

## 1 Its Ziggy Shape

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Here's none of your strait lines here – but all taste – zig-zag – crinkum-  
 crankum – in and out–

George Colman and David Garrick, *The Clandestine Marriage: As It Is  
 Acted at the Theatre-Royal in Drury-Lane*, A. Leathley and eight  
 others, Dublin, 1766, p. 29.

This is,  
 of course, how people get hurt,  
 how history gets its ziggy shape

Stephen Dunn, 'History', *What Goes On*, W. W. Norton, New York,  
 2013, p. 172.

*History and the Law* is about people's relationships with, to and under the law in the past, and modern historians' understanding of the law as experienced by those people. With some zig-zaggery into the seventeenth and twentieth centuries, the eighteenth to the nineteenth century is this book's time frame. The ziggy shape is history's shape, not history as 'the past' but history as stories that get told about the past. 'The law' here is English law – *The Laws of England* – with its common law system of precedent as opposed to written code; the common law's regime of adversarial procedure as opposed to the inquisitorial (or 'truth-finding') systems of Continental Europe. It is English law, with its overlapping circles of never-quite binaries: common law/statute law, criminal law/civil law, high law/low law, public law/private law, law/equity... all of it but the very last 'the common law' in one way or another and designated incomprehensible by many commentators. It is an adversarial legal system of fairly recent origin: now-familiar lawyer-dominated procedures came into being over the century from about 1750.<sup>1</sup> This is one of the reasons for some historians (*not* legal historians) having trouble with this law. Assured by great authorities,

<sup>1</sup> John H. Langbein, *The Origins of Adversary Criminal Trial*, Oxford University Press, Oxford, 2003.

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like Sir William Blackstone in his *Commentaries on the Laws of England*, that we are looking at an immemorial system, pertaining time out of mind, we have not known until very recently that, writing in the 1760s, Blackstone was in fact describing a system in the making.

Historical accounts of this law are contradictory. It has been said that from the mid-seventeenth century onwards, ideas about people's relationship to the law became a 'nationalist ideology ... that was absorbed into the mainstream identity of modern England'. It is also said that in the later eighteenth century this view of the common law as the prime expression of English identity declined, although it was sometimes still employed by radicals who, for political and rhetorical purposes, 'took common-law doctrine at face value, and turned it back to its masters'.<sup>2</sup>

But far from the connection between law and Englishness being severed, the nineteenth century provided new historical lessons for law students and children in schools about the indissoluble connection between the liberties and freedoms of 'being English' and being subject to its legal regime.<sup>3</sup> These ideas and connections are still expressed, in popular and professional circles, by conservatives and radicals. 'The common law is perhaps the single most distinctive feature of the condition of Englishness', says *Standpoint* magazine. 'Together with our language, it is at the heart of what makes us different from the nations of continental Europe'.<sup>4</sup> A former barrister concludes her harrowing 2018 collection of modern law stories (stories of ordinary people in relationship with the law) with an expression of pride in having served courts and a criminal justice system 'considered among the fairest in the world'.<sup>5</sup>

<sup>2</sup> Robert Colls, *Identity of England*, Oxford University Press, Oxford, 2002, pp. 13, 23, 27, 31.

<sup>3</sup> Gordon Batho, 'The History of the Teaching of Civics and Citizenship in English Schools', *The Curriculum Journal*, 1:1 (1990), pp. 91–100; David Sugarman, 'Legal History, the Common Law and "Englishness"', Karl Modeer (ed.), *Legal History in Comparative Perspective*, Institute for Legal History, Stockholm, 2002, pp. 213–27; John Hudson, *F. W. Maitland and the Englishness of English Law: Selden Society Lecture Delivered in the Old Hall of Lincoln's Inn July 5th 2006*, Selden Society Lecture, 2006, Selden Society, London, 2007; F. W. Maitland (with Sir Frederick Pollock), *History of English Law before the Time of Edward I*, Cambridge University Press, Cambridge, 1895.

<sup>4</sup> Jonathan Gaisman, 'Will the Genius of the Common Law Survive?', *Standpoint*, February 2018. The journal describes its mission as a celebration of western civilisation: 'its arts and its values – in particular democracy, debate and freedom of speech – at a time when they are under threat'. [www.standpointmag.co.uk/features-february-2018-jonathan-gaisman-will-the-genius-of-the-common-law-survive](http://www.standpointmag.co.uk/features-february-2018-jonathan-gaisman-will-the-genius-of-the-common-law-survive). Accessed 3 July 2018.

