MANIFEST[1]

The *Oxford History of the Laws of England* rounds off its long cavalcade with three Volumes devoted to that period of relative peace across Europe running from the defeat of Napoleon to the terrible war against the two Kaisers. As the story in these Volumes opens in 1820, a precocious Britain was set to become an industrial and largely urban society. The population in England was beginning a relentless expansion, much of it being drawn into towns, or bred in them, for work in factories, mines, transport, building, education, finance, government, and professional life. Agriculture and rural production, which had for so long sustained the bulk of her people, would become secondary as types of labour became more specialized—that crucial key in economic expansion already identified by Adam Smith and his followers. Villages and small towns that were intensely local and knew only their inward hierarchies were being replaced by large agglomerations of people who allied themselves to their equals in their regions, and even across the nation. Thus was rank giving way to class.

By the last decades of Queen Victoria's long reign, despite intermittent depressions and despite the drudge-like lives of much of its working population, the country was to enjoy unexampled prosperity as the commercially dominant force in the world. Optimists could see no end to this expansion of power and riches, and they robed their country in a noble imperialism. Freedom and equality of its people, guaranteed under the rule of its law, constituted a precious inheritance. British governors saw their cause as moral rather than economic, and they became intent on teaching it to all their subject races. These fine sentiments were easily compounded.

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Thine equal laws by Freedom gained,
Have ruled thee well and long:
By Freedom gained, by Truth maintained,
Thine Empire shall be strong.[2]

[1] For the Customs, a cargo is listed in a manifest. Here, it is the readers who undertake the inspection of the hold.

[2] Thus AC Benson, Master of Magdalene College, Cambridge, versifying Edward Elgar's *Pomp and Circumstance March No. 1* for the coronation of Edward VII—an event made famous to contract lawyers for its initial frustration by appendectomy. Christianity being the other crucial element in the imperial mix, the chorus contained the much-bellowed lines:

Wider still and wider, shall thy bounds be set,
God who made thee mighty, make thee mightier yet.

Pessimists, however, were becoming alarmed at the bellicose rivalries of the European Powers. At home they were dismayed by the rise of a working class urgent for democratic rights and improved chances in life. The tensions would lead the country soon enough into serious domestic confrontations—over votes for women and conditions of work in the mines, the docks and the railways, as well as the smouldering grudges of a subjugate Ireland. Then came the maelstrom of war. For Britain thereafter, decades of dessication would follow, as the debts of this and a second World War withered the economy and Empire was bleached into Commonwealth.

LEGAL REFORM IN A PERIOD OF RAPID CHANGE

The implacable changes of the period—economic, social, cultural, political—demanded reforms and new growths in the English system of common law, using that term in an embracing sense to include not only equity and the civilian jurisdictions but also a growing use of statute to effect legal change. These shifts would occur with a speed not previously known, and in various ways they would seem profound. From them, indeed, would emerge modified versions of an 'English common law', whose influence spread, both in the former colonies in North America, where it had long been established, and in the new 'second British empire' which grew after the decline of the first.[3] That diaspora gives the common law today a place in the pantheon of major legal systems, particularly when characterizing the legal inheritance on both sides of the Atlantic. But in the shifting course of reform there was almost always a powerful drag effect—a fear of the unpredictable results of altered systems, a concern that existing balances of power and prestige would be undermined. An atmosphere of concession and accommodation, of experiment and qualification, pervaded the diffuse business of keeping this 'common law' functioning in the face of such unexampled challenges.

Volumes XI–XIII do not attempt to trace the history of the common law as it fanned out across the Empire, any more than they deal with the position of the law of Scotland or Ireland. These are separate tasks. We must content ourselves with intermittent observations on the relationship between the English core and the imperial penumbra as it was until 1914. Most colonies fleshed out their law around a common law kernel through developments that they sought from Britain or introduced for themselves. Only rarely did the English take up these alterations for examination and possible adoption at home. Indeed, the

[3] Below, Ch.VII.

