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LAW REFORM AND LEGAL CHANGE IN AUGUSTAN ENGLAND[1]

I

The Adelaide Law School has been the source of much congenial companionship and intellectual stimulation even before and certainly after my move from the Napier Tower to the Ligertwood Building just over twenty years ago. So I was delighted as well as honoured by Paul Babie's invitation to contribute to a lecture series celebrating the Law School's 140th anniversary. I am also grateful to Paul for chairing my talk, and to members of the audience, whose questions and comments have helped shape the final form of this article.

It aims to provide a general account of how law reform has been viewed by historians of early modern England, and how my own interest in that topic has developed, concluding with a brief assessment of efforts to reform English law between the Glorious Revolution of 1688–89 and the accession of George III in 1760. That final part draws on work for the forthcoming ninth volume of the *Oxford History of the Laws of England*, generously supported by the tax-payer through the Discovery Projects scheme of the Australian Research Council ('ARC').[2]

II

What is the difference, if any, between law reform and legal change? Many early modern lawyers, not least Sir Edward Coke, purported to believe in an immemorial, unchanging common law. Of course, we know, as did they, that like other social artefacts law is not fixed and static, but flexible and even unstable, whether in terms of doctrine, forms, procedures or personnel. But the concept and practice of 'law reform', as a conscious endeavour to improve the equity and efficiency of

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1 'Augustan England' is a term and concept borrowed from literary scholarship, where it characterises poetry and drama from the age of Dryden, Swift and Pope as reminiscent of the flowering of classical Latin culture in the era of the Roman Emperor Augustus. Here it is used more broadly, with reference to English society in the later seventeenth to mid-eighteenth centuries. Cf Geoffrey Holmes, *Augustan England: Professions, State and Society: 1680–1730* (Allen and Unwin, 1982).

2 More specifically by grants DP120101749 (PI) and DP160100265 (CI).

substantive and procedural law is a relatively new phenomenon. So is the phrase itself. Although its first use has been attributed to John Cook(e) — the idealistic Gray's Inn barrister who, as solicitor-general for the Commonwealth, was appointed to lead the prosecution case at the trial of King Charles I in 1649 — there is no record of him employing that precise expression.[3] It seems rather to have been a nineteenth-century neologism, appearing for the first time in the late 1820s, on the eve of Britain's 'Age of Reform'.[4]

Irrespective of semantics, English historians have traced law reform, in the sense of an impulse to improve the workings of the law in the interests of the public good, much further back in time. The most recent general study, by the late Barbara Shapiro, begins with the reign of Henry VIII (1509–47) and runs through to the mid-eighteenth century.[5] Historians' attention has focused particularly on two decades of the mid-seventeenth century when, during and after the civil wars which broke out in 1642, the existing legal structure and its practitioners were subject to an unprecedented torrent of criticism and proposals for reform. Legal historians have traditionally depicted these as at best 'mild and obvious' and at worst 'extreme and absurd' — the product of ignorant and irrational outbursts of populist or theocratic prejudice.[6] By contrast, many general historians have tended to celebrate demands for law reform during the 1640s and 1650s as a genuine reflection of communal

3 The spelling of Cook's surname varies, as did those of many contemporaries. I follow the usage of the original *Dictionary of National Biography*, whereas his most recent biographer claims that Cook himself signed his name with an 'e': Geoffrey Robertson, *The Tyrannicide Brief* (Chatto and Windus, 2005) 3. Although no source is cited, this may refer to the missing original letter to Strafford from the manuscripts of William Knowler printed by CH Firth in the *Camden Miscellany* (1895) vol 4, 14–20. Most of Cook's numerous works published during his lifetime use the shorter spelling.

4 Michael Lobban, '"Old Wine in New Bottles": The Concept and Practice of Law Reform: *c* 1780–1830' in Joanna Innes and Arthur Burns (eds), *Rethinking the Age of Reform: Britain 1780–1850* (Cambridge University Press, 2003) 118 nn 23, citing Donald Veall, *The Popular Movement for Law Reform: 1640–1660* (Oxford University Press, 1970) 73, who misquoted a passage in Cook's letter of August 1655 to Lord Deputy of Ireland Charles Fleetwood, transcribed and printed from Bodleian Library MS Rawlinson A 189 in Edward MacLysaght, *Irish Life in the Seventeenth Century* (Cork University Press, 1950) 442. Although 'legal reform' occurs from the 1790s onwards (in the sense of a beneficial change to law, as distinct from a legally valid one), 'law reform' is not found in the 'Making of Modern Law' database earlier than Joseph Parkes, *A History of the Court of Chancery* (Longman, 1828) 77, 110: my thanks to Michael Lobban for this last point. The phrase quickly gained general currency, doubtless helped by Henry Brougham's celebrated six-hour speech on the subject to the House of Commons in February 1828: Michael Lobban, 'Henry Brougham and Law Reform' (2000) 115(5) *English Historical Review* 1184.

5 Barbara J Shapiro, *Law Reform in Early Modern England: Crown, Parliament and the Press* (Hart, 2019) ('*Law Reform in Early Modern England*').

6 John Baker, *An Introduction to English Legal History* (Oxford, 5th ed, 2019) 228. See also William Holdsworth, *A History of English Law* (Methuen, 2nd ed, 1937) vol 6, 411–30.

sentiment targeting narrow professional self-interest and anticipating in numerous respects the legislative programme enacted from the 1830s onwards.

Geoffrey Elton, the eminent historian of Tudor England, addressing the Selden Society in 1978 as Professor of English Constitutional History at the University of Cambridge, considered that effective law reform — indeed any kind of reform — requires five components: (1) recognition of the need for reform; (2) belief that reform is feasible; (3) broad agreement on a programme of reform; (4) public opinion favouring reform; and (5) 'leadership from those who can translate ambition and aspiration into action'.[7] In Elton's view, a lack of this last component is fatal; without it you have only 'loose, moralistic preaching talk' that 'does not get you anywhere'.[8] Someone like Thomas Cromwell, Elton's (as later, Hilary Mantel's) hero, is required to translate talk into positive deed, which is why, according to Elton, the only real law reform of the sixteenth century occurred between 1536 and 1540.[9]

Although he later served a three-year term as president of the Selden Society — the body founded in 1887, largely on the initiative of FW Maitland, 'to encourage the study and advance the knowledge of the history of English law' — Elton was not legally trained and always insisted that he himself was no legal historian. Indeed, his interest in law reform extended little further than parliamentary legislation enacted to that end. But even today efforts to improve the efficiency and equity of legal processes are not implemented solely by legislation — public discussion and opinion, judicial officers, legal bureaucrats, the legal profession and other legal institutions, not least law schools as well as dedicated non-legislative bodies like the South Australian and Australian law reform commissions all play their part. So once did English monarchs, from Anglo-Saxon times until the nineteenth century.

