

J H Baker

An Introduction to English Legal History

Second edition



Butterworths

An Introduction to English Legal History

Second edition

By J. H. Baker MA, LLB, PHD

of the Inner Temple and Gray's Inn, barrister;
Fellow of St Catharine's College and
University Lecturer in Law, Cambridge

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The cover of the limp edition shows a detail from *The Court of Chancery in the reign of George I*, c. 1720-25, by B. Ferrers, in the National Portrait Gallery, London

Preface

Some might think a second edition of a textbook on legal history more in need of justification than a new edition of a textbook on some rapidly developing branch of modern law. Surely, they will ask, legal history does not go out of date? The straight answer to their question is that all history, meaning history as we see it rather than the bare facts of the past, is subject to change; and in the last eight years original research has revealed so many new facts that our interpretations of English legal history are having to change as fast as the modern law does. The more honest answer to the question is, alas, more subjective. When the first edition was written the author saw things with a clarity given only to those who have not come fully to appreciate the extent of their own ignorance. No doubt that defect gave the book an illusory strength from the point of view of the groping student, but equally it must have caused widespread irritation among the more discerning readers. Many shortcomings, ranging from undue compression to manifest error, became apparent as the years passed, through further reading and research, and through trying to make sense of the subject to successive generations of students. In the optimistic belief that slightly more comprehensiveness is not incompatible with comprehensibility, I have made numerous additions throughout and have rewritten most of the first part. No doubt in eradicating the more obvious shortcomings I have introduced others. I have, nevertheless, tried hard not to alter the character of the book as an elementary historical introduction to English law, through which the reader may find his way to more substantial works. Perhaps the most formative influence on the shape and content of this edition has been the experience of lecturing on the history of English law to the inns of court, a yearly task which I was pleased to attempt six times; and I wish to record my gratitude to the Council of Legal Education for providing me with the opportunity of reconstruction. Among the many influences on the substantive rethinking behind this edition the foremost have been my Cambridge colleagues;

to them, and indeed to all who have helped me, knowingly or otherwise, my gratitude knows no bounds.

J.H.B.

Cambridge,

December, 1978

Preface to the first edition

“A law student in the present day,” said Professor Amos in an unpublished lecture in 1831, “should be like the ancient God Janus. He should have two faces, looking forwards and backwards on his profession; or he may perchance find the choicest stores of his industry suddenly converted into useless and cumbersome rubbish.” He was addressing his law class at University College London, at the dawning of the age of law reform; and his words are particularly meaningful today, as practitioners and students face another period of rapid legal change. The modern student, like his predecessor of 1831, has to come to terms with the fact that much of the law he learns, perhaps even some of what he is taught to consider axiomatic, will become obsolete in the course of his professional career. The academic discipline of law, therefore, if it is to have any lasting value, cannot confine itself to the mere learning of rules. It must impart some understanding of the rules, and a dynamic sense of legal evolution. To this end, some knowledge of the historical development of the law will always be indispensable. History alone reveals the reasons—though it does not provide any justifications—for the present shape of the law and legal concepts.

Legal history is a fascinating and intricate study in itself, and it continues to attract the attentions of researchers and scholars. But perhaps by its seeming to fall between the two disciplines of law and history, its basic relevance to both is sometimes overlooked. The present book is not designed for the student specialising in legal history, but for the student who requires a short history, in brief outline, of the principal English legal institutions and doctrines. Anyone who wishes to understand the history of English law at a deeper level must read Professor Milsom’s stimulating *Historical Foundations of the Common Law* (1969).

This book is based on a course of lectures delivered to the first year law students at University College London, in the progress of which I first felt the need for an elementary textbook of this kind. I wish to acknowledge, with deep thanks, the debt I owe to Professor Milsom

and his work, and the help I have received directly and indirectly, from all my colleagues at University College. I am particularly indebted to Mr Daniel Prentice for his patient criticism of the manuscript and his numerous valuable suggestions for improvement.

J. H. Baker

March 1971

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