2. Angevin kingship: making and breaking royal law
Nicholas Vincent

‘Angevin kingship: making and breaking royal law’ examines the context of Plantagenent rule, with particular attention given to legal matters. The Plantagenents have a reputation for bloodshed — where did this reputation come from and is it well founded? Historians have placed the emergence of English ‘Common Law’ after 1174, but it was still a system of law subject to the king. Henry reformed the courts, and the legal profession emerged due to these reforms, but Henry sought to impose legal restraints on his subjects via court reform. Years later, Magna Carta was an attempt to bring King John under this same law.

Introduction
G. Edward White

The ‘Introduction’ explains that a review of American Legal History must confront the defining issues in the development of American civilization and culture. The law is connected to, has reacted to, and has helped to shape America's geographic isolation, economic abundance, transatlantic settlement, the relations between European settlers and indigenous tribes, African American slavery, the importance of agricultural householding, the growth of industrial enterprise and urbanization, and the emergence of the United States as a world power. The focus of this VSI is on the topics and issues that are connected to central themes in American history.

1. The legal history of Indian tribes
G. Edward White

‘The legal history of Indian tribes’ considers the most fundamental theme of American legal history in the sixteenth and seventeenth centuries – the interaction of European settlers
with the aboriginal tribes who inhabited the North American continent. The history of the legal treatment of American Indian tribes can be divided into distinct phases of settler-tribal accommodation. In all but the last phase, the interaction between tribes and settlers disadvantaged the tribes. The contact phase, postcontact phases, and the changing legal relationships between the settlers and the Amerindian tribes are described as well as the restoration of the rights and interests of the American Indian tribes in the twenty-first century.

Epilogue

The future Constitution

David J. Bodenhamer

The United States does not operate today under the Constitution ratified in 1788 or the Constitution as completed by the Bill of Rights in 1791 or even the one revised by the Reconstruction amendments. Nor is it the same nation. The United States, then a plural noun and now a collective one, has grown from thirteen states hugging the Atlantic seaboard to fifty states spread across a continent and beyond. It has experienced a civil war that ended one social and political regime and ultimately ushered in another far different from anything most people could have imagined in 1776 or even in 1865. From its beginnings as a second-rate country with a tiny navy and army, it has grown to become a global economic and military superpower. It is a democratic republic in which democracy weighs far more heavily in its constitutional and societal calculus than the framers would have endorsed. Its citizens vest government with the responsibility for safeguarding their prosperity, health, safety, and welfare in ways alien to the experiences of the founding generation....

4. Law and entrepreneurship

G. Edward White

‘Law and entrepreneurship’ outlines how from the colonial years through the twentieth century, each of the dominant entrepreneurial ventures that emerged were responses to the changing physical and social features of the expanding American nation. They were made possible by legal innovations, whether in the form of a system for recording land titles, state-private partnerships creating exclusive transportation franchises, the application of patent law to industrial sector inventions, or the licensing of radio and television stations and cable franchises. In the twentieth century, aspiring entrepreneurs in the marketing, communications, and entertainment sectors would continue to rely on law to facilitate their ventures and to set permissible limits of their activities.
2. Law and African American slavery
G. Edward White

‘Law and African American slavery’ illustrates how the colonial heritage of slavery in America helped foster the population growth, expansion of the labour force, extraction of abundant agricultural resources, and commercial prosperity that seemed to make the United States a singularly favoured nation in the first half of the nineteenth century. African American slavery, however, was also the root cause of the breakup of that nation in 1860 and the civil war that accompanied it. A civil war was necessary to end slavery in America and forcibly restore a union of northern and southern states, but the legacy of slavery would survive in the form of pervasive discrimination against African Americans.

1. Introducing criminology
Tim Newburn

‘Introducing criminology’ explains that according to American criminologist, Edwin Sutherland, criminology is the body of knowledge regarding crime as a social phenomenon including within its scope the process of making and breaking laws, and reacting to the breaking of laws. Criminology dates back to the late 18th century when small groups of people developed an interest in explaining crime alongside their main occupations such as running asylums or collecting statistics on prisons or court proceedings. There was no form of collective enterprise until the end of the 19th century. During the 20th century, ‘criminology’ gradually formed and solidified. Its constitutive disciplines include sociology, history, psychology, law, and statistics.

8. Security
David J. Bodenhamer

Armed conflict poses an imminent threat to the nation’s existence, but so does suspension of the nation’s fundamental laws. The framers wrestled with how to grant government the power to defend the nation without providing it the means to threaten liberty. The question it raises—does war suspend the Constitution or does the Constitution control the conduct of the war—has rarely been absent from American history. ‘Security’ describes the impact of the Civil War, World War I, World War II, the Cold War, the Vietnam War, as well as the
recent ‘war on terror’ on the nation’s laws, the executive presidential power, and the roles of the Supreme Court and Congress.

2. Between the crime and the court
Julian V. Roberts

‘Between the crime and the trial’ discusses the procedures undertaken by the police and prosecution services after a crime has taken place and before court proceedings begin. Out of court disposals can be used for less serious crimes and where the allegations are not contested. Police may issue ‘on the spot’ fines for public disorder or impose conditional cautions. Failure to comply with the conditions will trigger prosecution. After an arrest, the prosecution guides the proceedings. Pre-trial developments include decisions on whether to: charge the defendant; bail them or remand them to custody; negotiate justice through plea bargaining; or offer to reduce the sentence if the accused will plead guilty.