As another non-lawyer ignoramus — like Geoffrey Elton, in that respect at least — I have usually felt uncomfortable, at worst incapable, when confronted by the more or less arcane technicalities of legal rules and doctrine. The law's institutions — courts, lawyers, and their relations with the laity — are far more readily accessible to the mere historian. On returning to Australia in 1966 to take up an Adelaide history lectureship after three years postgraduate study and six months employment as a trainee publisher in England, law reform was very much in the air. It became increasingly so through the early to mid-1970s. After the conservative post-World War II 1950s, campaigns to abolish the death penalty, end the restrictive White Australia immigration policy, decriminalise homosexual acts between consenting adults, and to reform consumer law, electoral law and family law were all part of a refreshingly new cultural and political climate, associated in Australia with the names of Don Dunstan, Gough Whitlam, and Lionel Murphy, who as Attorney-General established the Australian Law Reform Commission and appointed the late

7 GR Elton, *English Law in the Sixteenth Century: Reform in an Age of Change* (Selden Society, 1979) 7–8.

8 Ibid 9.

9 Ibid 6–11. Cf Clive Holmes, 'GR Elton as Legal Historian' (1997) 7(1) *Transactions of the Royal Historical Society* 267.

Alex Castles, our former Adelaide Law School colleague, as an inaugural member. So in retrospect my developing interest in law reform proposals, with particular regard to legal education in early modern England, seems scarcely surprising. My recent doctoral thesis on the inns of court during the half-century before the Long Parliament, when these four London-based voluntary associations served as liberal academies as well as law schools for would-be barristers, discussed John Cook's proposals for reforming the role of the inns in legal education.[10]

In 1646, Cook published a defence of the common law and its practitioners against the attacks of critics who sought a radical reconstruction and democratisation of the entire legal system. Resisting such calls, while accepting that many aspects of legal process needed 'reformation', Cook also condemned the lack of academic support for students at the inns of court, which unlike the two English universities had no tutorial system.[11] He therefore proposed that there should be in each of the four inns 'two at the least appointed as professors of the Law to direct young Students in the Method and Course of their Studies, that they may rather apply themselves to cases profitable than subtil, for the difficulty of the study discourages many' — indeed 'to put a young Gentleman to study the Lawe without direction, is to send a Bark without a steeres-man, saile, or anchor into an angry Sea'.[12]

My interest in Cook grew during my first years at Adelaide; some surviving correspondence from 1967–68 suggests that I was then contemplating a biography. By late 1972 that project had stalled, following failure to locate any personal papers or other primary sources of significance beyond those used by CH Firth for his *Dictionary of National Biography* memoir of Cook, and the unexpected arrival of a publisher's contract to prepare a facsimile reprint of his *Vindication* with a substantial introduction, as part of a prospective series of legal classics edited by a Cambridge law don. Duly drafted, that introduction never appeared in print, thanks to the publisher's equally unexpected decision to renege on the contract. It was some slight consolation that my new Cambridge friend John Baker shared the same dispiriting experience. Twenty-five years later, however, some of this research and writing was put to use as part of a commissioned brief life of Cook for what became the *Oxford Dictionary of National Biography* ('*ODNB*').[13] A little later still, that

10 WR Prest, 'Some Aspects of the Inns of Court, 1590–1640' (DPhil Thesis, University of Oxford, 1965) 292–5, the basis for my first book, Wilfrid R Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590–1640* (Longman, 1st ed, 1972).

11 For Cook's general law reform proposals, see Veall (n 4) index of persons *sv* Cook, John.

12 John Cook, *Vindication of the Professors and Profession of the Law* (London, 1646) 55, 94. In view of the discontinuance of the inns' traditional twice-yearly lectures or 'readings' on statutes after the outbreak of civil war in 1642, Cook further urged that these should now acquaint their audience 'with the most usefull knowledge and daily occurrences in actions of debt, upon the case, of trespasses and ejectments, the present Law of the times, which is worth our best studie': at 56.

13 Wilfrid Prest, 'Cook, John (*bap* 1608, *d* 1660): Judge and Regicide' (2015) *Oxford Dictionary of National Biography*.

ODNB memoir attracted the interest of Geoffrey Robertson; after an excellent dinner in Adelaide our discussion of Cook's life and works continued by email, although I can claim no credit for the book-length biography Robertson published in 2005, to general if not entirely unqualified applause.[14]

Cook was not the first or only critic of the shortcomings of the early modern inns of court as educational institutions. Two Elizabethan publicists addressed this issue, albeit from opposite ideological positions. The author, lawyer and anti-catholic activist MP Thomas Norton (*c* 1532–84), devised a series of orders 'for the better government of the fower houses of court' in the early 1580s, while the exiled Jesuit missionary and controversialist Father Robert Persons (1546–1610) composed and circulated from Spain ten years later a manuscript 'Memorial for the Reformation of England' which proposed a total transformation of the inns' educational functions.[15]

Norton's Calvinistic concern was simply to rid the inns of any idler who 'shall not be and continue to be a studient', whether of the common law, or 'some other gentlemanlike activitie', including the acquisition of a foreign language.[16] Persons advanced a far more ambitious agenda, maintaining that since England's break from Rome at Queen Elizabeth's accession, excessive 'liberty and dissolution' had allowed the inns of court to become, as he put it, 'schools of mere vanity, pride and looseness'.[17] So after the eagerly-anticipated accession to the throne of the Spanish Infanta following Elizabeth I's death, the inns were to be inspected by a commission of Catholic lawyers who would recommend how best to re-order their 'discipline, form of apparel, conversation and the like; as in other universities and colleges of laws is accustomed abroad in the world'.[18] The academic regimen of the four societies would also be strengthened by providing for students to 'write and make repetition of their lessons' within a pre-determined time-frame in order 'to proceed and take degrees'.[19] No evidence has yet come to light of any contemporary reaction or response to either of these attempts to establish a more demanding pedagogical structure at the inns, nor was either circulated in print during its author's lifetime. The same apparent lack of concern or interest would greet Cook's published proposals in the 1640s, as also the more obviously self-interested agenda of the royalist courtier-politician, former MP and crown law officer Sir Peter Ball KC, who in a 1649 manuscript advocated for the appointment of a salaried 'publike lecturer and reader of the law' to expound the whole body of legal knowledge according to

14 See: Stephen Sedley, *Ashes and Sparks: Essays on Law and Justice* (Cambridge University Press, 2011) 49–55, originally published in the *London Review of Books* (2006); Wilfrid Prest, 'The Lawyer's Tale: Review Essay' (2007) 66(3) *Meanjin* 61.

