Common Law (Oxford 2008), 28–29). Is Sumption really claiming that Tribonian was a "liberal"? One could also point to the jurisprudential discussions of these values. Are we to understand Lon Fuller to be a 21st century social justice warrior? Or we could look to international law, including the UN Declaration of Human Rights, against which even Stalin failed to vote. Undoubtedly people exist who approve of retrospectivity, oppression, denying justice and committing acts prohibited by international law, but to call everyone who opposes them "liberal" is over-broad.

Perhaps more seriously, Sumption's own argument about legitimacy applies with even more force to an oppressive state. An oppressive state cannot show that it has the consent of the population it rules. Although it might in fact have the support of those who prefer order to liberty (Sumption goes so far as to mention Hobbes with approval), if oppression and injustice are prevalent no one can tell whether apparent consent is real consent. In other words, lack of oppression is a condition for legitimacy. One might debate the extent to which courts can in reality prevent oppression, and the point on the scale of oppressive state behaviour at which they should step in, but to expect them not to care about oppression is to expect them not to care about legitimacy itself.

On the other hand, turning to Sumption's final chapter ("Constitutions, New and Old"), although he might have mis-specified the legitimacy crisis Britain faces and made doubtful claims about the limits of the law, he could still be right that adopting a new constitution is not necessarily a solution to problems of legitimacy. Much depends on the process by which a new constitution is adopted. It is necessarily a political process, which can have unintended effects. Those who call for a new British constitution run the risk, for example, that they will get a constitution inspired by a desire to implement "the will of the people" and by a preference for "strong leaders who break the rules". Proponents of constitutional reform might do better to start with specific problems in need of specific solutions, such as the relationship between the constituent parts of the UK.

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English Legal History and Its Sources: Essays in Honour of Sir John Baker. Edited by David Ibbetson, Neil Jones and Nigel Ramsay. [Cambridge University Press, 2019. xxiv + 397 pp. Hardback £95.00. ISBN 978-11-08483-063.]

Sir John Baker has been a truly great scholar of legal history. The contributors to this festschrift observe that his approach "revolutionised the way in which research has been carried out" (p. xi). More than anyone before him, Baker went behind the printed texts to the manuscripts: principally, to the plea rolls and to the unpublished reports. His work on these intractable sources – seemingly too vast to be studied, too cryptic to be edited – has laid much of the foundation for subsequent study of the history of the common law. The range of Baker's achievements, as a historian, editor, cataloguer and lexicographer, remains astonishing. This volume seeks to capture Baker's interests through 20 essays organised around four themes. The essays span the history of the common law from the twelfth century to the Victorian era. Each one seeks to pay homage to Baker's interests, often through close attention to esoteric records. The essays offer new discoveries and insights, but not always arguments; several conclude with an invitation to further research and some offer

appendices of records to follow up. The volume celebrates the pure quest for knowledge in out-of-the-way places and, as such, pays a fitting tribute to a distinguished explorer.

Part I addresses law reports. David Seipp examines the abridgements of the Year Books printed from 1490. He emphasises the importance of Anthony Fitzherbert's mammoth work (1514–16) as the first to have been publically authored. Fitzherbert's subsequent career as a judge conferred esteem on the work, and the same held true for the later abridgements of Robert Brooke and Henry Rolle. The significance of these abridgements, Seipp proposes, is that they preserved the relevance of the Year Books for later practitioners. The decay of the Year Book tradition stimulated in the later sixteenth century new forms of law reporting, as David Ibbetson's essay indicates. Ibbetson focuses on a collection called "Errors in the Exchequer Chamber". This court had been erected in 1585 to hear writs of error from King's Bench. Ibbetson collates the different manuscripts and analyses the cases adjudicated. These reports, though disappointingly laconic, still intrigue as the record of a curious piece of statutory innovation within the ancient court system. In the next essay, W.H. Bryson looks at the seventeenth century, when there existed a ready market for law reports, which enterprising printers met by publishing the manuscripts of prominent practitioners. The need for more editorial work of the kind that Baker has undertaken for the Tudor period is stressed. In the eighteenth century, newspapers provided a new kind of law reporting. Initially, journalists concentrated on criminal cases; the situation changed with the founding of *The Times* in 1785. James Oldham's essay examines the newspaper's reporting of contract cases over the next 35 years. It shows how much substantive law could be elicited on themes such as capacity, offer and acceptance, consideration and damages. Cases concerning horses disclose the issue of warranty. Oldham's essay also raises the possibility that newspapers' law reporting shaped attitudes to contracts among their non-professional readers.

