c. VI 'The Judicature Acts'.

#### *Common law procedure*

Baker, *IELH* cc. 4, 5, 9 (procedure, proof, appeals)

J. Cohen, 'The history of imprisonment for debt' *JLH* 3 (1982) 153-71.

F.W. Maitland, *Equity, also the forms of action at common law* ed. Chaytor and Whittaker, Cambridge, 1909

C. Hanly, 'The decline of civil jury trial in 19<sup>th</sup> century England', *JLH* 26 (2005) 253-78.

J. Cairns and G. McLeod (eds), *The Dearest Birthright of the People of England': the jury in the history of the common law* (Oxford, 2002)

#### *The Chancellor's jurisdiction*

Baker, *IELH*, cc. 6, 7.

Milsom, *HFCL*, c.4.

Manchester, *MLH*, 135-42.

P. Tucker, 'The early history of the Court of Chancery: a comparative study' *English Historical Review* (2000) 791.

M.E. Avery, 'History of the equitable jurisdiction of the chancery before 1460' *Bulletin of the Institute of Historical Research* 49 (1969) 129-44.

W. Jones, 'Chancery in the reign of Elizabeth I', 5 *AJLH*. 1

- S. Prall, 'Chancery reform and the Puritan Revolution' - *AJLH* (1962) 28.
- G. Behrens, 'An early Tudor debate on the relation between law and equity' *JLH* 19 (1998) 143-61.
- G Behrens, 'Equity in the Commentaries of Edmund Plowden' *JLH* 20 (1999) 25-50.
- D.R. Klinck, 'Lord Eldon on Equity' *JLH* 20 (1999) 51-74.
- D.R. Klinck, 'Lord Nottingham's "certain measures"' *LHR* 28 (2010), 711-748.
- S. Bottomley, 'Patent cases in the court of Chancery 1714-58' *JLH* 35(2014) 27-43.
- C. Riley 'Jeremy Bentham and equity: the Court of Chancery, Lord Eldon, and the Dispatch Court plan', *JLH* 39 (2018), 29-57.

#### *Conciliar courts*

- J.A. Guy, *The Cardinal's Court: the impact of Thomas Wolsey in Star Chamber* (Hassocks, 1977) 1-21; 119-39
- T. Barnes, 'Star Chamber and the sophistication of the criminal Law' [1977] *Crim. L.R.* 316-26.
- T. Barnes, 'Due process and slow process in the late Elizabethan and early Stuart Star Chamber', 6 *AJLH*. (1962) 222-49; 315-46.
- P. Vinogradoff (ed.), *Essays in Legal History*, (Oxford, 1913): H.D. Hazeltine, c.XIII 'The early history of English equity' (on equity in courts other than the Chancery); F. Pollock, c. XIV 'The transformation of equity'.

#### *Chancery procedure and doctrine*

- Yale, 'Lord Nottingham and precedent in equity' *SS* 73, xxxvii.
- Croft, 'Lord Hardwicke's use of precedent in equity', in *Legal Record & Historical Reality* ed. T.G. Watkin (1989) 121.
- David Foster, 'Construction and Execution of Trusts in Chancery, c. 1660-1750', *Journal of Legal History* 40 (2019), 270-97.

#### *Conflict with the common law*

- J.H. Baker, 'The common lawyers and the chancery: 1616' (1969) 4 *Irish Jurist* 368.
- L. Knafla, *Law and Politics in Jacobean England*,. 155-81.

*Accommodation and eventual merger of jurisdictions*

M. Lobban, J. Getzler and J. Oldham, Discussion of nineteenth century chancery reform: *Law and History Review* 22 (2004) 389-428 and 565-618

**II: The Legal Profession(s)**

Baker, *IELH* cc. 10 and 11.

Cornish & Clark, *Law & Society in England*, 45-53; 98-110

Manchester, *MLH* c.3, 50-83.

P. Polden, *OHLE* XI, Part IV: The Legal Professions

R.A. Houston, 'The composition and distribution of the legal profession, and the use of law in Britain and Ireland, c.1500-c.1850', *Legal History Review* 86 (2018) 123-56 (online via Library)

*OHLE II* cc. [7], 16, 27 (up to 13<sup>th</sup> C - c.7 is pre-Conquest).