15 Wilfrid R Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590–1640* (Cambridge University Press, 2nd ed, 2023) 213 ('*Inns of Court*').

16 Ibid.

17 Ibid 214.

18 Ibid.

19 Ibid 215. See also JJ Scarisbrick, 'Robert Persons's Plans for the "True" Reformation of England', in Neil McKendrick (ed), *Historical Perspectives: Studies in English Thought and Society in Honour of JH Plumb* (Europa, 1974) 19.

a 'scientificall method' (which Ball claimed to have himself devised), in order to guide students through the 'chaos of our bookes'.[20] Quite apart from the practical problems of filling and funding any such post, the self-perpetuating bodies of senior lawyers who ruled the inns clearly saw no pressing reason to alter the educational regime which had brought them to their present eminence, while radical critics of the law and lawyers had much larger targets in view.

The erudite William Lambarde (1556–1601) was another early modern lawyer of slightly earlier vintage anxious to reform his own profession. Besides compiling a history of the county of Kent, the earliest known example of what would become a standard English historical genre, and a pioneering edition of Anglo-Saxon laws and customs, Lambarde wrote a frequently reprinted manual on the office and duties of justices of the peace, and *Archeion, or a Discourse upon the High Courts of Justice in England* (first published in 1635). He ended his life as a legal office-holder in the Court of Chancery and an archivist, as keeper of the records in the Tower of London.[21] But his antiquarian and historical interests were not divorced from a concern with current issues, especially those relating to judicial and professional ethics. A manuscript tract entitled *Against Auricular (or private) Information of Judges*, written in Lambarde's hand and now in the Harvard Law School Library, dates from 1590. It is essentially a condemnation of what are represented as pervasive and persistent efforts to influence judicial decision making in favour of specific parties to litigation, directed especially at judges sitting alone in so-called 'English-bill' courts like Chancery, which operated without recourse to the juries empanelled on the assize circuits and in the common-law courts of Westminster Hall. Lambarde's circumstantial and detailed indictment of the solicitation of judges and judicial favouring of individual barristers and their causes is far removed from the frequent broad-brush contemporary accusations of judicial corruption and impropriety, which historians have understandably tended to discount or dismiss as based upon little more than ill-informed lay prejudice.[22] It is also significant for our understanding of the extent to which concern with abuses of the (highly unsystematic) early modern English legal system persisted from the sixteenth century into the 1630s and 1640s. For Lambarde's tract not only circulated in manuscript but reached a far wider potential audience via two printed editions recently identified as his work. The first was published by the veteran London printer-bookseller George Purslowe in 1631, under the title *The iust Lawyer his Conscionable Complaint against Auricular or private Informing and soliciting of Judges By their Menialls, Friends and Favourites With a sure Advice for the Reformation thereof: As also an Appendix with obiections against Favourites at the barre of Justice*.[23] The second, also issued from London, was one of the first books printed for the bookseller/

20 Prest, *Inns of Court* (n 15) 216–17. See also Wilfrid Prest, 'Law Reform and Legal Education in Interregnum England' (2002) 75 *Historical Research* 112–22.

21 JD Alsop, 'Lambarde, William (1536–1601): Antiquary and Lawyer' (2008) *Oxford Dictionary of National Biography*.

22 Wilfrid Prest, 'William Lambarde, Elizabethan Law Reform, and Early Stuart Politics' (1995) 34 *Journal of British Studies* 464.

23 Ibid 474.

publisher George Lindsey; it appeared on the very brink of outright warfare between the forces of King and Parliament in August 1642, with a racier title, reflecting the extent to which the courts, judiciary and legal profession were already under attack, both within and outside Parliament: *The Courts of Iustice Corrected and amended. Or The Corrupt Lawyer untrust, Lasht and quasht. Wherein the Partial Iudge, Counsellour, Great Mover, whispering informer, Favourite at the Bar are fully displayed, convicted and directed. By WL Esquire*.[24] The title page of this completely reset but textually almost identical printed version added the striking claim that the work had been 'Presented to the Honourable House of Commons and by Them approved of'.[25] The law reform movement of the revolutionary 1640s and 1650s was no simple sudden outburst of populist anti-professionalism, class hatred and religious fanaticism, but rather reflected long-standing and widely-held concerns and grievances.

III

It was once thought that after the tumultuous years of civil war and republic, the 1660 return of the monarchy in the person of King Charles II effectively put an end to law reform attempts until the early nineteenth century, when much of the extensive agenda for change advanced during the revolutionary decades finally began to be implemented.[26] That view has turned out to be mistaken. For in 1975 Shapiro demonstrated that criticism of the legal system and efforts to improve it, far from being cut short by the fall of the republic, continued well into the eighteenth century.[27] Indeed Charles II's long-sitting 'Cavalier' Parliament (1661–79) debated numerous law reform measures, and enacted at least one statute, the *Habeas Corpus*

24 Ibid.

25 Ibid 474–5. See also: RB McKerrow (ed), *A Dictionary of Printers and Booksellers in England, Scotland and Ireland: And of Foreign Printers of English Books: 1557–1640* (London, 1910) 222; HR Plomer (ed), *A Dictionary of the Booksellers and Printers Who Were at Work in England, Scotland and Ireland from 1641–1667* (London, 1907) 118. While no corroboration of Lindsey's title page claim has been found, it may well refer to an event in the unminuted proceedings of a Commons' committee for courts of justice. The unpredictable and possibly severe consequences of a false assertion of this nature at this juncture increase the likelihood that Lindsey's claim was no mere marketing puff. I am grateful to Dr Andrew Thrush and Professor Jason Peacey for their comments on this matter.

26 'Lawyers supported first the offer of the crown to Cromwell, then the restoration of Charles II. The law remained unreformed till the nineteenth century': Christopher Hill, *The World Turned Upside Down: Radical Ideas during the English Revolution* (Temple Smith, 1972) 218. For a more balanced assessment, see Christopher Hill, *The Century of Revolution 1603–1714* (Nelson, 1961) 225–7, 289–90.