Part II looks at the courts and at records of litigation. John Hudson tackles the thorny question of what seisin meant in early common law: possession or property? An examination of usages leads him to propose that different meanings attached to the term depending on how it was deployed: one could be "in seisin", but not "seised", or alternatively have "full seisin". Hudson suggests an analogy with the term felony. In the next essay, Henry Summerson considers homicide in the late thirteenth- and early fourteenth-century eyres. Crosschecking entries with the coroners' rolls, Summerson finds that most suspicious deaths made it to court. He also provides fascinating early examples of exchanges between judges and juries. Then Jonathan Rose provides a further gleaning from his research on the Fastolf papers, which document the most epic legal battle of the fifteenth century. Rose studies a list of costs, principally for counsel and gathering evidence; he also notes several payments to judges and other public officials that would now be considered improper. The sheer expense of litigation is conveyed. Nigel Ramsay turns this subject on its head, looking at how much a sixteenth-century lawyer could earn. Particularly interesting is Ramsay's analysis of a recently identified source, the fee-book of William Staunford (author of *Les Plees del Coron*). From later evidence, Ramsay concludes that attorneys were increasingly poorly remunerated and so may have relied on patrons or on holding office. In her essay, Susanne Brand pulls off the feat of uncovering a source that Baker has not used: the accounts of the undersheriff of Middlesex. These accounts provide vignettes on the running of the courts situated in Westminster Hall. The best of these is the episode in 1452 when the officers of King's Bench turned up one morning to find that their eponymous bench had been stolen! Especially through his work on Battle Abbey,

Baker has drawn attention to the continuing activity of local courts. Christopher Whittick responds with an impressive survey of the different local courts in East Sussex (the county of which he is archivist) over seven centuries. The wider import may be that the long-term decline of these local jurisdictions was sufficiently protracted as to constitute an unhelpful generalisation, one that may have discouraged research into post-medieval local courts.

Baker has long taken an interest in depictions of the law and has become a collector of images and artefacts. In particular, he has shown the potential of visual sources to afford us a sense of what actually went on in court. Part III offers two essays on this theme. Anthony Musson's overview explores an eclectic set of examples: depictions of courtrooms since lost, courts that are still standing, tombs, stained glass, publishers' frontispieces and much more besides. While cautioning against simplistic uses of visual evidence, Musson nevertheless asserts its value in illustrating law in action and in imparting personalities to members of the profession. As the contributors remark, Baker's study of the interpretation of Magna Carta over four hundred years was "one of the very few wholly original and groundbreaking works of scholarship" produced for the anniversary in 2015 (p. xiii). Simon Keynes's essay considers the engraved facsimile of the Charter made by John Pine in 1733, which is reproduced on p. 244. Pine's facsimile was a response to the catastrophic fire in the Cotton Library two years earlier. It derived from a project, authorised by the Speaker of the Commons, to preserve the text of the more damaged of the library's two copies while it was still just about legible. In the nineteenth century, the British Museum displayed the original and Pine's reconstruction side-by-side. Keynes's detective work provides a new angle on the transformation of Magna Carta into its present iconic position.