*OHLE VI* part V (15<sup>th</sup>-16<sup>th</sup> century)

*OHLE XI* part IV (19<sup>th</sup> century)

*The judiciary*

R.V. Turner, 'The reputation of royal judges under the Angevin kings' *Albion* 11 (1979) 301-16.

J.R. Maddicott, *Law and Lordship: Royal Justices as Retainers in Thirteenth- and Fourteenth-Century England Past and Present Supplement 4*

S.B. Chrimes, 'Richard II's Questions to the judges, 1387' *LQR* lxxii (1956) 365-90

Black, 'The courts and judges of Westminster Hall during the Great Rebellion, 1640-1660.' *JLH* 7 (1986), 23.

Musson, 'The role of amateur and professional judges in the royal courts of late medieval England', in M. Mulholland and B. Pullan (eds) *Judicial tribunals in England and Europe, 1200-1700* (Manchester, 2003) 37-57.

*Advocates, attorneys and solicitors, the rise of professional lawyers*

R. Palmer, 'Origins of the legal profession', II *Irish Jurist* (1976) 126-46.

S. Reynolds, 'The emergence of professional law' *LHR* 21 (2003) 347-66.

P. Brand, 'The English difference' *LHR* 21 (2003) 383-88.

P. Brand, *The Origins of the English Legal Profession* (Oxford, 1992).

A. Musson, 'Rehabilitation and reconstruction? Legal professionals in the 1290s' in M. Prestwich et al. (eds), *Thirteenth Century England IX* (Woodbridge, 2003), 71-87.

C.W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: the lower branches of the legal profession in early modern England* (Cambridge, 1986 - online via Library).

*Legal education and scholarship*

M. Birks, *Gentlemen of the Law*, 87-112.

W. Prest, *The Inns of Court*, 115-73.

P. Goodrich, 'Eating law, commons, common land, common law' *JLH* 12 (1991) 246-67.

R. Auchmuty, 'Early women law students at Cambridge and Oxford' *JLH* 29 (2008) 63-97.

A.W.B. Simpson, 'The circulation of yearbooks in the fifteenth century' 73 *LQR* (1957) 492

A.W.B. Simpson, 'The source and function of the later Year Books' 87 *LQR* (1971) 94

Ives, 'The purpose and making of the later Year Books' 89 *LQR* (1972) 64.

D. Powell, 'Coke in context: early modern legal observation and Sir Edward Coke's Reports', 21 *JLH* (2000) 33-53.

I. Williams, "'He credited more the printed book": common lawyers' receptivity to print c. 1550-1640' *LHR* 28 (2010) 39-70.

G. Garnett, 'The ould fields: law and history in the prefaces to Sir Edward Coke's Law reports' *JLH* 34:3 (2013) 245-84

*Professional privileges, regulation, reputation*

J.H. Baker, 'Solicitors and the law of maintenance 1590-1640' 32 *CLJ* (1973), 56-80.

J.H. Baker, 'Counsellors and barristers, an historical study', *CLJ* 27, 205-29.

A. Musson, 'Legal culture: medieval lawyers' aspirations and pretensions' in W.M. Ormrod (ed.), *Fourteenth Century England III* (Woodbridge, 2003) 17-30.

J.H. Baker, *The Order of Serjeants at Law* SS Supplementary Series, 1984, 108-29.

E.W. Ives and Manchester (eds), *Law, Litigants and the Legal Profession* (London, 1983).

J. Lyes, *A Strong Smell of Brimstone: the Solicitors and Attorneys of Bristol, 1740-1840* (Bristol, 1999).

B.L. Anderson, 'The attorney and the early capital market in Lancashire' in Liverpool and Merseyside: essays in the Economic and Social History of the Port and its Hinterland, ed. J.R. Harris (London, 1969) 50-77.

M. Miles, 'The Money-Market in the Early Industrial Revolution: the evidence from West Riding attorneys c. 1750-1800', *Business History* 23.2 (1981) 127-46.

P. Mathias, 'The Lawyer as businessman in eighteenth century England' in *Enterprise and History: Essays in honour of Charles Wilson*, ed D.C. Coleman and P. Mathias (Cambridge, 1984) 151-67.