27 Barbara Shapiro, 'Law Reform in Seventeenth-Century England' (1975) 19(1) *American Journal of Legal History* 280.

Act 1679, 31 Car 2, c 2, which has been seen, rightly or wrongly, as a major constitutional bulwark and safeguard of individual liberty.[28]

As it happened, the first test of the *Habeas Corpus Act* involved a challenge to the imprisonment by the House of Commons in December 1680 of Thomas Sheridan (1646–1712). Sheridan was an Irish-born follower of James, duke of York, Charles II's younger brother and a Catholic convert who stood next in line to the throne. James was hence the supposed beneficiary of an alleged 'Popish Plot' to assassinate King Charles and restore England to communion with Rome. Sheridan succeeded in using the new statute, which had been designed to prevent the Crown and its ministers evading the issue or return of the common law writ of habeas corpus, to secure his release from confinement, thus defeating a politically-motivated attempt by the dominant Whigs to expand the jurisdiction of the lower house, going well beyond the Commons' traditional power of commitment associated with breaches of privilege.[29] But Sheridan is also a particularly interesting individual for our present purposes. Just before the Popish Plot (or 'Exclusion') crisis erupted he published anonymously a *Discourse on the Rise and Power of Parliaments*, advocating a wide range of what were by then fairly routine demands of would-be legal reformers, including regulation of lawyers' numbers and fees and simplification of legal rules, doctrines and procedures. But Sheridan's leading proposal was no part of the standard agenda, because he called for Parliament to legislate the total abandonment of capital punishment, long the accepted penalty in English law for many criminal offences, including larceny or theft.[30]

It is easy to assume that law reform is now and always has been a progressive if not radical activity, advocated in the mid-seventeenth century by sectarian activists like the Levellers and Diggers, proponents of political and agrarian democracy, and in the 1820s and 1830s by the forward-looking utilitarian philosopher-activist Jeremy Bentham and his followers. Yet as we have already seen, the Jesuit Robert Persons who wished to undo the Protestant Reformation, and the royalist courtier Sir Peter Ball KC both proposed reforming the educational role of the inns of court. Sheridan, who would reveal his own conversion to Catholicism after his royal master came to the throne as James II in 1685, went a good deal further even than Persons.[31]

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28 Ibid 299–310; William Blackstone, *Commentaries on the Laws of England* (Oxford University Press, 1765–9; 2016) vol 4, 282 ('*Commentaries*'); Paul D Halliday, *Habeas Corpus: From England to Empire* (Harvard University Press, 2010) 237–46.

29 Halliday (n 28) 243–4.

30 John Baker, *An Introduction to English Legal History* (Oxford University Press, 5th ed, 2019) 552–3.

31 Peter Garnsey and Wilfrid Prest, 'Thomas Sheridan against the Death Penalty' (2023) 135(2) *Rivista Storica Italiana* 443, 449. Shapiro in Shapiro, *Law Reform in Early Modern England* (n 5) 183–4, credits Sheridan with an earlier anonymous work: *Enchiridion Legum: A Discourse Concerning the Beginnings, Nature, Difference, Progress and Use, of Laws in General; and in Particular, of the Common and Municipal Laws of England* (London, 1673), but unfortunately provides no evidence for this claim.

Sheridan's case against the death penalty was multi-faceted. Neither God nor Nature permitted governments to exercise rights of life and death over their subjects, nor subjects to abandon their right to life as part of their original contract with government. The purpose of punishment was to reform and deter, yet a dead criminal could hardly be reformed, and common experience showed that capital punishment was an ineffective deterrent. Influenced by his association with the pioneering political economist William Petty, Sheridan also presented a utilitarian argument against the death penalty: already experiencing a labour shortage due to declining population, England could afford no further diminution of available manpower via the gallows.

This rejection of the death penalty was not unprecedented. Sheridan was familiar with the arguments against capital punishment presented in Thomas More's *Utopia* (1515–16), while some of his readers may have been aware of the abolitionist critique mounted from the 1650s onwards by radical puritans, especially Quakers, and Gerrard Winstanley, the leading Digger. Nor was Sheridan's appeal clearly or immediately successful. Indeed, parliamentary legislation saw the number of offences carrying the death penalty rise from around 50 to over 500 in the course of the eighteenth century. Yet at the same time various countervailing forces did something to weaken the impact of what would come to be known as 'the Bloody Code'. Many convicted felons escaped an otherwise mandatory death sentence by pleading 'benefit of clergy', a relic of the pre-Reformation church's claim to criminal jurisdiction over accused priests; this concession became available to women as well as men during the 1690s, while the previous formal requirement of ability to read was abandoned in 1706.[32] Juries also continued to commit 'pious perjury' by undervaluing stolen goods, since theft of items worth less than one shilling was petty larceny, which did not carry the death penalty.[33] Moreover alternative penal sanctions were becoming more readily available, in particular transportation to the English colonies across the Atlantic and imprisonment at hard labour. Statutes of 1718 and 1720 significantly boosted the transportation of felons. While it is difficult to generalize about the motivation underlying these various ameliorative developments and practices, both legislative and judicial, concern about excessive reliance on the death penalty almost certainly played some part; if so, ongoing criticism of capital punishment was far from wholly ineffectual. It also helped provide the groundwork for later, more systematic and potent attacks on the death penalty. The assertion that executions did not deter criminals long preceded the more sophisticated versions of this claim elaborated by mid-eighteenth-century abolitionists like Cesare Beccaria. It must also be remembered that more than two centuries elapsed between the appearance of Beccaria's main treatise in English translation and the effective abolition of capital punishment in the United Kingdom, and subsequently all Australian jurisdictions; of course, it remains in full force today in many other places. Law reform can be a very protracted process.

32 Blackstone, *Commentaries* (n 28) vol 4, 238–9. However, Blackstone also pointed out that 'in many cases of simple larceny', including horse-stealing, 'the benefit of clergy is taken away by statute': at vol 4, 159.

33 Ibid vol 4, 158–9.

Although still claiming to be an orthodox Anglican when examined by the House of Commons in 1678, Sheridan married into a Catholic family before the death of Charles II and went public with his own conversion in 1686; six months later he became secretary to King James II, whom he followed into exile across the Channel early in 1689, subsequently writing pamphlets which 'show him as both a bigoted Catholic and a forceful proponent of absolute monarchy'.[34] So he might well be characterised as a man on the wrong side of history, even if he also escaped the Protestant compulsion to follow scriptural precept, with particular reference to Old Testament accounts of God's dispensation of civil or judicial law for the Jewish people, which was in most respects far from abolitionist or hostile to the notion of death as ultimate penalty.

