CONTENTS

In	troduction	1
	Law and History	11
	Law and Revolution	18
	The Crisis of the Western Legal Tradition Toward a Social Theory of Law	33 41
	PART I: THE PAPAL REVOLUTION AND THE CANON LAW	<u> </u>
		17
1.	The Background of the Western Legal Tradition: The Folklaw	49
	Tribal Law	52
	Dynamic Elements in Germanic Law:	
	Christianity and Kingship	62
	Penitential Law and Its Relation to the Folklaw	68
2.	The Origin of the Western Legal Tradition in the Papal	
	Revolution	85
	Church and Empire: The Cluniac Reform	88
	The Dictates of the Pope	94
	The Revolutionary Character of the Papal	00
	Revolution	99
	Social-Psychological Causes and Consequences	107
	of the Papal Revolution The Rise of the Modern State	113
	The Rise of Modern Legal Systems	115
•	<u> </u>	110
3.	The Origin of Western Legal Science in the European	100
	Universities	120
	The Law School at Bologna	123
	The Curriculum and Teaching Method	127
	The Scholastic Method of Analysis and Synthesis The Relation of Scholasticism to Greek	131
	Philosophy and Roman Law	132
	The Application of the Scholastic Dialectic to	
	Legal Science	143
	Law as a Prototype of Western Science	151
4.	Theological Sources of the Western Legal Tradition	165
	Last Judgment and Purgatory	166
	The Sacrament of Penance	172

	The Sacrament of the Eucharist	173
	The New Theology: St. Anselm's Doctrine of Atonement	174
	The Legal Implications of the Doctrine of the	179
	Atonement The all reight Sources of Western Criminal Law	181
	Theological Sources of Western Criminal Law The Canon Law of Crimes	185
5.	Canon Law: The First Modern Western Legal System	199
	The Relation of Canon Law to Roman Law Constitutional Foundations of the Canon Law	204
	System Corporation Law as the Constitutional Law	205
	of the Church	215
	Limitations on Ecclesiastical Jurisdiction	221
6.	Structural Elements of the System of Canon Law	225
	The Canon Law of Marriage	226
	The Canon Law of Inheritance	230
	The Canon Law of Property	237
	The Canon Law of Contracts	245
	Procedure	250
	The Systematic Character of Canon Law	253
7.	Becket versus Henry II: The Competition of Concurrent	
	Jurisdictions	255
	The Constitutions of Clarendon	256
	Benefit of Clergy and Double Jeopardy	259
	Ecclesiastical Jurisdiction in England	260
	Writs of Prohibition	264
	PART II: THE FORMATION OF SECULAR	
	LEGAL SYSTEMS	271
8.	1 5	273
	The Emergence of New Theories of Secular	075
	Government and Secular Law	275
	John of Salisbury, Founder of Western Political	070
	Science	276
	Theories of the Roman and Canon Lawyers	288
	The Rule of Law	292

xi	Contents

9. Feudal Law	295
Feudal Custom in the West Prior t Eleventh Century The Emergence of a System of Feud	297
10. Manorial Law	316
Objectivity and Universality Reciprocity of Rights of Lords and I Participatory Adjudication Integration and Growth	321 Peasants 322 324 328
11. Mercantile Law	333
Religion and the Rise of Capitalism The New System of Commercial La	
12. Urban Law	356
Causes of the Rise of the Modern Ci The Origins of the Cities and Town	•
Western Europe	363
Picardy (France): Cambrai, Bo	364
France: Lorris, Montauban	368 369
Normandy: Verneuil Flanders: Saint-Omer, Bruges,	
Germany: Cologne, Freiburg,	
Magdeburg	371
England: London, Ipswich	380
The Italian Cities	386
Guilds and Guild Law	390
The Main Characteristics of Urban The City as a Historical Community	
13. Royal Law: Sicily, England, Normandy,	France 404
The Norman Kingdom of Sicily	409
The Norman State	414
The Personality of Roger II	417
The Crowth of Bounds and N	419
The Growth of Royal Law in No	•
England The Personality of Henry II	434 438
The English State	440
2 2 5 6	110

Contents	xii

English Royal Law ("The Common Law") The Science of the English Common Law Normandy France The Personality of Philip Augustus The French State The French System of Royal Justice French Royal Civil and Criminal Law French and English Royal Law Compared	445 457 459 461 463 464 467 473
14. Royal Law: Germany, Spain, Flanders, Hungary, Denmark	482
Germany	482
Imperial Law	482
The personality and vision of	400
Frederick Barbarossa The imperial peace statutes	488
(Landfrieden)	493
The Mirror of Saxon Law	
(Sachsenspiegel)	503
The Law of the Principalities	505
Spain, Flanders, Hungary, Denmark	510
Royal Law and Canon Law	516
Conclusion	520
Beyond Marx, Beyond Weber	538
Abbreviations	560
Notes	561
Acknowledgements Index	636 637
Index	037
Maps and Figures	
Map 1. Western Europe circa 1050	81
Map 2. Western Europe circa 1200	117
Map 3. Cities and towns of Western Europe circa 1250	365
Figure 1. Structure of the Western church-state, 1100-1500	210
Figure 2. Canon law, urban law, royal law, and feudal law mid eleventh to late thirteenth centuries	, 522
AIM OLO VOLILLI LO ARCO CITTA COULCATION	044