

Contents

Prologue: The Man of Law's Tale	<i>page xi</i>
1 The Need for Legal History	1
I Introduction	1
II Maitland and the Common Law	4
III Why History?	7
1 History Contextualises Law	8
2 History as Comparative Law	9
3 History Shows That Law Is Not Fixed	9
4 History Highlights the Necessity of Legal Change	9
5 History Highlights the Nature of Legal Change	10
6 History Questions the Relationship between Law and Society	10
7 History Serves as Critique	11
IV Stories of the Common Law	12
V Conclusions	16
2 The Architects of Legal History	19
I Introduction	19
II The Intellectual History Tradition	20
III The Social History Tradition	22
IV Radical Approaches	26
1 Critical Legal History	26
2 Feminist Legal History	30
3 Critical Race Theory	35
4 Subversive Legal History	38
V Conclusions	41
3 The Anglo-Saxon Legacy	45
I Introduction	45
II The Seamless Web	46
III From Feud to Compensation	49

1	The Blood Feud	50
2	Compensating Wrongs	52
3	Fault	53
IV	The Late Anglo-Saxon Legal System	55
1	Laws	56
2	Courts	57
3	Proof	61
V	Conclusions	62
4	The Norman Conquest (c.1066–1154)	65
I	Introduction	65
II	What Have the Normans Ever Done for Us?	66
III	Feudalism	70
1	Feudal Tenures	72
2	Feudal Incidents	74
3	Feudal Courts	75
4	The Sarum Oath	76
IV	The Position of Slaves and Women	77
V	Conclusions	79
5	The Father of the Common Law (c.1154–1215)	85
I	Introduction	85
II	The Becket Controversy	86
III	The Angevin Advance	88
IV	The Writ System	92
1	Maitland and <i>The Forms of Action</i>	94
2	The Writ of Right	95
3	The Possessory Assizes	97
4	The Writs of Entry	100
5	The Maitland–Milsom Debate	102
V	Conclusions	109
6	The Myth of Magna Carta (c.1215–1272)	113
I	Introduction	113
II	The Great Charter?	115
1	Feudalism	116
2	Courts	117
3	Governance	119
4	Immigration	120
III	The Origins of Parliament	123
1	Magna Carta and the Charter of the Forest	125
2	The Statute of Merton 1235	126

Contents

ix

3	The Provisions of Oxford 1258 and the Provisions of Westminster 1259	127
4	The Statute of Marlborough 1267	128
IV	Women under Medieval Law	131
V	Conclusions	134
7	The English Justinian (c.1272–1307)	137
I	Introduction	137
II	The Statutes of Edward I	139
1	The Statute of Westminster 1275	141
2	The Statute of Wales 1284	142
3	The Statute of Westminster II 1285	143
III	The Decline of Feudalism	145
IV	The Origins of the Law of Obligations	148
1	Covenant	149
2	Trespass	150
V	Conclusions	153
8	The Black Death (c.1307–1485)	157
I	Introduction	157
II	The Origins of Labour Law	159
1	The Ordinance of Labourers 1349	163
2	The Statute of Labourers 1351	164
III	Effect upon the Legal System	166
IV	Effect upon Substantive Law	169
1	The Action on the Case	169
2	Assumpsit	173
3	Treason	177
4	Murder	179
V	Conclusions	182
9	The Tudor Transformation (c.1485–1603)	189
I	Introduction	189
II	The Legal Renaissance	191
1	The Common Law Courts	196
2	The New Conciliar Courts	199
3	The Court of Chancery	201
III	The Reformation of Statute Law	205
1	Regulating the Relationship with Rome	209
2	Cromwell's Constitutional Clash	210
3	A Religious Revolution	211

IV	The Tudor Common Law	215
1	Consideration	215
2	Ejectment	218
3	Trusts	219
4	Murder and Manslaughter	223
V	Conclusions	229
10	The Stuart Suicide (c.1603–1649)	233
I	Introduction	233
II	Coke the Lawyer	236
1	Disputes with the Ecclesiastical Courts	238
2	Tensions between the King and the Common Law	239
3	The Conflict with Chancery	241
4	The End of Coke's Judicial Career	242
5	Coke the Parliamentarian	243
III	Coke the Husband	247
IV	Coke the Jurist	251
V	Conclusions	256
	Epilogue: Destiny of the Common Law	261
	Afterword	269
	<i>Index</i>	272