Nevertheless, it seems likely that Sheridan's Catholic-Jacobite identity helps explain why his pioneering attack on capital punishment had no obvious contemporary impact. Another reason was doubtless the rather diffuse and poorly-organised fashion in which his case was presented, something which also did little to ensure its subsequent influence on the development of abolitionist theory. Yet Sheridan may well have been the very first person to issue a public denunciation of the ultimate penal sanction, cast not merely in the form of a utopian fantasy or visionary ideal, but as a concrete proposal placed before legislators in the immediate here and now.

IV

I had first become aware of the disputed relationship between Mosaic law and early modern English law long before encountering Sheridan, in connection with the legal author, Puritan politician and proto-Zionist Henry Finch (1558–1625). In the mid-1580s Finch drafted a manuscript dedicated to and possibly commissioned by the Protestant hero Sir Philip Sidney: '*Nomotexnia*, or the Common Law of England in such lawful method written as it may justly challenge the name of an art. With a Conference or Reformation of the same law by the law of God'.[35] John Cooper, the internal examiner of my thesis, encouraged me to work on this tract after I completed converting that thesis into a book. It soon became clear that a complex series of subsequent drafts and revisions extending over several decades had transformed the first and shorter part of Finch's manuscript overview of English law into a much longer and more comprehensive account, which now exists not only in numerous manuscript versions, but as two printed volumes: the law-French

34 John Miller, 'Sheridan, Thomas (1646–1712): Government Official and Jacobite Pamphleteer' (2006) *Oxford Dictionary of National Biography*.

35 Wilfrid R Prest, 'The Art of Law and the Law of God: Sir Henry Finch (1558–1625)' in Donald Pennington and Keith Thomas (eds), *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill* (Oxford University Press, 1978) 94, 97–8, citing Bodl Rawlinson MS C 43. See also Timothy D Crowley, 'Sidney and Finch's *Nomotexnia* (Art of Law): Religion, Politics, and Patronage?' (2021) 72(306) *The Review of English Studies* 663.

Nomotexnia (1613) and the English *Law, or a Discourse thereof* (1627).[36] While *Nomotexnia* did not appear in English translation until 1759, the posthumous English book was frequently reprinted, summarised and re-issued as an introductory text for law students until the mid-eighteenth century. Yet detailed comparison of their contents and the cases cited by both versions shows that although published later, the English *Law* was actually compiled before the law-French *Nomotexnia*. More than a century afterwards, introducing the printed syllabus of his Oxford law lectures, Dr William Blackstone would characterise Finch's *Law* as 'greatly superior' to all previous attempts at 'reducing the Elements of Law from their former Chaos to a regular methodical Science'.[37] Indeed, Finch's methodology, heavily indebted to the scheme of analytical exposition associated with the influential sixteenth-century French Calvinist academic philosopher and rhetorician Peter Ramus, influenced both the form and content of Blackstone's lectures from 1753 onwards, and through them his celebrated *Commentaries on the Laws of England*.[38]

So the most important and influential common-law book of all time, the work of the first ever common-law academic, Oxford's inaugural Vinerian Professor of the Laws of England, represents the culmination of attempts extending over more than two centuries at 'reducing our Laws to a System'.[39] For Finch's project was but one of many efforts to impose order and method on the jumbled chaos of statutes, cases, rules and processes which confronted early modern students of the common law. If proposals to improve the educational functions of the inns of court were a type of law reform, the same surely goes for endeavours to ease the labours of law students increasingly dependent on reading and private study, rather than the traditional oral 'learning exercises' handed down from the medieval inns, especially after the disruptions of the mid-seventeenth century civil wars. Blackstone's great achievement a hundred years later was to build upon his predecessors' work, 'to explain the law to laymen' (as the late Toby Milsom put it), by expounding 'the substantive rules without reference to the procedural framework in which they existed for lawyers'.[40] Finch in the sixteenth and seventeenth century and Wood in the early eighteenth century had written books which attempted to provide an accessible, authoritative and comprehensive general account of English law, while Sir Matthew Hale had outlined the plan for such a book. But none of them quite managed to pull it

36 Henry Finch, *Nomotexnia Cestascavoir un Description del Common Leys Dangleterre Solonque les Rules del Art* (London, 1613); Henrie Finch Knight, *Law, or A Discovrse Thereof*, *In Foure Bookes* (London, 1627).

37 William Blackstone, *Analysis of the Laws of England* (Oxford, 1756) vi.

38 Wilfrid Prest, 'The Dialectical Origins of Finch's *Law*' (1977) 36(2) *Cambridge Law Journal* 326.

39 William Blackstone, *Analysis of the Laws of England* (Oxford, 1756) v. On the national and international influence of the *Commentaries*, see: Wilfrid Prest (ed), *Re-Interpreting Blackstone's Commentaries* (Hart, 2014); Wilfrid Prest, 'Blackstone's *Commentaries*: Modernisation and the British Diaspora' in Philip Payton (ed), *Emigrants and Historians: Essays in Honour of Eric Richards* (Wakefield Press, 2016) 77.

40 SFC Milsom, *The Nature of Blackstone's Achievement* (Selden Society, 1981) 6.

off. That Blackstone was able to succeed where they failed owed much to a young man's energy and determination, allied to a wide range of reference and intellectual curiosity, and a poet's sensitivity to words and sentence structure.[41]

But Blackstone was also a law reformer in the more conventional sense, an advocate for progressive change in the doctrines and procedures which the courts administered. This may be hard to believe, in view of Jeremy Bentham's depiction of his former teacher as 'a bigotted or corrupt defender of the works of power', who 'openly sets his face against civil reformation', 'everything-is-as-it-should-be' Blackstone.[42] It is certainly true that Blackstone was a Tory in politics and an Anglican in religion, as well as a patriotic expositor of the virtues of English law and the British constitution. On the other hand, he was unhappy with many aspects of contemporary criminal law, especially its excessive dependence on capital punishment, and sought to develop a practical penal alternative through the last years of his life, drafting and promoting successive versions of what became the *Penitentiary Act 1779*, 19 Geo 3, c 74, providing for the construction of a prison where convicted felons could be sentenced to confinement at hard labour, rather than Tyburn's gallows.[43] Blackstone's Tory politics developed in opposition to the one-party rule of Robert Walpole and his oligarchic Whig successors from the 1720s through to the 1750s, not to mention their supporters among the gerontocratic college heads who resisted the young college fellow's active and ultimately successful campaign to reform Oxford's university press. Blackstone's religious stance understandably earned him the opprobrium of Protestant dissenters, but he was anxious to distinguish human from divine law, while maintaining that 'affronts to christianity' were punishable not because they offended God, but lest they should weaken the efficacy of oaths sworn by judges, jurors and witnesses, on which the entire legal system depended.[44] He upheld individual liberty and the rights of private property in a fashion which appeals to modern right-wing ideologues. But the *Commentaries* give little comfort to advocates of small government. For they support the provision of public welfare measures rather than private charity to maintain the poor and find jobs for those able to work, while as a Member of Parliament in the 1760s their author contributed to the drafting of legislation which sought to rationalise the provision of poor relief on a county or regional basis.[45] In short, Blackstone's political and social views, including his stance on gender issues, were not all of a piece, and cannot be reduced

41 Ibid 7–8.

42 Jeremy Bentham, *A Fragment on Government* (London, 1776) in JH Burns and HLA Hart (eds), *A Comment on the Commentaries and a Fragment on Government* (Athlone Press, 1977) 398, 406, 407.

