

5-1928

The Historians of Anglo-American Law, by William Searle Holdsworth

Paul L. Sayre
Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Legal History Commons](#)

Recommended Citation

Sayre, Paul L. (1928) "The Historians of Anglo-American Law, by William Searle Holdsworth," *Indiana Law Journal*: Vol. 3 : Iss. 8 , Article 6.

Available at: <https://www.repository.law.indiana.edu/ilj/vol3/iss8/6>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

THE HISTORIANS OF ANGLO-AMERICAN LAW*

In his recent book "Some Lessons from Our Legal History," Professor Holdsworth has set forth the service that a study of legal history can render to the profession of the law in our time and in the future. In this present volume Professor Holdsworth gives us the same teaching from a somewhat different angle and shows the particular contributions of the leading legal historians in Anglo-American history. The book contains the addresses on this subject delivered at Columbia University during Professor Holdsworth's recent visit to this country. One can well imagine that it was most enjoyable to listen to these lectures;

* *The Historians of Anglo-American Law.* By William Searle Holdsworth. Columbia University Press, New York, 1928. P. 175. \$2.75.

they read with that clarity and directness which marks them as good oral composition also.

Professor Holdsworth divides his subject into five lectures. I. The Professional Tradition, in which he considers the whole field of historical writings down to the seventeenth century. II. The Historians of the Seventeenth and Eighteenth Centuries, in which the writer deals with Coke, Blackstone and the analytical school of legal historians. III. Four Oxford Professors, where the writer considers the work of Maine, Vinogradoff, Dicey and Sir Frederick Pollock. IV. The American and Foreign Contributions, in which the writer deals for the most part with the work of Bigelow, Holmes, Ames, Thayer, Wigmore and Street, although he considers in addition some writers who deal especially with particular fields of the law and contribute to legal history itself in minor or incidental ways. V. Here he deals with the works of Maitland and justly gives to him the place of honor as the last and greatest historian of English law.

The references to foreign contributors deal largely with the writings in foreign languages which were intended merely for the elucidation of other systems of law although incidentally they also contain important work on Anglo-American legal history.

It seems ungrateful to take a book that is confessedly a brief account and that from its very brevity and lightness of presentation makes delightful reading, and then criticize it because of omissions or insufficient emphasis on particular writers. The reviewer must confess, however, that he was depressed to find so much commendation for Blackstone as a historian and so little criticism of Blackstone's obvious tendency to defend everything in the common law, good or bad. It was also somewhat disappointing to find no reference to Dean Pound's "The Spirit of the Common Law" and his "Introduction to the Philosophy of Law," although considerable space is given to Gray's "Nature and Sources of the Law." Certainly there is little if any more legal history in Gray's book than in Dean Pound's books while Gray's book contains considerable error in view of the result of recent scholarship. It does not appear that Wigmore and Gray, because they are historical and analytical in their outlook, should be given precedence over contributions to legal history which are more significant although their philosophical outlook is not dominated by the historical school of jurisprudence.

Professor Holdsworth's book is full of delightful passages. It is impossible in this brief review to refer to more than a few of them. It is difficult for a critic to be courteous and kind and just in giving praise to any but those few persons who are entitled to the highest encomiums. The reviewer feels that Professor Holdsworth has performed this difficult task in the case of Sir Frederick Pollock. He is most felicitous in his quotations from Sir Frederick Pollock's advice to law students given as Corpus Professor of Law in the University of Oxford. Upon reading this splendid peroration here the reviewer could not

help but think of similar passages that have been a source of inspiration to American lawyers. We have space only for a brief excerpt from Pollock's address:

"And what is to be the reward of your labours when you have brought all your best faculties to bear on your chosen study . . . The reward which I promise you is this, that your professional training, instead of impoverishing and narrowing your interests, will have widened and enriched them; that your professional ambition will be a noble and not a mean one; that you will have a vocation and not a drudgery; that your life will not be less but more human . . . You shall understand how great an heritage is the law of England, whereof we and our brethren across the ocean are partakers, and you shall deem treaties and covenants a feeble bond in comparison with it; and you shall know with certain assurance that however arduous has been your pilgrimage, the achievement is a full answer. So venerable, so majestic, is this living temple of justice, this immemorial and yet freshly growing fabric of the Common Law, that the least of us is happy who hereafter may point to so much as one stone thereof, and say, the work of my hands is there."¹

Similar to this in many ways was the address of Mr. Justice Holmes given before the Harvard Law School in 1886, from which we can give only a brief passage:

"No man has earned the right to intellectual ambition until he has learned to lay his course by a star which he has never seen—to dig by the divining rod for springs which he may never reach. In saying this, I point to that which will make your study heroic. For I say to you in all sadness of conviction, that to think great thoughts you must be heroes as well as idealists. Only when you have worked alone—when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your own unshaken will—then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought—the subtle rapture of a postponed power, which the world knows not because it has no external trappings, but which to his prophetic vision is more real than that which commands an army. And if this joy should not be yours, still it is only thus that you can know that you have done what it lay in you to do—can say that you have lived, and be ready for the end."²

There is a third address of striking similarity in many cases to these that we have noted. It was delivered by Lord Buckmaster before the American Bar Association in 1925. While it deals with the "Romance of the Law" we note the following portion which our readers will want to compare with the passages already given.

¹ *Historians of Anglo-American Law*, p. 96.

² Holmes, *Collected Legal Papers*, p. 31.

"In the eighteenth century there was a great French lawyer whose name was Malesherbes. He was a man so devoted to good works that he was beloved for his charity throughout the length and breadth of France. He was devoted to science. He was fond of literature. He resisted to the uttermost any attempt to interfere with the dignity and the independence of justice. Twice was he called to the councils of the state, twice he had to abandon the seals of office. He was the most vigorous indicter of the abuses of the time. He declared himself in favor of religious liberty, of impartial taxation, and of the abolition of the *lettres de cachet*, and had his opinion been listened to, the terrors and horrors of the Revolution might have been averted; but he was disregarded and the storm burst. He himself was in safety in Switzerland following his dearest pursuits, botany and literature, when his master, Louis XVI, was brought up for trial. The old man was then 74. Other men refused the office of appearing for Louis XVI, and pleaded, this one his age, and that one some other excuse. This man volunteered his services. He said, 'I was twice called to the counsels of my master when all the world thought it was an honor to serve him, and shall I not serve him now when all the world deems it is dangerous?'"³

The part which perhaps pleased the reviewer most was the last lecture in which Professor Holdsworth treated of the splendid work of Maitland. While he treats of Pollock and other important scholars merely as composing a general group he reserves the whole fifth lecture for Maitland, who was great as a scholar, and great as a man of letters, and perhaps even greater in his courage, wisdom, and his power to draw others to his own high plane of professional labor and personal devotion. Surely everything that Professor Holdsworth says in commendation of Maitland's scholarship is just and it is particularly pleasing to have the author of *Holdsworth's History of the English Law* give such high praise to the *History of the English Law* by Pollock and Maitland. We venture to suggest that Maitland's *History of English Law* will influence all subsequent scholars in the field of legal history and indirectly serve to strengthen and improve the common law itself. His work has set forth the method and the standards; the influence of his basic treatise will mould the work of future historians of the English law long after legal histories, more extensive than this, will be referred to only by name or for their informational content. Doctor Johnson placed over the grave of Goldsmith in Westminster Abbey the famous statement *Nullum quod tetigit non ornavit*. This could be justly said of Maitland. Indeed the future workers in the common law will want to say not only this but more—*nullum quod tetigit non ornavit et emendavit et purgavit*.

PAUL L. SAYRE.

Indiana University School of Law.

³ American Bar Association Journal, Vol. 13, p. 583.