<sup>5</sup> Sarah Langford, *In Your Defence: Stories of Life and Law*, Doubleday, London, 2018, pp. 268–70.

Legal historians continue to discuss the very great puzzle of the ‘the great litigation decline’ from the seventeenth to the eighteenth century. In the Tudor and Stuart periods, all sorts and degrees of people appear to have had ‘first-hand knowledge of legal processes and concepts’.<sup>6</sup> Social historians agree that this kind of law experience led to a sense of community (local and national) and high expectations of good governance.<sup>7</sup> Personal experience of litigation gained in the sixteenth and seventeenth centuries may have empowered some participants because such experience created expectations that government was bounded by law and might be held to account if it failed to act accordingly.<sup>8</sup> Legal historians agree that this kind of law experience deteriorated among eighteenth-century people; it appears they were far less willing to ‘go to law’ – to defend their reputation, their local social and political standing, their property interests – than their ancestors had been.<sup>9</sup> Perhaps new forms of association in the new century, new kinds of self-disciplined social subjects, and newly available knowledge of the law spread by the print industry can account for a decline in litigation. There were newer and cheaper ways now of settling family, community and employment disputes. These explanations for a decrease in litigation centre on lay-people; but attorneys too experienced rising legal costs, and – as we shall see – may have developed less litigation-centred ways of doing business.<sup>10</sup>

Nevertheless, decline or not, and as shall be discussed, E. P. Thompson found the law ‘everywhere’ he looked in the English eighteenth century: ‘the ruled – if they could find a purse and a lawyer – would actually fight for their rights by means of law ... When it ceased to be possible to

<sup>6</sup> David Lemmings (ed.), ‘Introduction’, *The British and Their Laws in the Eighteenth Century*, Boydell Press, Woodbridge, 2005, p. 8.

<sup>7</sup> Steve Hindle, *The State and Social Change in Early Modern England*, Macmillan, Basingstoke, 2000, pp. 236–7; James Sharpe, ‘The People and the Law’, *Popular Culture in Seventeenth-Century England*, Barry Reay (ed.), Routledge, London, 1988, pp. 224–70.

<sup>8</sup> Christopher Brooks, ‘Litigation, Participation and Agency’, *British and Their Laws*, David Lemmings (ed.), pp. 155–81.

<sup>9</sup> Wilfrid Prest, ‘The Experience of Litigation in Eighteenth-Century England’, *British and Their Laws*, pp. 133–54; W. A. Champion, ‘Recourse to the Law and the Meaning of the Great Litigation Decline, 1650–1750: Some Clues from the Shrewsbury Local Courts’, *Communities and Courts in Britain, 1150–1900*, Christopher Brooks and Michael Lobban (eds.), Hambledon, London, 1997, pp. 179–98.

<sup>10</sup> David Lemmings, *Law and Government in England during the Long Eighteenth Century: From Consent to Command*, Palgrave Macmillan, Basingstoke, 2015, pp. 56–80. See Chapter 3 for attorneys doing business outside the courts.

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continue the fight at law, men still felt a sense of legal wrong: the propertied had obtained their power by illegitimate means ...<sup>11</sup>

For the main part, *History and the Law* is concerned with the men and women who did not have even these small means to ‘go to law’; they were brought before it, interpellated by it, not as voluntary litigants but as required by law to produce an account of themselves in bastardy or settlement examinations before local magistrates. The fiscal-administrative state expanded dramatically during the second half of the eighteenth century; poor law legislation and taxation law wove a legal web around many lives. This kind of everyday encounter with the law probably increased during the course of the century.

There are magistrates, high court judges, and a lord chief justice here; and poets, and novelists, and political philosophers, but many more maidservants, and poor and pauper men and women, and down-at-heel, low attorneys, and middling-sort wives in their coverture – all of them thinking, talking, manipulating, resisting the law, for the purposes of their everyday life. The law those people knew has shaped (some) modern historians’ love affair with the law itself. And not only historians. Writing about his 2014 novel *The Children Act*, Ian McEwan said that most stories, maybe all stories, are to be found in the operation of the family division of the UK high courts. He could have said: not just the family division, but all British courts of law from the seventeenth century onwards.<sup>12</sup> He did not say that – maybe – he is half in love with the law, seduced by its authority as a way of thinking and telling; its glamorous, enticing opacity. In the novel he quotes many high court judgments, real and half-invented, for the elegance of their legal reasoning, the bewitching cleverness of their thought.<sup>13</sup>

It takes one to know one – to know McEwan’s love for the law: I too suffer from the law-envy which is so close to love: the desire to *understand* the law, to speak its language, to be able to tell its stories. Romantic attachment grows from wanting to please; from paying close, admiring attention; from earnestly struggling to know and

<sup>11</sup> E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (1975), Penguin, Harmondsworth, 1977, p. 261; Daniel H. Cole, “An Unqualified Human Good”. E. P. Thompson and the Rule of Law’, *Journal of Law and Society*, 28:2 (2001), pp. 177–203.