43 Wilfrid Prest, *William Blackstone: Law and Letters in the Eighteenth Century* (Oxford University Press, 2008) 297–301.

44 Wilfrid Prest, 'William Blackstone's Anglicanism' in Mark Hill and RH Helmholz (eds), *Great Christian Jurists in English History* (Cambridge University Press, 2017) 213, 231.

45 Wilfrid Prest, 'William Blackstone and the "Free Constitution of Britain"' in DJ Galligan (ed), *Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham* (Oxford University Press, 2014) 210.

to simple stereotypes of radical or conservative, reactionary or progressive, let alone Whig or Tory.[46]

I don't recall when I first came across Blackstone. As a non-lawyer history postgrad with an interest in early modern legal literature it would have been difficult to avoid his name. It may even have been invoked as a kind of talisman in an orotund course of lectures delivered by the practitioner PD Phillips QC to the 1958 first-year Melbourne University Law School 'Introduction to Legal Method' class, of which I was a reluctant member (following short-lived parental directives to do something useful in addition to an Arts degree). I certainly knew very little about Blackstone or his *Commentaries* when in the early 1990s Michael Lobban enquired whether there was any individual lawyer from the early to mid-eighteenth century whom I might like to write up for the new *Dictionary of National Biography* (Michael being then, like myself, an associate editor charged with finding contributors for entries on a 'block' of subjects, in our case lawyers, from a given chronological period). It is still slightly puzzling to me that I unhesitatingly nominated Blackstone, about whom I then knew little more than that there was no recent scholarly biography. Perhaps compiling a relatively brief biographical memoir seemed to offer an interesting challenge, besides a good way of filling a large gap in my own understanding.

For since completing *The Rise of the Barristers*, a sequel to my inns of court book in the mid-1980s, my research interests had been moving forward from the later sixteenth and early seventeenth centuries to what historians now termed 'the long eighteenth century'. This chronological progression was accelerated by the arrival in Adelaide of David Lemmings, a recent Oxford doctoral graduate. For David and I had begun work on another ARC-funded project, aiming to produce a general history of the English bar 'in the context of a century when popular participation in litigation declined, parliamentary legislation increased, and the imperial state expanded'.[47] This quotation comes from the dust-jacket of David's deservedly influential and very well-received *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century*, which remains the most substantial outcome of that project. My own involvement had largely ceased in the early 1990s, after David moved to a lectureship at Newcastle, when I was persuaded to write a general textbook covering English history from 1660 to 1815, in which Blackstone and his *Commentaries* made a fleeting appearance.[48] It was not until a sabbatical year at the National Humanities Center in North Carolina in 1998–99 that I came to think Blackstone might merit more than 1500 words in what was now officially termed the *Oxford Dictionary of National Biography*. Researching and writing that biography was what brought me into the Law School in 2003, thanks to further ARC support enabling me to devote myself full-time to the task. Having completed

46 Cf: Wilfrid Prest, 'William Blackstone and the Historians' (2006) 56(7) *History Today* 44; Anthony Page and Wilfrid Prest (eds), *Blackstone and His Critics* (Hart, 2018).

47 David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford University Press, 2000).

48 Wilfrid Prest, *Albion Ascendant: English History 1660–1815* (Oxford University Press, 1998) 136, 199–200.

and published the life (and previously a volume of Blackstone's surviving correspondence, a partial substitute for the lack of any family, personal or professional papers), the next priority was to produce a new edition of the *Commentaries* — with modern typography, translated passages in foreign languages, footnote glosses on unfamiliar words and names, and substantial scholarly introductions — to replace the more rudimentary and somewhat user-unfriendly facsimile volumes published by the University of Chicago Press.[49]

V

That editorial project happened to fit in neatly with another endeavour undertaken by my now returned Adelaide colleague David Lemmings, who had accepted an invitation to write the ninth volume of the *Oxford History of the Laws of England* ('*OHLE*'), covering the period 1689–1760. Like much else in the booming cottage industry of English legal history over the past half-century or so, the *OHLE* is the brainchild of Professor Sir John Baker, the first legal historian to be knighted for service to scholarship.[50] It was intended to supersede or at least complement Holdsworth's monumental multi-volume *History of English Law*, compiled in the early twentieth century almost entirely from printed sources. By contrast the distinctive contribution of Baker has been to identify and exploit the wealth of unpublished material generated by the operation of the courts and the legal profession, much of which became available and readily accessible only after World War II. However, apart from being widely dispersed on both sides of the Atlantic and even further afield, such manuscript sources, often existing in few or unique copies, are generally more time-consuming than printed material to locate and consult. The intensifying pressures of modern academic life also help to explain why only half the original dozen *OHLE* volumes commissioned in the late twentieth century have as yet been published. Unfortunately, the passage of time only worsens the problem. For while the advent of digital technology has generally helped make historical sources of all kinds more readily accessible, most early printed books are available online, whereas this is true of only a fraction of the immense existing bulk of relevant manuscript and archival material. Moreover, authors signed up more than twenty years ago are inevitably and increasingly subject to all the ills the flesh is heir to. It was the incapacity of the late Henry Horwitz, the original contracted author of *OHLE* volume 9, which led to David being asked to take his place; my own involvement followed shortly thereafter, along with that of Mike Macnair from Oxford's Faculty of Law. We agreed upon a rough division of labour, whereby Mike would be responsible for the history of legal doctrine during our seventy-year period,

49 WR Prest (ed), *The Letters of Sir William Blackstone 1744–1780* (Selden Society, 2006); Wilfrid Prest et al (eds), *Commentaries on the Laws of England* (Oxford University Press, 2016).