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tendency to ignore such comparisons becomes more noticeable as the nineteenth century moves on.[4]

The amount of material to be covered in any reasonably complete history of nineteenth-century English law is very considerable, for law wove its strands into so much of the social fabric. How it did so became increasingly apparent as written records proliferated, as they so evidently did. Nonetheless, these volumes do not seek to provide a social history of the law, or examine closely the impact of law on society. Rather, they seek to offer primarily a history of the law itself, focusing on its institutions and doctrines, and considering how these changed in response to changes in the wider world. We have sought to cover the major aspects of legal development in England during the ninety-four years from 1820. We have not, however, treated every aspect in equal detail. These volumes bring to a close a long history of ideas and institutions that have made the common law a distinctive and important inheritance, comparable with the civilian tradition by which Continental countries derived their own laws in varied ways from Roman law foundations. The organization and content of contributions to the Series have shaped our own approach. We follow their broad pattern set by the division into Institutions, Public Law, and Private Law. In the common law this can be treated only as a convenient outline, since, as the whole becomes more elaborate, the overlaps increase. The distinction between the public and the private in law has applications which shift with the development of governmental administration and the desire to decrease or increase the degree of regulation affecting the economic and social activities of individuals, classes, and other divisions within a society, arising from differences of gender, ethnic origin, nationality, religion, or education.[5]

English common lawyers have long resisted the erection of a complete structure of legal classifications deriving from an explicit constitutional foundation. In the nineteenth century, civil law, criminal law, administrative law and so on, displayed an open-ended quality that was fundamentally at odds with engineered pyramids of obligation and entitlement such as was introduced into continental systems by codification. It was not just that English law got by with what was enough for present needs. The whole system had developed out of practical experience that allowed for additions by analogy, or re-definition, or pretence (as with legal fictions). Most of those who in some sense ran it—Parliamentarians, civil servants, those engaged in local government, as well as judges, magistrates, and lawyers—found the result preferable to pre-conditioned categorization. So much of what did not happen, as well as what did, can be explained through

[4] Below, pp. 251–4.

[5] M. Horwitz, 'The History of the Public/Private Distinction' (1982) 139 *U Pennsylvania LR* 1423–8.

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the preferences of those with the power and prestige to get their way. But there were other driving forces, not least those which expressed a growing political consciousness in the lower social orders. One part of that novelty was a realization that the tools of law could, with persistence, be turned to their advantage.

We hope that these volumes will be of interest not just to legal historians but to judges, legal scholars, and practising lawyers, whose main concerns are not in history for its own sake, and to historians to whom legal matters and patterns of thought are one part of their conspectus. General histories of the period still neglect to offer much account of law as a distinctive factor in managing government or in contributing to the wider culture.[6] In part, this may reflect the fact that the legal terrain is often regarded by historians as unfamiliar and sometimes forbidding. We hope that these volumes will help explain to a wider historical audience, both how law worked, and how it reacted to social change. The Volumes, let it be added, do not pretend to be a general history of their period or country; nor do they set their own subject against the state of the law today or the criticisms that are made of it in theory or practice.

We have aimed to capture a sense of the nature and meanings of law in the late Georgian, Victorian, and Edwardian periods, and to show the possibilities offered by law for people to advance their own interests, and the limitations and frustrations it posed for them. The insight of those with legal training naturally carries with it the insiders' tendency to admire the constructions of their specialism, using the language which is the mortar of the craft and has about it an attractive adhesiveness.[7] Legal historians today are well aware of the need to distance themselves from their material. On the whole, they strive to avoid the many dangers of treating it with the reverence conjured by Sir Frederick Pollock's obeisances to 'Our Lady, the Common Law'. In its own way, legal language is as forbidding for the untrained as that of natural sciences, and sometimes as obscure as that of sociology and theology can be. When the historian's period is relatively remote, the language recorded in documents may well issue its own warnings against the dangers of misinterpretation. By the nineteenth century, there is a greater proximity to our own understandings, and differences of meaning may be subtle. Those who tackle this period have constantly to remind themselves not to transplant a twenty-first century assumption back into the conditions of what was still a very different age; nor must they seize on some interpretation of past usage

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[6] Regretted, for instance, by M. Lobban, 'Law and Politics in the Nineteenth Century' (paper given at the British Legal History Conference in July, 2007).

[7] For the difficulties of drawing any line between 'internal' and 'external' histories of the law, when approaching so complex a period, see, e.g., S. Hedley, 'Words, Words, Words: Making Sense of Legal Judgments, 1875–1940' in C. Stebbings (ed.), *Law Reporting in Britain* (1995), 169–96; M. Lobban, 'The Tools and Tasks of the Legal Historian' in A. Lewis and M. Lobban (eds), *Law and History* (Current Legal Issues, vi; 2004), 1–32.

which fosters a case that they are championing for their own time. Indeed, legal language exposes itself as a particular case for the post-modern divination that statements stand to be understood as those who receive them wish to treat them, rather than as those who made them intended. How else could legal fictions have had such moments in the development of the common law?