<sup>12</sup> Ian McEwan, “The Law versus Religious Belief”, *Guardian*, 5 September 2014; Ian McEwan, *The Children Act*, Faber, London, 2014.

<sup>13</sup> In modern Britain, these may be read on a daily basis by any member of the public who has elected to receive by email ‘Courts and Tribunals Judiciary All Judgments’ from [www.judiciary.uk/judgments/](http://www.judiciary.uk/judgments/).

understand the desired object: giving it everything you've got, and showing it. For the writing of my three books before last, I kept a glossary of eighteenth-century legal terms permanently book-marked on my computer and *Jacob's Law Dictionary* to (virtual) hand. But I was never sure that I'd properly understood, or was worthy of understanding, should it ever come. In *The Needle's Eye* (1972) Margaret Drabble has her heroine's mind skitter and slide over the pages of (the fictional) *Everyman's Lawyer, Law for the Layman*: 'she had tried to educate herself gently ... It had been a horrible experience, made worse by the fact that she seemed to understand so little of what she read ... The details and refinements of the explanation remained totally obscure, and it was only by an immense effort of will that one could understand the main drift'.<sup>14</sup> If you're going to write something out of your attempts, and to add to the gloomy sense of your own incapacity, there is a nervous apprehension of your legal readers, who will find your use of law vocabulary so odd, so very off-key. To have these anxieties is not unreasonable: we shall see William Godwin suffering the condescension of lawyer-reviewers of his novel *Things As They Are* (1794); they thought the law story he told in it risible at best and wrong at worst.<sup>15</sup> I thought at first that my own difficulties with the law ('she had to convict herself, as she struggled, of real stupidity'<sup>16</sup>) were to do with not having Latin, like Rose in *The Needle's Eye*. But understanding legal terms and language is not to do with translating vocabulary. Joseph Woolley, the Nottinghamshire stocking maker (c. 1769–1840) whose diaries provide several of the law stories told in this book, did not have Latin either and probably could not have provided a definition of *mittimus* to satisfy a lawyer. But he used the word with ease and confidence, in his writing and down the alehouse, because it was embedded in his life and conversation.<sup>17</sup>

Some late eighteenth-century opinion was that Joseph Woolley couldn't possibly have understood the law that threads through his diaries. In *Pig's Meat*, Thomas Spence reproduced an address to a provincial radical society's inaugural meeting to excoriate 'A criminal code of law sanguine and inefficacious; – a civil code so voluminous

<sup>14</sup> Margaret Drabble, *The Needle's Eye* (1972), Penguin, Harmondsworth, 1973, pp. 143–6.

<sup>15</sup> Below, pp. 181–5.

<sup>16</sup> Drabble, *Needle's Eye*, p. 143.

<sup>17</sup> Carolyn Steedman, *An Everyday Life of the English Working Class: Work, Self and Sociability in Early Nineteenth-Century England*, Cambridge University Press, Cambridge, 2013.

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and mysterious as to puzzle the best understandings; by which means, justice is denied to the poor, on account of the expence attending the obtaining of it'.<sup>18</sup> (In *Pig's Meat*, Spence often reproduced claims that *no one* understood English law, not even the lawyers.) But Joseph Woolley *did* understand, or understood enough for the purposes of his everyday life and writing. His friends and neighbours, often at a sharper end of the law exercised by the local magistrate than he, also appear to have understood the law well enough. I wanted to understand as much as did the average maidservant seeking her settlement in a justice's parlour. I wanted to understand and use law's obfuscating language with the ease of Joseph Woolley and his friends and neighbours, all talking law in the bar of the Coach and Horses in Clifton, c. 1805.

