A Sketch of English Legal History, by Frederick W. Maitland

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discussed and the rules of pleading are not discussed at all; but
the fact that our system of practice is essentially a contest of
skill, with the judge a mere moderator, is rightly held up as the
most glaring defect therein, and the rules of evidence
against hearsay, as to expert testimony and denying one
who has made a will “the vicarious privilege” against contes-
tants “of presenting his side of the case through beneficiaries,
spiritual advisers, legal advisers and physicians” come in for
sarcastic comment. The extent of crime in this country, the
enormity of litigating procedure and of tolerating newspaper
trials, as we do in the United States, and the suffering of the
poor, are all vividly shown; but the other evils incident to our
scheme for the administration of justice are for the most part
passed by. By way of reform of Legal Procedure there is sug-
gested law revision commissions, declaratory judgments, reform
of the press (though probably not by the process of contempt),
the abolition of the ease of divorce by uniform laws and the abo-
lication of contingent fees in negligence cases, uniformity of Fed-
eral procedure, and conciliation and arbitration, domestic rela-
tions courts, administrative tribunals and small claims courts
for the poor; but nothing is said about the reorganization of
the courts, the appointment of judges, the education of the bar,
the theory of criminal law, the disarmament of criminals, the
character of the police and enforcement officers, the glorification
of criminals and the teaching of law obedience. The author
shows his vision when he insists that the theory which requires
the administration of justice between individuals necessarily
will force us ultimately to administer it between groups of indi-
viduals and between nations; and he is undoubtedly right in his
position that what substantive law needs is not reforming so
much as restatement, and that the American Law Institute is
performing an adequate function in this respect.

The author everywhere shows a sane, broad, unbiased view-
point, and a courage worthy of emulation. It is as encouraging
as it is unusual to hear such doctrines and to witness such zeal
from a practicing lawyer. Perhaps the explanation of why he
does not, like most “legal votaries, cling to technique,” lies, as
he himself says, in his advance in years and to his membership
on law reform committees; but a more reasonable explanation
is that Mr. Henry W. Taft is an unusual practitioner.

Hugh E. Willis.

NOTICES

(These Notices are preliminary; they do not preclude reviews later.)

A Sketch of English Legal History, by Frederick W. Maitland
and Francis C. Montague. Edited by James F. Colby. G. P.

This book consists of a series of articles contributed to Social England
by the late Professor Frederick W. Maitland of Cambridge University and
Professor Francis C. Montague of University College, London. Since
their original lodging places in the various volumes of *Social England* does not make them accessible to the general public or even to most members of the legal profession, it seems that Professor Colby has done a real service in collecting them and presenting them in a single volume with appropriate notes and an appendix giving a good deal of interesting and helpful historical matter. It is true that we have Professor Jenks' "A Short History of English Law." In view of its length there could hardly be a more scholarly and thorough piece of work than this. And yet this volume containing articles by Maitland and Montague has a real place in English legal history. Professor Jenks' book is somewhat hard reading and while it is brief, it is so far scholarly as to treat the different matters involved with technical accuracy and in a strictly professional manner. These papers by Maitland and Montague however are even more brief in their summary treatment of English legal history and in addition to this they are very easy reading. The ideas are set forth as one would expect them to be considered in a book of general literature rather than with the formation which, for better or for worse, we have come to expect as essential parts of legal works. The book makes excellent reading. One who has had pretty thorough training in legal history will delight to read it through and will get a new understanding of familiar ground through the delightful interpretation which is here presented. For the lawyer who has not had time for a thorough work in legal history the reviewer feels that this book will prove invaluable. Without the forced attention which we have come to regard as incidental to "study," the reader may gain from this book an extraordinary amount of accurate information and understanding. For instance the discussion of development of equity and of the criminal law gives a picture of these two branches of legal history which only a master could produce in so short a space.

The reviewer is inclined to feel that students and lawyers often deceive themselves in their knowledge of legal history. They may do considerable work in the field and conclude that they must have a rather adequate knowledge because they have gone through the form of working in the field. In other words, there is likely to be a certain amount of forced application which may not result in actual understanding of the matters involved. It is suggested therefore that the reader can go through this book with the reasonable assurance that he can pursue it with real profit and then proceed with greater safety and advantage in the consideration of Jenks, Pollock and Maitland, and the crowning work of Holdsworth.


It seems to the reviewer that this is a most timely book. Perhaps this will be no news to the reader since the book has been out several years now and since it has been reviewed in a most favorable way in other periodicals. If the reader, however, has not read the book he has a valuable and pleasurable experience in store for him. It may well be that the book was even more opportune in 1924 when it was published since it came at the height of the Ku Klux Klan difficulties in America and the ambitions of nationalistic groups in Europe.

Professor Miller's entire presentation seems to be scholarly and impartial. This is high tribute when we consider that he is dealing with imme-