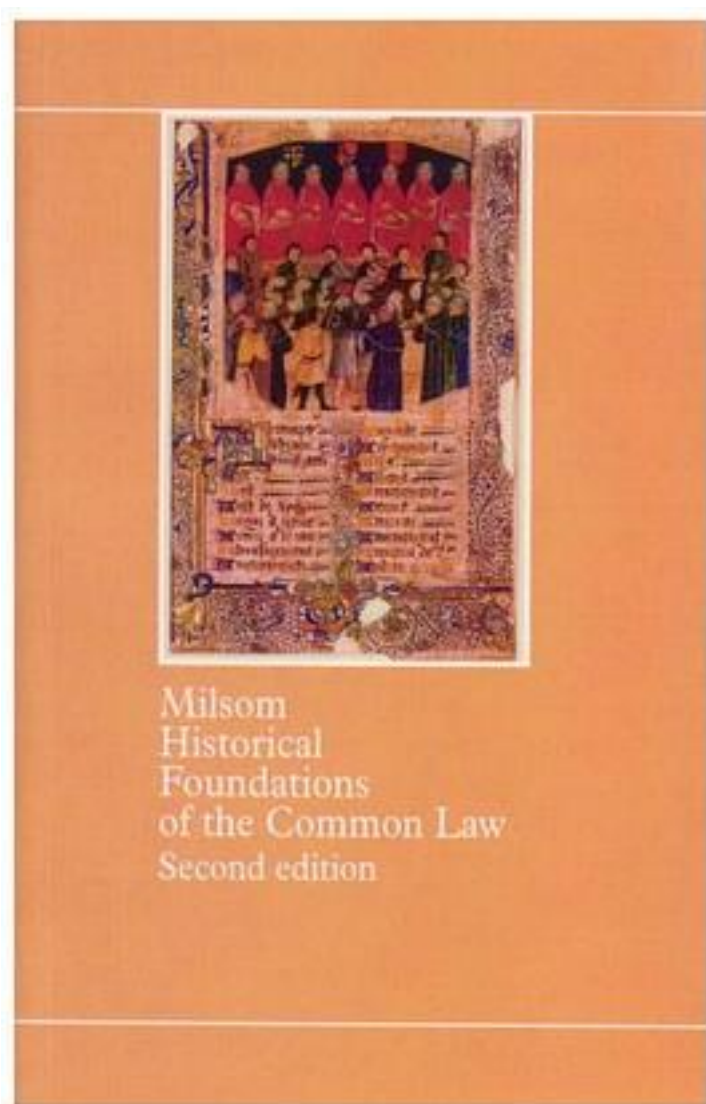


Historical Foundations of the Common Law



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This book is directed at the central difficulty in legal history: one is not reconstructing earlier answers to modern questions, but earlier questions; and they were different in kind. Today we see law as a system of substantive rules which can be explained in textbooks, altered by legislation, and embodied in a restatement or a code. It is somehow separate from society and needs separate adjustment; and there is a simple relationship between legal and other change. If this had always been so, legal and social and economic history would all be easy. They are not. Such a vision comes late in legal developments, and the common law reached that stage only in quite recent times. But ever since an early stage fortune has preserved copious original materials; and we can hope to trace not just the changing arrangements of one society, but the stages through which at least one legal system has passed, the changing ways in which the law itself has been seen. The underlying questions have always been beyond discussion in any practical context. How far are right and wrong man's business rather than God's? How and upon what terms are the resources of creation to be appropriated to individuals? But answers are at any one time assumed, and determine what smaller questions arise as daily business for those concerned with the legal process. It is to the changing nature of those practical questions that this book seeks to reduce the development of each of the main branches of the law

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