I shall claim good taste for this book (none of your straight lines here). How could I not with a book that concerns the eighteenth century and its forthright discrimination of the properties (aesthetic and otherwise) of history and the law? In the English eighteenth century, history writing was discussed as much for its form and compositional qualities as it was for its content. There was discussion of law writing too, although much more of the tedium and exhaustion of those who had to read law's graceless prose. In the early 1740s, an eighteen-year-old Oxford graduate enrolled at the Middle Temple to study law. Young William Blackstone had spent the previous three years with his Muse, reading and writing poetry. Now he had to bid her farewell, enter 'wrangling courts and stubborn law, / To smoke, and crowds, and cities draw: / There selfish faction

<sup>18</sup> 'THE DERBY ADDRESS. At a Meeting of the Society for Political Information, held at the Talbot Inn, in Derby, July 16th, 1792, the following Address, declaratory of their Principles, &c. was unanimously agreed to, and ordered to be printed: To the Friends of Free Enquiry, and the General Good', *Pigs' Meat; Or, Lessons for the Swinish Multitude. Published in Weekly Penny Numbers, Collected by the Poor Man's Advocate (An Old Veteran in the Cause of Freedom) in the Course of His Reading for More Than Twenty Years. Intended to Promote Among the Labouring Part of Mankind Proper Ideas of Their Situation, of Their Importance, and of Their Rights. And to Convince Them That Their Forlorn Condition Has Not Been Entirely Overlooked and Forgotten, Nor Their Just Cause Unpleaded, Neither by Their Maker Nor by the Best and Most Enlightened of Men in All Ages... The Third Edition*, printed for T. Spence, at the Hive of Liberty, London, 1795, pp. 230–5; 233. Spence published penny numbers between 1793 and 1795, later reprinting them in three volumes. Malcolm Chase, Alastair Bonnett, Keith Armstrong et al., *Thomas Spence: The Poor Man's Revolutionary*, Breviary Stuff, London, 2014; Jon Mee, *Print, Publicity, and Popular Radicalism in the 1790s: The Laurel of Liberty*, Cambridge University Press, Cambridge, 2016.

rules the day, / And pride and avarice throng the way'.<sup>19</sup> The worst of it will be law's language; its 'sounds uncouth and accents dry, / That grate the soul of harmony'. Blackstone anticipated by a century Charles Dickens' agonised chronicles of law learning. As a young man, Dickens worked as a law clerk (he inhabited a much lower position in the legal hierarchy than Blackstone ever did), later enumerating the articulated and salaried clerks, and 'the middle-aged copying clerk[s] ... always shabby and often drunk' with whom as a boy he had laboured in dusty, airless rooms.<sup>20</sup> In 1833, one of the last wrote to the *Legal Observer* about the wastelands of his working life, the arid copying of law's narratives, day after day, into eternity.<sup>21</sup> All boys in training for the law were advised to practice almost incessant copying, of text they did not understand – that was beyond understanding.<sup>22</sup>

In the 1740s, later in his 'Farewell to his Muse', and then even later in life as Sir William Blackstone, author of *Commentaries of the Laws of England* (1766–1769), the former poet will find another, new Law-Muse holding a 'sacred page', 'Where mix'd yet uniform, appears / The wisdom of a thousand years. / ... Clear, deep, and regularly true', which is indeed the message of all four books of the *Commentaries*. So too, in the poem and in the *Commentaries*, he will discern the 'mighty Alfred's piercing soul' pervading and regulating 'one harmonious rule of right'. The middle-aged Blackstone will fashion a new Muse in the shape of Alfred the Great, founder of English law.<sup>23</sup>

After 1765, when the first book of the *Commentaries* appeared, readers frequently remarked on the simplicity, ease and clarity with which

<sup>19</sup> William Blackstone, 'The Lawyer's Farewell to His Muse', Robert Dodsley (ed.), *A Collection of Poems in Six Volumes: By Several Hands*, R. and J. Dodsley, London, 1758, Vol. 4, pp. 224–8; David Kader and Michael Stanford (eds.), *Poetry of the Law: From Chaucer to the Present*, University of Iowa Press, Iowa City, 2010, pp. 36–39; xiii–xiv; Wilfrid Prest, *William Blackstone: Law and Letters in the Eighteenth Century*, Oxford University Press, Oxford, 2008, pp. 40–60.

<sup>20</sup> Thomas Alexander Fyfe, *Charles Dickens and the Law*, Chapman and Hall, London, William Hodge, Edinburgh, 1910, pp. 38–40.