HISTORIES OF MODERN ENGLISH LAW

Systematic historical study of English law as a whole received its first extensive treatment by Sir William Holdsworth, whose forty-year, sixteen-volume Odyssey ended with six volumes devoted to the eighteenth and nineteenth centuries up to the Judicature Acts 1873–75.[8] All that he so assiduously recorded remains one starting point for today's historian. But Holdsworth was born a Victorian and his appreciation of modern historical developments glows with a sense of their fulfilment in the cause of his nation. As his work approached its close, an escapee to Britain, Sir Leon Radzinowicz, showed, in his *History of English Criminal Law,* what wealth of original material was available to the historian who took a branch of law and set it in its larger context.[9] A certain admiration for what he found in England understandably informed his judgement and later writers of Foucaultesque mien have treated him with considerable, but undeserved, harshness.

In the comfortable conditions of modern academic life, historical treatment of many fields in which law played a significant role became the subject of ideological confrontation. A British movement to study law in a broader context was well under way by the time that evidence of Critical Legal Studies began to cross the Atlantic eastwards.[10] Revisionist histories of government structures, civil liberties, the legal professions, the judiciary and legal process, of corporate, labour,

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[8] *A History of English Law* (1903–66). Even Holdsworth faltered at the end, Vols XIII–XVI being completed by A.L. Goodhart and H.G. Hanbury. Before him, A.V. Dicey's *Law and Opinion in England in the Nineteenth Century* (1905, 1914) was an influential compound of intellectual influences, legal developments and minatory soothsaying: for which, see below, Vol VIII, Pt 2, Ch. VII. There were also valuable contributions to *Select Essays in Anglo-American Legal History* (1907), esp. Vol. I, Parts 4 and 5. For the flow of works that established historical jurisprudence as a nineteenth-century art form, see below, pp. 102–11; K.J.M. Smith and J.P.S. McLaren, 'History's Living Legacy: An Outline of "Modern" Historiography of the Common Law' (2001) 21 *Leg. St.* 251, 253–64, and *cf.* 317–22.

[9] This *History* appeared in five volumes, 1948–86, the last with Roger Hood. For reactions, see Smith and McLaren 'Living Legacy' 281–9.

[10] There had been important British catalysts before and after the Second War, notably in the public law field, in the extensive investigations of Sidney and Beatrice Webb and their followers, and then such writers as Sir Ivor Jennings and W.A. Robson, Hermann Levy, and Wolfgang Friedmann. In the 1960s, the appearance of B. Abel-Smith and R.B. Stevens' *Lawyers and the courts* (1967) raised the flag considerably higher, joined as it was by A. Harding's *Social History of English Law* (1966).

social welfare, criminal, family, and accident law built up unsettling pictures of legal operations in the past.[11] Here were portrayals that no longer simply marked the point from which to measure enlightened progress. Among them came unremitting claims that everything was determined at root by the selfish interests of the powerful, whether consciously adopted or merely assumed as the natural order of things. These in their turn have attracted counter-criticism. The greatest scholars of the history of the common law as a whole have, after all, stressed the Adam-Smith-like contributions of the mass of people engaged in resolving legal difficulties, intent on their immediate needs and desires, who have little or no interest in fulfilling some larger scheme of understanding.[12]

Other ways of tackling the records blossomed, with insights not just from a range of historians—political, administrative, economic, social, technological—but from sociologists, anthropologists, political scientists, and philosophers. Broad surveys stood alongside detailed investigations of legal areas and were expanded by critical biographies and case-history elaborations.[13] Legal history became not only about the establishment and development of legal rules essentially as sources of law, but extended to the psychological and social impact of all 'legal relationships' in von Savigny's embracing sense.[14] On the home front, far more importance attached to collective action such as that of political parties, professional and trade associations, amateur and professional lobbyists, rioters, strikers, the stimulators of purpose-driven rowdiness; and equally to dealings between individuals that displayed anything from greed, perversity, and the will to dominate, to generosity, decency, altruism, and good, solid judgment.[15] As contemporary Britain has adjusted to its middle-ranking, post-Imperial condition in

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[11] The series of Penguin titles, which included H. Street, *Freedom, the Individual and the Law* (1963), G. Borrie and A.L. Diamond, *The Consumer, Society and the Law* (196.) and K.W. Wedderburn, *The Worker and the Law* (1965), all emphasized the historical contingencies of their subjects and set in motion a 'law and society' movement that would in some respects prove to have parallels to realist and later critical writing in the United States. For the historical significance of the intensive, organic realism of Willard Hurst and his school, see Smith and McLaren, 'Living Legacy', 273–81, 289–303.

