

The Letters of Frederic William Maitland. C. H. S. FIFOOT, ED. Cambridge: Harvard University Press, 1965. Pp. xxiv, 397. \$12.50.

This admirably, unobtrusively edited volume is a useful record of the greatest English legal historian. Reflecting on the embarrassments of biography in connection with his life of Leslie Stephen—the “work of piety”¹ that preoccupied his last years—Maitland quoted the doggerel lines:

Lives of great men all remind us
As we o'er their pages turn
That we often leave behind us
Letters we had better burn.²

This truth perhaps finds its exception in Maitland himself. Part of the reason points to the sense in which Maitland's correspondence is of limited general interest: his letters are mostly “business letters,” within a wide meaning of the term. They are mostly about his professional concerns, or in furtherance of the ordinary duties of friendships grounded in law and history. Maitland thought himself a bad correspondent,³ though qualitatively he was a good one indeed. What he was not is a correspondent for the sake of correspondence, a votary of the letter as a literary indulgence, a means of self-expression, a substitute for the diary, an extended conversation. These uses of the letter are nicely illustrated by the long correspondence between two of the *personae* of this volume, Sir Frederick Pollock and Mr. Justice Holmes.⁴ The Holmes-Pollock letters are much richer in *obiter dicta*, miscellaneous intellectual exercise and the play of personalities. The contrast intimates differences of character and of something as fundamental as the “size” of lives. Maitland lived fifty-six years, many of them hampered by ill health and medical exile from the English weather. Within a brief scope, he achieved an incredible life's work. Holmes and Pollock expatiated into their nineties.⁵ In a way Maitland was not, they were intellectuals, as well as the better Victorians. Despite his principles of sticking to business, eschewing the newspapers, and suffering the cosmos, Mr. Justice Holmes could not escape the seduction of general ideals, nor deny the claims of literature, nor help defining himself against the

¹ Letter 472 to Melville M. Bigelow, April 19, 1906, p. 371.

² Letter 431 to Henry Jackson, May 29, 1905, p. 341.

³ Letter 472 to Melville M. Bigelow, April 19, 1906, p. 371.

⁴ HOLMES-POLLOCK LETTERS (Howe ed.) (2 vols. 1961).

⁵ Nearly. The last Holmes-Pollock letters were written when Holmes was 91. Pollock was then only 87, but he survived to 92.

cosmos. Maitland stuck to business. He gave little voice to his opinions on public and general questions and was diffident of his title to them. Liberal, reformist, and agnostic, he seems to have worn these attitudes lightly and to have avoided the pains of a liberalizing parturition. At least he avoided making the slightest fuss over his internal processes. That he was not insensitive to general ideas is indicated by his admiration, beyond mere social friendship, for two of the most significant later Victorian intellectuals, Stephen and Henry Sidgwick. But his letters to them do not reach the node of intellectual influence and shared thought. Those to Henry are mostly about university business or points of law on which Sidgwick had asked for information, those to Stephen, personal.

At the same time, through letters with a practical purpose, Maitland's personality shows clearly. Of many adjectival qualities, perhaps "gaiety" should be first set down. Physical suffering and constant vigilance for his health could not repress a style of animation to which the word "spirit" is applicable less cheaply than usual. And spirit also overrode the drudgery of legal history, the prodigious copying and editing for which the corn on Maitland's little finger may stand.⁶ If two patron ghosts were to be assigned to the English legal MSS., they should be Prynne's and Maitland's. Prynne—disfigured, indestructible, and disagreeable—ploughs the intractable wastes of the Tower under propulsion of a hot, smudgy, fanatical fire. Maitland is of the air, not of the mines, yet he extracts value with magic incisiveness and, returning to the open, sloughs the marks of toil and displays only courtesy, grace, and humor. Serious and single-minded in his devotion to the ancient common law, Maitland could be funny in Law French. To the burdens of hard research and ill health, a regular and conscientiously embraced duty to lecture on general legal subjects must be added. Over all, Maitland's gaiety prevailed. Much the same thing is said by observing that he had an unexampled clarity of mind. He was a great editor who avoided the pitfall that the Selden Society approach to legal history is sometimes in danger of: leaving the subject in a splendidly edited but underarticulated condition. His letters contain many well articulated points of legal doctrine and history and can be read with instruction for the substance. The history of the Selden Society is significantly documented in the correspondence of its prime mover. Maitland's gaiety in a serious business is shown by his affection, which was also respect paid to perverse craftsmanship, for the bad boy of the legal history game, the

⁶ Letter 420 to W. W. Buckland, Feb. 13, 1905, p. 331.

dilatory G. J. Turner.⁷ By way of the letters we do not invade Maitland's domestic life very deeply, but one feels his wife's menagerie was accepted with equal seriousness and equal amusement.