<sup>21</sup> 'Hardships of Lawyers' Clerks', *Legal Observer, or Journal of Jurisprudence*, 8: 225 (1834), pp. 412–13. This correspondent called himself 'a copying clerk'. Also John Taylor, *Autobiography of a Lancashire Lawyer, Being the Life and Recollections of John Taylor, Attorney-at-Law ... edited by James Clegg*, Bolton, 1888, p. 23, for the 'little office comfort ... [and] much drudgery in doing a copy clerk's work'.

<sup>22</sup> Jacob Phillips, *A Letter from a Grandfather to His Grandson, an Articled Clerk: Pointing Out the Right Course of His Studies and Conduct*, George Wilson, London, 1818; Alfred Cecil Buckland, *Letters to an Attorney's Clerk, Directions for His Studies and General Conduct*, for the author, London, 1824; Francis Hobler, *Familiar Exercises between an Attorney and His Articled Clerk*, J. F. Dove, London, 1831.

<sup>23</sup> William Blackstone, *Commentaries on the Laws of England. Book I: Of the Rights of Persons* (1765), Oxford University Press, Oxford, 2016, pp. 50–5.



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Blackstone had made harmonious the common law's dingy and discordant history.<sup>24</sup> Blackstone had not yet done his work when young Edmund Burke complained that 'the law has been confined, and drawn up into a narrow and inglorious study...our jurisprudence presented to liberal and well-educated minds, even in the best authors, hardly anything but barbarous terms, ill explained, a coarse, but not a plain expression, an indigested method, and a species of reasoning the very refuse of the schools ...'<sup>25</sup> But even after the *Commentaries*, law's 'sordid scribe' – its problem of writing – will always have to be circumnavigated in order to see 'how parts with parts unite.../ See countless wheels distinctly tend / By various laws to one great end'. Some ordinary readers, however, remained as baffled and perplexed as modern historians: on the very next page of Dodsley's *Collection* in which Blackstone's 'Farewell' appears, a woman poet *just can't see* the harmony. She praises her brother's efforts in *actually reading* Coke upon Littleton; but he has had to work a dark and rugged mine to find gold; force each dark page of the law to 'unfold its haggard brow'.<sup>26</sup>

William Blackstone did not fall in love with the law (at least not in his 'Farewell'), but some modern writers, including historians, have done so. It's a complicated, ambivalent kind of love; it is unreciprocated, which in some post-Romantic philosophies is the reason for going on hopelessly...loving. Law will never love the historian back. One reason for its indifference may originate (in propositions later to be discussed) in the eighteenth-century's endeavour to write the law as if it existed out of time. Legal scholars provided a knowledge of the past 'conceived as "precedent", of a past which was the container of the substantive accumulated wisdom concerning which kinds of governmental and legal decisions were best', says Tim Murphy.<sup>27</sup> Law writers – legal

<sup>24</sup> Blackstone, 'Lawyer's Farewell', p. 38; *Commentaries on the Laws of England. Book I*, General Editor's Introduction, pp. vii–xv; *Commentaries on the Laws of England. Book II: Of the Rights of Things* (1766), Oxford University Press, Oxford, 2016, Simon Stearn, Introduction, p. xxiv.

<sup>25</sup> Edmund Burke, 'Fragment: An Essay towards an History of the Laws of England c. 1757' (1757), T. O. McLoughlin, James T. Boulton, William B. Todd (eds.), *The Writings and Speeches of Edmund Burke, Vol. 1: The Early Writings*, Oxford University Press, Oxford, 1997, pp. 321–31.

<sup>26</sup> 'Miss COOPER – (now Mrs. MADAN) [written] in her Brother's Coke upon Littleton', Dodsley (ed.), *Collection*, pp. 228–9. Valerie Rumbold, 'Madan, Judith (1702–1781)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004. Accessed 12 January 2017.