[12] This forms the *Leitmotif* of S.F.C. Milsom, *Historical Foundations of the Common Law* (2nd edn, 1981).

[13] Two general texts were A.H. Manchester, *Modern Legal History of England and Wales, 1750–1950* (1980), and W.R. Cornish and G.de N. Clark, *Law and Society in England, 1750–1950* (1989). The latter, it will be appreciated, has certain umbilical ties to the present volumes. The master of the case history is A.W.B. Simpson. His essays are now collected in *Leading Cases in the Common Law* (Oxford, 1995), together with *Cannibalism and the Common Law* (Chicago, 1984). They and others have a distinctive place at various points in these Volumes.

[14] A conception introduced to British readers in translation by William Guthrie. See his Introduction to F.C. von Savigny, *Conflict of Laws* (1869).

[15] G.R. Rubin and D. Sugarman's edited collection, *Law, Economy and Society, 1750–1914* (1984), epitomized the first stage of development, with its mixture of achievement and incitement to the research community.

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a collaborating Europe that is fighting for its stake in global trade and world order, the need to compare constitutional forms and legal systems has greatly increased the flow of historical writing. There is a cornucopia brimming with reactions against modernistic certainties, including those that in their time used history to classify stages of human development towards more advanced and rational understandings. These Volumes contain the results of research into primary sources by each author. They also contain a critical survey of research and speculation undertaken by scholars from Britain and other countries. The history of English law in the modern period is now a flourishing discipline. Equally, it is a necessary one. Law is mostly deployed to resolve social problems of the moment and to organize how policies and desires can be carried out. All too easily the immediate purpose for relying on a legal principle becomes the only thing that counts; and then, all too easily, 'text without context becomes pretext'.

Retrieving historical context remains crucial to a fuller understanding of the phenomenon of law. In the latter twentieth century, as those in industrialized parts of the world came to live without directly confronting elemental violence, scepticism took the place of ideological commitments and the many-faceted notion of post-modernism provided an alluring philosophical premise. Among its targets, history came to be treated as a purposeless exercise and one therefore that was wholly misleading. The provider of knowledge about the past was confronted with the impossibility of establishing the truth of events, since each recipient of the information would interpret what they were told by reference to their own personality and experience. That nihilistic attack deserved and, so far as we are concerned, secured its answer from such authors as Richard Evans.[16] A warrior from the litigious battlefield of Holocaust denial, his *In Defence of History* (1998) recognizes that historians must use surviving evidence to explore reactions to events from varied individual and social perspectives. At the same time he welcomes that endeavour as a vital tradition in securing collective understanding about the present, and indeed the future, of the human condition. Exploring history in this ever-critical way provides the real chance of putting scepticism to worthwhile ends. Historiography began stretching out for such new perspectives, and at the same time for more detailed exploration of what is to be found in its sources, from a time well before the elevation of the art of deconstruction into a fundamental philosophical premise, as in the linguistic theory of Jacques Derrida.[17]

The authors have, sometimes individually and sometimes as part of their joint deliberations, had such a welter of advice and criticism from colleagues

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[16] See also, e.g., J. Tosh, *The Pursuit of History: Aims, Methods and New Directions in the Study of Modern History* (3rd edn, Harlow, 2000).

[17] See in more detail, Lobban, 'Tools and Tasks' 8–14.

and friends that it would take too much space to name them all and would be an embarrassment to draw up a partial list. We trust that they will take it in good part if we offer them our gratitude only in a collective form. The one exception must be Sir John Baker who, as General Editor of the *Oxford History of the Laws of England*, invited us to join his parade of authors and has been at hand as mentor and guide from the time when we first sketched our plans and divided up tasks. That, it has to be said, was several years ago. We thank him, as we do our publishers, for the forbearance that they have had to show while we worked towards completion of the three final Volumes in the *Oxford History of the Laws of England*.