Toward the cosmos, Maitland carried mannerliness as far as it can be taken. An anti-snob who thought compulsory Greek a nasty instrument of privilege, a technical artist, and a rather anti-Victorian piece of architecture, he was perhaps the most aristocratic member of Mr. Noel Annan's "intellectual aristocracy."⁸ He suffered happily and died early, did not join the company of robust old gentlemen who countervailed against labor and hard gods by force of sheer corporeal relish. For Maitland, relish was a luxury caught on a perceptive palate. One notices, in the winters of exile to the Canaries and Madeira of his later life, a dilation of the senses in face of sunshine and Latinity, enjoyment accepted with the same grace as affliction. Yet Maitland remained true to a central symbol of his order—that passion for self-locomotion which Joseph Conrad caught (in the figure of the civil servant in *Chance*) and which descends, in one line, from Mr. Gladstone. Even as a near-invalid Maitland tramped and bicycled in six and nine hour doses. Only, compared to other great striders of the Liberal Establishment, there was perhaps more spirit and less muscle in his movements.

American readers will be impressed by the prominence of their countrymen among Maitland's correspondents. Ames, Gross, Thayer, Bigelow, Gray, and of course Holmes (among whose "worshippers" Maitland counted himself,⁹ with whom he exchanged a few letters, mostly about Leslie Stephen's literary remains, but who was hardly a friend and correspondent in the way the others were) define a generation in which law and history were happily married, as were England and America, or at least the two Cambridges. In several earlier letters, Maitland acknowledged, with modesty but realism, the comfort he took from the American legal historians, whom he regarded as superior to their British counterparts. That the balance shifted later was largely Maitland's work, the effect of historical genius engrafted on his lucid legal mind. The ultimately professionalizing influence of that historical genius, its tendency to produce the modern English mediaevalist, was perhaps disruptive of the *fin de siècle* harmony between historical enthusiasm and sturdy legal minds. Nothing could so well represent the affections of the best years and the chivalry native to Maitland than what may be the most pointed tribute ever paid to the Harvard Law

⁷ See Letter 500 to R. Lane Poole, Dec. 5, 1906, p. 389.

⁸ Annan, *The Intellectual Aristocracy*, in *STUDIES IN SOCIAL HISTORY* 243, 250 (Plumb ed. 1955).

⁹ Letter 74 to Melville M. Bigelow, Oct. 5, 1889, p. 73.

School. Regretfully declining Gross' invitation to visit there, Maitland wrote: "I feel as if I lived in the 12th century and was rejecting a 'call' to Bologna."¹⁰

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Two Perspectives on Civil Rights

The Negro and the First Amendment. HARRY KALVEN, JR. Columbus: Ohio State University Press, 1965. Pp. ix, 190. \$4.75.

A Manual for Direct Action: Strategy and Tactics for Civil Rights and All Other Non-violent Protest Movements. MARTIN OPPENHEIMER & GEORGE LAKEY. Chicago: Quadrangle Books, Inc., 1965. Pp. xiii, 138. \$1.65 (paper).

It is always difficult to evaluate a revolution from the vantage point of the ramparts. I recall reading somewhere that one of King George's advisors dismissed the commencement of the American Revolution as primarily French fomented and completely lacking in support by the colonists. Of more recent vintage, Castro was considered a bearded clown not only by the inexpert but by our Curious Intelligence Agency as well. The current civil rights strife in this country is no exception to the rule. To a southern sheriff it is a bunch of New Yorkers getting their kicks. To an excitable eighteen year old Snicker, every sit-in is *the* confrontation between the forces of all good and the white power structure. To a certain California mayor, it is a big surprise.

In any event, it is hard to write about while it is happening. It is even harder to write something durable. Two current books pose the dilemma very nicely. One is a short do-it-yourself kit on how to start a civil rights movement entitled *A Manual for Direct Action: Strategy and Tactics for Civil Rights and All Other Non-violent Protest Movements* by Oppenheimer and Lakey. It is kind of a classified directory for anyone interested in getting into the agitation business. The other is a compilation of lectures by Professor Harry Kalven, Jr. entitled *The Negro and The First Amendment*. It does not even tell you *where* to sit, let alone *how*, but its impact on the never ending argument about the first amendment¹ is great. Using the current rash of civil rights cases as a take-off, the book does an excellent job of illustrating how our

¹⁰ Letter 222 to Charles Gross, Sept. 2, 1898, p. 179.

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¹ U.S. CONST. amend. I.