50 Sir William Holdsworth, the other possible aspirant to that distinction, gained his honour for services to the British Empire as a member of the 1929 Indian States Inquiry Committee: HG Hanbury and David Ibbetson, 'Holdsworth, Sir William Searle (1871–1944): Legal Historian' (2015) *Oxford Dictionary of National Biography*.

I would handle the institutional aspects (courts, litigation, the legal profession and law reform), and David would write on expectations and representations of the law, its practitioners and processes. This is still the basic plan, although we have recently recruited Emily Ireland, who wrote her doctoral thesis at the University of Adelaide, to provide chapters on gender and the law, and legal personality, for David and Mike's respective sections. She thereby became the first female legal historian contracted to contribute to the *OHLE*.

Legal history has never been an exclusively male preserve. The first 100 volumes of texts published in the Selden Society's main series between 1887 and 1987 include 17 edited by a woman (co-edited with a male in two cases). Yet after the first two volumes on medieval borough customs compiled by Mary Bateson were published in 1904 and 1906, a quarter century would pass before the work of the next female editor appeared. This gender imbalance no doubt reflected the Society's dominance by professional lawyers well into the second half of the twentieth century. Over the same period the sex ratio among academic historians may not have been any more favourable to women, but the sub-discipline of medieval history had long tended to attract a disproportionate representation of female scholars, while it was only in the 1960s that the Selden Society begin to publish the occasional post-medieval text.[51] More recently, women have become increasingly prominent practitioners of legal history, as is readily apparent from the programs of the biennial British Legal History conference and the annual conferences of the American Society for Legal History and the Australia and New Zealand Law and History Society, as well as the pages of the *Journal of Legal History*, the *American Journal of Legal History*, the *Law and History Review* and *Law&History*.

At this point of widening opportunities for female scholars in the field of legal history, it is particularly regrettable that the Adelaide Law School seems to have turned its back on a homegrown tradition of innovative legal-historical scholarship, with the abandonment of legal history as a stand-alone subject in both the undergraduate syllabus and taught postgraduate courses.[52] Some of the reasons why legal history, once a significant and often mandatory curricula component, is now largely absent from Australian law schools — for Adelaide is by no means unique in this respect — have been well summarised by Justin Gleeson, while two former High

51 JH Baker and DEC Yale, *A Centenary Guide to the Publications of the Selden Society* (Selden Society, 1987) 13, 53–206; Laura Carter, 'Women Historians in the Twentieth Century' in Heidi Egginton and Zoe Thomas (eds), *Precarious Professionals: Gender, Identities and Social Change in Modern Britain* (University of London Press, 2021) 263.

52 While legal history at Adelaide has been largely dominated by male scholars (among others Ralph Hague, Horst Lücke, Alex C Castles, Greg Taylor, and John M Williams), it should not be forgotten that Suzanne Corcoran became founding editor of the *Australian Journal of Legal History* in 1995. Cf Horst Lücke, 'Legal History in Australia: The Development of Australian Legal/Historical Scholarship' (2010) 34(1) *Australian Bar Review* 109.

Court judges have eloquently stated the case for its return or retention.[53] An instrumentalist approach to legal education, manifest in a desire to produce graduates who are employment-ready, equipped with the analytical techniques to deal with the law as it is now and in the future, is not necessarily an unworthy goal in itself. But given that most law graduates will not work as lawyers, and that much of the work done by legal practitioners today is likely to be seriously intruded upon, if not made redundant, by the future application of generative artificial intelligence, it may be that the virtues of a broader curriculum which encourages a more reflective approach to law as a social practice have been too easily overlooked.

To return to law reform, and the *OHLE*. The close textual study required to produce a new edition of Blackstone's *Commentaries* was a very appropriate preparation for research on a new historical account of English law in the seventy years following the 'Glorious Revolution' of 1688. For Blackstone's Oxford lecture course — a radical departure in itself, since the university's formal curriculum made no provision for teaching English common law, the Faculty of Law being then concerned solely with Roman or civil law — on which the *Commentaries* were closely based, provided a comprehensive and well-informed overview of English law in the last decade of our allotted period, which was also the final decade of George II's reign. Like the *Commentaries* themselves, the lectures (in so far as they can be reconstructed from surviving student notes) demonstrated Blackstone's dissatisfaction with many aspects of the legal system, informed by his experience as a practising barrister.

Blackstone's views indeed supported the argument advanced in a 1991 British Legal History conference paper (the last relic of my involvement with David Lemmings in co-authoring a history of the eighteenth-century bar), which maintained that Shapiro's characterisation of law reform activity, as 'interest in obtaining cheaper, less dilatory and more equitable legal services [which] continued at a low but by no means insignificant level … into the early years of the eighteenth century,' remained valid up to George III's accession in 1760.[54] Three main phases of parliamentary law reform activity can be identified: (1) the early 1700s, centred around a House of Lords committee chaired by John Lord Somers which produced a bill that became an act for 'amendment of the law' (4 & 5 Anne, c 16, 1706); (2) the early years of George II's reign, which saw legislation regulating attorneys and solicitors (2 Geo 2, c 23, 1729), the 'Englishing' act of 1731 (4 Geo 2, c 26), a House of Commons committee's enquiry into the notorious and shocking abuses and conditions prevalent in

53 Justin Gleeson, 'Re-Imagining Legal History' in Justin T Gleeson and Ruth CA Higgins (eds), *Constituting Law: Legal Argument and Social Values* (Federation Press, 2011) 58; William MC Gummow, 'Law and the Use of History' in Justin T Gleeson and Ruth CA Higgins (eds), *Constituting Law: Legal Argument and Social Values* (Federation Press, 2011) 61; Michael Kirby, 'Is Legal History Now Ancient History?' (2009) 83(1) *Australian Law Journal* 31; Michael Kirby, 'Foreword' in Sarah McKibbin, Libby Connors and Marcus Harmes (eds), *A Legal History for Australia* (Hart, 2021) v–viii ('*A Legal History for Australia*').

54 Wilfrid Prest, 'Law Reform in Eighteenth-Century England' in Peter Birks (ed), *The Life of the Law: Proceedings of the Tenth British Legal History Conference, Oxford, 1991* (Hambledon Press, 1993) 113, 115.

the capital's court-administered but privately-operated prisons, and two eventually unsuccessful bills for reforming the functions and powers of the national network of ecclesiastical courts and their jurisdiction over 'spiritual' and 'moral' matters; and (3) the late 1740s to early 1750s, more or less coinciding with the years of peace from the end of the War of the Austrian Succession (1748) and the start of the Seven Years War (1756), when fears of a violent crime wave led to a spate of measures intended to improve criminal law enforcement, together with numerous statutes affecting civil proceedings, by among other things shortening Michaelmas term (24 Geo 2, c 48, 1751), prohibiting clandestine marriages (26 Geo 2, c 33, 1753), and establishing small debts courts exercising summary jurisdiction ('courts of conscience'), in London and various provincial urban centres.