We would all wish to thank the law faculties in our respective universities—Cambridge, Otago, Keele, Queen Mary, London, Brunel, and Cardiff—for their institutional support, just as we thank their library staff for much practical assistance. Michael Lobban would like to add his particular thanks to the British Academy for electing him to a Research Readership in 2003–2005, to work on his contributions to Vol. XII. William Cornish likewise is specially grateful to the Leverhulme Trust for the award of an Emeritus Fellowship for 2004–2006.

We end this display of wares with some remarks on the organization of the writing:

(i) The three Volumes are each divided into Parts, within which come sets of Chapters. Volume XI is devoted mainly to the sources of English law, the intellectual frameworks and institutions within which they were understood, the constitutional arrangements for the legislature, central and local executives, and the judicial system, this last providing the crucial core from which professional lawyers operated. Volume XII treats the major categories of private rights and responsibilities: property, contract, commercial law and torts. Volume XIII considers five 'topics' which changed in major ways between 1820 and 1914: criminal law, law as an instrument in social protection and control, family law, labour law, and rights relating to personality and intellectual property.

(ii) Detailed footnoting to historical sources and literature occurs in the course of the narrative; but to provide exhaustive bibliographies of primary and secondary works would have taken a great many pages. Thanks partly to the publication of many specialized works and partly to digitization, the growth of bibliographies for many of our subjects has already been exponential. That is also true of access to primary records that previously were at best available only after very considerable perseverance.

(iii) In the tradition of common law legal scholarship, each Volume has Tables of Cases and of Statutes covering the materials in that Volume. In Volumes

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XI and XII, there is a Names Index and a Subject Index for the volume. In Volume XIII, these Indices cover all three Volumes. The Names Index allows the reader to know where an individual is mentioned in the text or footnotes. The entries are not intended as biographical surveys in disguise. The Subject Index identifies where in the narrative a topic is discussed. There are numerous points at which a subject is dealt with in more than one Part or Chapter. An important function of the Indices is to show where this is so.

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Part One

ENGLISH LAW IN AN INDUSTRIALIZING SOCIETY

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I
Introduction*

Any legal history worth salting must deal not only with what the law was but how and why it became so: the pressures that led to shifts in the law itself and the rationalizations offered for them. So far as evidence can be winkled out, it should also look at outcomes, for most legal change produces unintended effects. There may be large consequences from supposedly minor adjustments; there may be rejections of new law through non-activation or reversal. Between these poles any number of variants arise, which have to do with those who sought to rely on their rights and those who were obliged to meet their responsibilities, those who used the channels marked out by law to achieve their ends, and all those who were affected at some remove by the rights and duties of others. This is territory where legal history merges into the social, economic, political, and administrative.

Volumes XI–XIII, which end this *Oxford History of the Laws of England* in a period of unprecedented economic and social change, are much concerned with new legal developments. The present Chapter and those which follow in this Part aim to set the general scene for subjects that will be described later in more detail. The remainder of Volume XI concentrates on the structure of the English legal system, including the constitutional framework within which government operated and the intellectual stimuli to its functioning. Volume XII deals with the major elements of its inherited Private Law and the manner in which they were re-fitted for a more complex age, giving larger understandings of property, contract, commercial law, and tort. Volume XIII takes up five subject areas—some primarily public in orientation, some private, some increasingly mixed—where, between 1820 and 1914, any original clay was substantially remoulded. The volume covers the criminal law and its techniques of detection, prosecution, and punishment; provisions for social aid in accordance with the earnest moral endeavour of Victorian thought and action; family law as it came to apply both to the interests of the propertied classes and the great body of people supported by manual labour; labour law as it faced class conflict through the demands and actions of employers and trade unions; and the development of conceptions that would

* In this Part, Chapters II, III, VII, VIII and IX are by William Cornish, Chapters IV is by Michael Lobban, and Chapters V and VI are by Keith Smith.

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protect individuals against external intrusions upon their personal lives and allow them exclusive control over the results of their intellectual endeavours.