<sup>27</sup> W. T. Murphy, *The Oldest Social Science? Configurations of Law and Modernity*, Clarendon Press, Oxford, 1997, pp. 77–108; 86–7.



authors – of the seventeenth and eighteenth centuries constructed a past which collapsed temporality into simultaneity; they did not search for origins: ‘the past of the common law was the continuing consolidation of a perpetual present which was somehow out of time’. Origins were lost, gone, in some time ‘beyond memory’. The lawyers’ ‘history’ was about harmony, not difference, about making the past of the law conform to the present and to the future. It neither needed nor cared about beginnings; it ‘could thereby treat on one footing the distance from the present of two or two hundred years’.<sup>28</sup> This was done even by Blackstone in his *Commentaries*, which provided, as we shall see, harmony and timelessness *by means* of a series of history lessons. And this by a writer and a lawyer who advanced the field of Enlightenment historiography, used archival sources with creativity, and was much concerned to adumbrate cause and effect in the making of England’s legal system and constitution.<sup>29</sup>

A major part of the project to make Law history-less (that is, without history) was undertaken when ‘History’ in its modern mode was tentatively finding its way in the world, as a way of thinking and understanding. Writing and history ‘were combined to thematize the passage of time as a problem, by conferring specificity on the past’.<sup>30</sup> ‘History’ proposed the radical disjuncture of then from now; the utter difference of the past from the present. ‘History’ underscored the importance of making out the beginning of things – of society – so that eighteenth-century historians might restructure an undifferentiated mass (then/ the past/once upon a time) into a thing measured by change, by temporality. But Law did not care for historians. It didn’t then, and it doesn’t now. Law will never take notice of you, no matter how much you hang around the bike shed after school, hoping for just one look, just one glance sent your way.

The common law’s timelessness – absence of time, indifference to history – is discernable in the most practical and mundane activities of the historian’s working life. Nothing has dates! It takes a lot of time to find out when a case, stated in ‘The All England Law Reports’, *actually happened*. This is the compendious, digitised version of the Victorian endeavour (started in 1865) to gather together in one place all decisions of the high courts stretching back to remote medieval times. Cases are

<sup>28</sup> Murphy, *Oldest Social Science*, pp. 89–90.

<sup>29</sup> Wilfrid Prest, ‘Blackstone as Historian’, *Parergon*, 32:3 (2015), pp. 183–203.

<sup>30</sup> Murphy, *Oldest Social Science*, p. 99.

headed (as was nineteenth-century practice) with the names of plaintiff and defendant (*Wilkins v. The Parish of Hardington Obscure*, for example); there is the abbreviated title of the original published volume of reports, and the year, usually noted on the monarchical system (23 Geo. 3 for example, which is 1783). You're lucky to have that, and even luckier to have the short-title (Bur.) for James Burrow, *Decisions of the Court of King's Bench upon Settlement Cases; from the Death of Lord Raymond in March 1732, to June 1776, inclusive ... Second Edition ...* His Majesty's Law-Printers for E. Brooke, 1786. But when you find him, Reporter Burrow will not tell you when a trial took place or the date of the events about which the trial was concerned. He restricts himself to 'Hilary Term 4 Geo. 3. *Rex v. Inhabitants of Salford*'. Happy those who, like the Bertram girls in *Mansfield Park* (1814) were forced to get by heart the reigns of the English monarchs! But at least you know the case was heard sometime between January and March 1764, and you can start searching other sources. The blithe disregard for your purposes (happenings are pretty meaningless to a historian unless they have a date and a context by which to interpret them) can make Law the more alluring...and those of us who complain about its opacity and indifference are told to *just get over it*: 'it must be obvious that... [legal] records were created for an entirely different purpose from that of enriching the study of history'.<sup>31</sup>

Then, long ago I learned to love the kind of law story that Stephen Dunn tells in his poem 'History'. It is the story that modern social history tells: of resistance to oppression imposed by law, and, usually as end-stop, the restoration of law and order – oppression – in some new, more resolute form. Then, perhaps, further conspiracy and rebellion. In this kind of history narrative, there is often a plangent, heart-wrenching epilogue referring to 'the experience of defeat'. This was Christopher Hill's 1984 title for a book that described how, after 1660, radical clergy, intellectuals and writers responded to the failure of the English Revolution. Because they *did* respond – reformulated their faith, found new ways of justifying the ways of God to man, took a new view of the social order and wrote about all of this – their reaction was not one of abject surrender to things as they were (or had turned out to be).<sup>32</sup>

<sup>31</sup> John Baker, "'Authentic Testimony'? Fact and Law in Legal Records', *Collected Papers on English Legal History*, Cambridge University Press, Cambridge, 2013, Vol. 3, pp. 1513–27.

<sup>32</sup> Christopher Hill, *The Experience of Defeat: Milton and Some Contemporaries*, Faber and Faber, London, 1984. E. P. Thompson also, and more famously, wrenched triumph from defeat at the end of *The Making of the English Working Class* (1963), Penguin, Harmondsworth, 1968, p. 915.