SS vol. 105 (1989) pp.xv-xxiii; xxv-xxxiii.

W. Wesley Pue and D. Sugarman (eds), *Lawyers and Vampires cultural histories of legal professions* (Oxford, 2002).

J.M. Schramm, 'The anatomy of a barrister's tongue': rhetoric, satire and the Victorian Bar in England', *Victorian Literature and Culture* 32 (2004) 285-303.

### **e) Women and the legal profession**

R. Auchmuty, 'Early women law students at Cambridge and Oxford' *JLH* 29 (2008) 63-97.

R. Auchmuty, 'Whatever happened to Miss Bebb? *Bebb v. The Law Society* and women's legal history', *Legal Studies* 31 (2011) 199-230.

M.J. Mossman, 'Precedents, patterns and puzzles: feminist reflections on the first women lawyers' *Laws* 5 (2016) 39.

P. Polden, 'Portia's progress: women at the Bar in England 1919-1939', *International Journal of the Legal Profession* 12 (2005) 293-338.

### **III: Procedure and Proof**

Baker, *IELH*, cc. 4, 5, 9.

Milsom, *HFCL*, cc. 2 and 3.

M.S. Arnold, 'Law and Fact in the medieval jury trial: out of sight, out of mind?' *AJLH* 18 (1974) 267-80.

S.F.C. Milsom, 'Law and Fact in Legal development' *U of Toronto LJ* 17 (1967) 1-19.

I MacLean, 'Fictional entities and legal fictions in Renaissance jurisprudence' *JLH* 20 (1999) 1-24.

D. M. Dwyer, 'Expert evidence in the English civil courts 1550-1800' *JLH* (2007) 93-118.

### *Criminal trials*

J.G. Bellamy, *The Criminal Trial in Later Medieval England: felony before the courts from Edward I to the sixteenth century* (Toronto, 1998)

J. Langbein, *The Origins of Adversary Criminal Trial* (Oxford, 2003).

*OHLE* XIII part I c. III The trial: adversarial characteristics and responsibilities.; pre-trial and trial procedures. (changes in prosecution and defence),

J. Oldham and others, Forum: 'From the twelve judges to the Court for Crown Cases Reserved' *LHR* 29 (2011), 181-302/

## **B: Substantive Development 1066-1875**

### **I: Criminal Law and Criminal Justice**

Baker, *IELH* cc. 29, 30.

Milsom, *HFCL* c.14.

Manchester, *MLH*, c. 9, 180-187, c. 10, c.11.

Cornish & Clark, *Law and Society in England* c. 8, 543 - 613.

Baker, 'Pleas of the Crown' (1978) 94 *SS* 299-350.

C. Herrup, *The Common Peace*

P. King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford, 2000).

B.P. Smith, 'English criminal justice administration 1650-1850', *LHR* 25 (2007) 593-634.

L. Radzinowicz and Hood, *A History of English Criminal Law and its Administration from 1750* (1948-86).

R. Ireland, *Land of White Gloves? A History of Crime and Punishment in Wales* (2015).

J. Wallas, *The Bloody Code in England and Wales 1760-1830* (2018),

#### *Procedure*

R.W. Ireland, 'The presumption of guilt in the history of English criminal procedure' *JLH* 7 (1986) 243-55.

Hunter, 'The development of the rule against double jeopardy' *JLH* 5 (1984), 1-15.

- Post, 'The admissibility of defence counsel in English criminal procedure', *JLH* 5 (1984) 23-30.
- T. Gallanis, 'The mystery of Old Bailey counsel' *Cambridge Law Journal* 65 (2006) 159-73.
- D. Lemmings, 'Criminal trial procedure in eighteenth century England: the impact of lawyers' *JLH* 26 (2005) 63-70.
- A. May, 'Advocates and truth-seeking in the Old Bailey courtroom' *JLH* 26 (2005) 71-7.
- Cockburn, 'Trial by the book' in *Legal Records and the Historian* (ed. Baker) 60-79.
- Cockburn and Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England 1200-1800* (1988).
- J.H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford, 2003).
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