In addition to these bursts of debate and legislative activity, hardly any of the now annual parliamentary sessions from 1689 onwards failed to see at least one law reform measure brought forward, even if many more such bills were presented than actually enacted. Outside Parliament an explosion of print media following the collapse of pre-publication press censorship in 1695 facilitated dissemination of a more or less continuous critique of the law's shortcomings, as well as proposals to remedy them, sometimes including draft bills. Law reform advocates, both lawyers with direct personal experience of what they complained about and lay persons, showed an increasingly realistic appreciation of the need not merely to enumerate and excoriate legal deficiencies and abuses, but to persuade their readers that remedial action of a specific nature was called for. They also seemed more conscious than their mid-seventeenth century predecessors of the previous history of attempted law reform in England, and frequently sought to reinforce their case by invoking the virtues of other legal and penal systems, especially those in the Netherlands, Denmark and Prussia. At the same time there was greater recognition of the difficulties created by the need to work through Parliament, of the value of expert independent advice on the merits of proposed law reform measures, and of the practical limits on what real-world changes could be achieved by legislative means.

The long final chapter on law reform in my contribution to *OHLE* volume 9 incorporates these points from the 1991 paper, while providing much more detail on both parliamentary and extra-parliamentary pressure for legal change. It also argues that we have tended to underestimate the significance of what was achieved over the whole period 1689–1760, especially with regard to the regulation of attorneys and solicitors and criminal law reform. At the same time, we must recognise the limits of such intermittent incremental change, which did little to tackle the dilatory proceedings of the Court of Chancery, the vested interests of the possessors of venal legal office who controlled the 'back-stage' fee-for-service workings of all the central common law and equity courts, the plight of imprisoned debtors, the appalling state of the gaols in which they languished, and much else besides.

In the later eighteenth century and early nineteenth century, law reform never became a cause as popular or widely-supported as the emancipation of slaves or electoral reform, perhaps because the law and its workings seemed less central to most people's lives and less shocking to their sentiments of common humanity. But then it still took more than half a century after Mansfield's decision in Somerset's

case to accomplish the legislative abolition of slavery, while the Reform Act of 1832 was even further distant chronologically from the parliamentary reform agitation which had first erupted with cries of 'Wilkes and Liberty' in the 1760s. And what might seem to some today the cardinal fault of the eighteenth-century English legal system — its apparent total exclusion of women from legal practice — took still longer to be recognised and acted upon. Yet even at the very outset of the eighteenth century we hear the occasional proto-feminist voice, like that of the 'Gentlewoman' who on the 'Question … Why a Woman should not be admitted in to Government as well as Men … argued, That Women … exceed Men in quickness of Apprehension … Men she said, out of the Robustness of their Nature, kept them from it'.[55] A little later Mary Astell famously demanded to know 'If *all Men* are *born free*, how is it that all Women are born Slaves?'[56] Some men and women agreed that the problem was one of upbringing or education: 'How many ladies have there been, and still are, who deserve places among the learned; and who are more capable of *teaching* the *sciences* than those who now fill most of the *university chairs*', asked the anonymous author of *Woman not Inferior to Man*.[57] She (assuming the authenticity of her authorial persona) went on to claim that '[i]f we were to apply to the *law*, we should succeed in it at least as well as the *Men* … were we to fill the offices of *counsel*, *judges*, and *magistrates*, we shou'd shew a capacity in business which very few Men can boast of'.[58] In point of fact, there is some evidence that a few women actually were working as lawyers during our period. According to Dr Nehemiah Grew FRS, research scientist, physician and political economist, writing a few years into the reign of Queen Anne, the excessive proliferation of attorneys in and around London was exacerbated by many persons who

> tho' no sworne Attorneys, yet Sollicit Causes, and Practise as Attourneys, in other men's Names; of which Number there are above 500 in this City. And among them, some Women; of whom one Hawkins, a Female Sollicitor, is said to be knowne to most of the Judges.[59]

While it has not so far proved possible to identify Mistress Hawkins, we do know a little more about the Herefordshire heiress Lucy Rodd, who after separating from her barrister husband Robert Price in 1690 seemingly resided in chambers at Gray's

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55 Joseph Coles, *England to be Wall'd with Gold, and to Have Silver as Plentiful as Stones in the Street* (London, 1700) 8.

56 Mary Astell, *Reflections upon Marriage* (London, 4th ed, 1730)

57 Sophia [pseudonym], *Woman Not Inferior to Man*: *Or, a Short and Modest Vindication of the Natural Right of the Fair Sex, to a Perfect Equality of Power, Dignity and Esteem, with the Men* (London, 1739).

58 Ibid 40–1.

59 Nehemiah Grew, 'Nehemiah Grew and England's Economic Development: The Meanes of a Most Ample Encrease of the Wealth and Strength of England in a Few Years' in Julian Hoppit (ed), *Records of Social and Economic History: New Series 47* (Oxford University Press, 2012) 87; Wilfrid Prest, '"One Hawkins, a Female Sollicitor": Women Lawyers in Augustan England' (1994) 57(4) *Huntington Library Quarterly* 353.

Inn, 'and often took upon her to act as a Counsellour at Law', and so gained the title of the '*Petticoat Counsellor*'.[60] Further research may uncover more corroborative detail about the activities of these two individual practitioners, as well as evidence of other women undertaking roles as chamber counsel or unofficial legal agents during and after this period.[61] It will hardly modify the general point already insisted upon, that law reform is often a very long drawn-out process. How far that holds true of law reform in Australia's various jurisdictions is another question which still awaits its historian.

60 WR Chetwood, *The British Theatre, Containing Lives of the English Dramatic Poets* (Dublin, 1750) 164; Paul Baines and Pat Rogers, *Edmund Curll, Bookseller* (Clarendon Press, 2007) 233–4; Stuart Handley, 'Price, Robert (1655–1733): Judge and Politician' (2007) *Oxford Dictionary of National Biography.*

61 Cf: Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (Random House, 1986); McKibben, Connors and Harmes (eds), *A Legal History for Australia* (n 53) 51–3.