The first task of this initial Part is to outline the nineteenth-century frame of government and law. At the very heart of the common law system lay a triangle of continuity.[1] Along one side, a set of courts had built up which, despite some considerable re-shaping, would keep to certain basic divisions—between superior and inferior courts, between civil and criminal process. Along a second side, there was an ever-clearer division of professional lawyers into barristers, with their rights of audience in the superior courts, and attorneys-cum-solicitors, with their own monopolies in such matters as conveyancing. Along the third side, as for centuries before, was the convention that the superior judges were drawn from the practising bar. Here was the institutional foundation of the common law system bred in England, a base-plate which shaped so much of the relations between legal institutions and the other branches of government.[2] Filling the space thus enclosed were the established procedures of these superior courts and the substantive legal rules generated in large measure from their decisions—a definitive process for so much of this *Oxford History*. On the stamping ground thus measured out, there were arenas flagged as *'common law'* in the strict sense: the law of the three royal courts of common law; then there was *equity*, being the law mainly applied in the courts of Chancery; and thirdly, *civilian law*—an inheritance of both ecclesiastical and Admiralty rules. By 1876, these arenas would together become common jurisdictional territory for all the courts of the new Supreme Court of Judicature; but not so as to alter the content and meaning of the substantive rules or remedies that were previously available only in one of the arenas.[3]

On a separate plane rose those buttresses which sustained, first, the Parliament, consisting of Monarch, Lords and Commons, as the sovereign legislature of the country; and secondly, the executive, which—at least formally—retained the Monarch at its centre until the franchise reforms of 1832; and thereafter was in the charge of Prime Minister and Cabinet, themselves all members of one or other House of Parliament. The 'Glorious Revolution' of 1689 had established new perceptions of a legislature, a central executive and a judiciary—each of them distinct, and in varying degrees separate. Between them, the three entities provided legally defined channels for governmental and private energies which were with time to become the hallmark of 'progressive' societies—as they liked to distinguish themselves from 'backward' communities.[4] In *L'Esprit des Loix*, the Baron

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[1] The development of the legal system is treated in detail in Pts 3 and 4 of this volume.

[2] See A. W. B. Simpson, 'The Survival of the Common Law' in his *Legal Theory and Legal History* (1987), Ch. 16.

[3] See below, Pt 3, Ch. VI.

[4] This distinction, like the related concepts of 'society', 'state', and 'sovereignty', was premised upon a variety of ill-defined assumptions. See, for instance, its restrictive effect upon the very idea of international law: see below, pp. 264–5.

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de Montesquieu had held the example of Britain up to the world and the upper ranks of its peoples were well satisfied in being such a model.

Secondly, this Part turns to issues of what could be identified as law. Starting from inherited beliefs about the sources of English law, Chapter III on that subject and Chapter IV on theories of law and government deal with the drive to distinguish law clearly from other moral structures. That discussion touches on the related hope, espoused by some engaged in public discussion, but certainly not by all, that its principles and rules would be expressed in codified legislation, with a written constitution as its top storey. In England codification was to prove a movement with only very partial success; but it instituted a debate about the theory of law that would intensify over the latter part of Victoria's reign, as the subject became an academic discipline as well as a craft practice.[5]

To a degree this would prove to be an internal debate among those attracted by distinctively legal philosophy. But that intellectual activity cannot be isolated from other schemes of thought about conditions of society. Accordingly, the next element in this Part addresses two external frames of reference—religious belief and political economy, together with ideological beliefs and sociological understandings which provided the warp to their weft (Chapters V and VI). The effect of strands of intellectual history upon the functioning law is always complex and often diffuse. A legal history has most to say when the law's means become significant in their own right in contributing to social ends. That perception lies behind the content of every volume in this *Oxford History* but it needs to be borne in mind, particularly in the modern period. Reading historical materials through the minds of those who wrote them and those for whom they were written has become a pre-emptive basis of historical scholarship. Where the gap in time is relatively brief the differences of understanding may be the less easy to appreciate and the scope for misinterpretation by unthinking reliance on today's assumptions all the greater.

Finally, in Chapters VII–IX we turn outward to the place of Britain and its vaunted Empire in relation to other nation states. It was in this context that notions of legislative sovereignty, and indeed the very nature of law, gained much of their modern character. In the nineteenth century ideas of a law of nations and of private international law were obliged to break their European frame, given the competition to trade with and colonize the inhabitable globe. The prospects for an international legal order would appear to be slender in the decades of hostility that would make the first half of the twentieth century so terrible. Nonetheless the preceding attempts to build that order had an impact that cannot be ignored, even in respect of English common law.

[5] See Ch. II(5).

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