3. In court and on trial
Julian V. Roberts

‘In court and on trial’ outlines the procedures once a trial date has been set. There is considerable variation in terms of the nature of the decision-maker—judge or jury—as well as the ways that the adjudicator is appointed. In almost all countries, prosecutors and judges are appointed, but in many US states they are elected. The jury decides questions of fact, whereas the judge decides matters of law. There are now specialist courts, such as drug treatment courts and juvenile courts, which focus on one particular form of offending and adopt a ‘problem-solving’ approach. What happens when criminal justice fails? Wrongful convictions and wrongful acquittals are also discussed.

4. The substantive reach of court-martial jurisdiction
Eugene R. Fidell

If a court-martial has jurisdiction over an accused, to what offenses does that jurisdiction extend? Military justice codes take a variety of approaches to defining what conduct will be prosecuted in courts-martial. Typically, they set forth and give the required elements of a number of offenses. Some offenses—disobedience and disrespect, desertion, dereliction of duty, AWOL, missing movement, mutiny, oppressing a subordinate, or hazarding a vessel
—have no counterpart in civilian criminal law. ‘The substantive reach of court-martial jurisdiction’ outlines two key issues: whether human rights violations should be prosecuted in courts-martial, and whether common law or ordinary crimes should ever be tried by court-martial rather than in the civilian courts.

4. Courts
Raymond Wacks

Courts personify the law and play a central role in every legal system. But what precisely is that role? Are courts the best forum for resolving disputes? What do judges do? What of their appointment, election, and accountability? Can judges be genuinely impartial or objective? What is the purpose of a criminal trial? Is the jury system effective and fair? ‘Courts’ attempts to answer these questions, and also considers different court systems around the world, the moral responsibility of judges, the difference between criminal and civil trials, sentencing, the politics of the judiciary, and alternative dispute resolution.

1. The revolutionary Constitution
David J. Bodenhamer

The American Revolution was a radical event that redefined ideas of sovereignty, liberty, equality, representation, and power. It also recast how men and women related to each other within and outside of government. As its political expression, the Constitution was the revolutionary answer to an age-old antagonism in Western culture between power and liberty. ‘The revolutionary Constitution’ describes the processes involved in the drafting of the Constitution, its ratification, and the creation of the new national government structure, including the House of Representatives, the Senate, and the Supreme Court. It outlines the key stages in the Constitution’s construction such as the Philadelphia Convention in 1787 and the ratification of the Bill of Rights in 1791.

4. Property
David J. Bodenhamer

The Constitution of 1787 contains no broad guarantee of the right to property, but it established numerous protections for property. ‘Property’ explains that the right to property found explicit protection in the Constitution with the 1791 Fifth Amendment. It also
describes how the courts reshaped the law of property as a capitalist instrument in ways that fit both constitutional republicanism and an emerging democratic order. Twice, Congress passed and states ratified amendments that redefined property rights: the 1913 Sixteenth Amendment and the 1919 Eighteenth Amendment. Private ownership has often been in tension with popular sovereignty, democracy, and the general welfare. How to strike an appropriate balance between these legitimate constitutional interests remains a challenge.

5. Representation
David J. Bodenhamer

Introduction: Separate rules for a separate society
Eugene R. Fidell
Since World War II, there has been an accelerating trend toward the assimilation of military and civilian legal systems, with military justice increasingly approximating civilian criminal justice. The trend has been resisted in some quarters, but now has enough momentum that it will continue—but how far? ‘The arc of civilianization’ outlines the similarities and disparities between military and civilian legal systems in different countries; explains the Uniform Code of Military Justice and the Manual for Courts-Martial; and shows how civilianization has occurred on multiple levels. The rule-making process itself usually involves civilian officials and in some countries the senior judge in a court-martial may not be a uniformed officer.

American Legal History: A Very Short Introduction
G. Edward White

Law has played a central role in American history. From colonial times to the present, law has reflected the changing society in which legal decisions have been made and has played a powerful role in shaping that society, though not always in positive ways. American Legal History: A Very Short Introduction sheds light on the impact of law on several key social issues: Native American affairs, slavery, business, home life, and criminal and civil offences. The expansion of laws regarding property rights is also considered, as well as the evolution of criminal punishment, the rise of tort law after the Civil War; and the progress in legal education.

6. EU law in the national courts
Anthony Arnall

‘EU law in the national courts’ explains the concepts of direct effect and primacy. The Court of Justice of the European Union has ruled that EU law may confer rights on individuals that may be enforced in the national courts of the Member States. Such rights enjoy primacy over conflicting national laws regardless of the constitutional status of those laws. Moreover, national law must where possible be interpreted consistently with overlapping rules of EU law. When a Member State breaches EU law, any individual who suffers loss as a result may claim damages in the national courts. How have national courts responded to these principles?

3. Implementing international law
Vaughan Lowe
States tend to comply with international law, but what happens if a State breaks a rule of international law? ‘Implementing international law’ considers the different ways in which international law is implemented—diplomatic protest through acts of retorsion, countermeasures, litigation, arbitration, and mediation. If litigation is necessary, most cases in which international law is applied arise in municipal courts and tribunals. Only a small proportion of cases that are decided by the application of rules of international law are taken to the International Court. Despite the increasing engagement between international law and individuals, the particular focus of international law remains fixed upon States and State responsibility.