Part IV, the final and largest, combines legal practice and legal learning. Elisabeth van Houts's essay on the Constitutions of Clarendon shows that, even in the twelfth century, an awareness of legal issues was not confined to professionals or to men. Her essay examines the responses of two impeccably connected women to this demarcation of the boundaries between Church and state: that of Henry II's mother, Empress Matilda, and of Thomas Becket's sister Mary, the abbess of Barking. Van Houts shows that the Constitutions were widely known, but failed to attract the approval of every layperson, even that of the king's mother. Paul Brand's essay does give us the professionals' perspective, being organised around a clerk of the Common Bench in the late thirteenth century called Anger of Ripon. Anger's claim to fame is as the possible author of a much-copied legal opinion about the availability of the assize of novel disseisin for land within ancient demesne. Brand's essay indicates the easily overlooked role of the clerical secretariat in the development of common law. If this essay whets the reader's appetite for close study of manuscripts, then Charles Donahue's offers the prospect of putting intention into action. It introduces the project to digitise the collection of statute books and registers of writs belonging to Harvard Law School. A large number of such manuscripts survive and no two are alike; in particular, they contain in total 50 different tracts and treatises that Donahue lists. One preliminary finding is noteworthy: the conventional division, at Edward III's accession, of statute books into *statuta vetera* or *statuta nova* appears tenuous. Ian Williams's essay also studies the late Middle Ages. It contrasts the references in fifteenth-century legal argument to "common learning" with the preference in the fourteenth century for "common opinion". Williams suggests that the earlier phrase may have been picked up from the *ius commune*. He thinks that "common opinion" was less conclusive than "common learning" in that a lawyer might proffer a "contrary opinion", but hardly contradict "common learning". A "common opinion" seems to have been

a proposition acceptable to the court, rather than a judgment: it was a label, Williams proposes, chosen by reporters for didactic purposes.

The final four essays move into later periods. Neil Jones addresses the trust known as the use upon a use. In his reading at Lincoln's Inn in 1624, Henry Sherfield regretted how this new "bastardly" use had sprung up since the Statute of Wills 1540 and had found favour in Chancery. Jones's study of Chancery entry books, however, shows that Sherfield had exaggerated the prevalence of trusts of freehold land. Moreover, their purpose, Jones finds, was more often to provide security or to pay debts than to pass beneficial interests. Although Baker's work has concentrated on the common law, he has also written on the canonical and civilian traditions. Richard Helmholz's essay returns the compliment by examining the presence of civilians in common law courts in the early modern period. A study of law reports leads Helmholz to endorse Baker's suggestion that civilians were treated as *amici curiae*. The civilians were expert testifiers who, upon invitation, expounded ecclesiastical law on matters such as tithes, marriages and testaments. They were allowed to appear in court to argue that a writ of prohibition should not be granted, although they did not always prevail. Janet Loengard's essay – the reviewer's favourite – reveals one way in which the different legal systems rubbed along. A widow was supposedly entitled to dower, quarantine (temporary residence), and paraphernalia (the personal accoutrements that a bride brought to her marriage). While dower and quarantine were guaranteed by Magna Carta, the common law did not recognise paraphernalia, since a bride's chattels became her husband's property. This view raised a wider divergence with the Church over the testamentary capacity of married women. Not wishing to be ungentlemanly, common lawyers conceded that a widow was entitled at least to her clothes. This compromise generated case law on the question of whether jewellery was included (the answer depended on status: what suited a viscountess was not fitting for a lesser individual). The final essay, by Michael Lobban, also entertainingly illustrates social mores. Lobban examines the diaries kept by two barristers in the early nineteenth century. Both men might have preferred to be doing something else. They ingenuously recorded their little stratagems, which did not always work, and admitted to self-doubt; in the heat of battle, they could be scathing about judges and juries ("a stupidity quite disgraceful to the county"). Their humanness, for Lobban, is a reminder that the need to win an argument for a client, and thence to make a living, mattered more to the development of the common law than did abstract ideas. In a sense, though, what the essays in this volume reveal is that the common law is practice transmuted, and also that no one has given a more faithful or rounded account of its formation than Sir John Baker.

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Scholars of Tort Law. Edited by James Goudkamp and Donal Nolan. [Oxford: Hart Publishing, 2019. xviii + 401 pp. Hardback £85.00. ISBN 978-1-50-991057-1.]

This handsome, fascinating and formidably well-researched volume reflects on the lives and writings of 11 academics and one judge who dominated tort scholarship in the twentieth century. It should be essential reading for anyone who teaches tort law, especially those just starting off in their careers – I can think of no quicker or pleasanter way for a neophyte tort academic to come to understand both the height of the