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978-0-521-06689-1 - Selected Historical Essays of F. W. Maitland

Helen M. Cam

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HISTORICAL ESSAYS OF
F. W. MAITLAND

CHOSEN AND INTRODUCED BY
HELEN M. CAM

CAMBRIDGE
PUBLISHED IN ASSOCIATION WITH
THE SELDEN SOCIETY
AT THE UNIVERSITY PRESS

1957

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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521056595

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First published 1957

This digitally printed version 2008

A catalogue record for this publication is available from the British Library

ISBN 978-0-521-05659-5 hardback

ISBN 978-0-521-06689-1 paperback

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PREFACE

The Collected Papers of Frederic William Maitland were published by the Cambridge University Press in 1911 in three volumes and are now out of print. More than half of the present selection was not included among them. The date and place of previous publication are noted at the beginning of each essay. Except for Essay VII, Maitland's notes are given in full, with only the slight corrections made necessary by the re-classification of records or the detection of some small error of fact. Notes which have been added by the editor are enclosed in square brackets.

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An edition of Maitland's letters is being prepared for the Selden Society, who are also about to reprint his legal essays.

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I

This selection is designed to render more accessible those shorter writings of Maitland's which have the greatest intrinsic value for students of history and best illustrate his distinctive qualities, thus serving, it may be, to stimulate a taste for his greater works. It is lamentable that Maitland should be known to so many mainly by his lectures on constitutional history. Written in 1888, published after his death, contrary to his declared judgment, these contain statements and interpretations quite inconsistent with his mature opinions and inadequately represent his genius. It is the aim of this volume to make Maitland better known to a generation that has entered into his labours without recognising its debt.

When Maitland died, fifty years ago, one friend noted 'the smallness of the ripple on the general consciousness caused by the passing of England's greatest historian since Gibbon and Macaulay'.¹ His indignation was shared on the other side of the Atlantic; Americans recalled that when Gardiner, Creighton and Stubbs were still living, Acton had ranked Maitland as the ablest historian in England.² Tributes poured in from the scholars of France, Italy, Germany, and the United States, and the University of Oxford sent a special message of condolence on his loss to the University of Cambridge—a gesture, as far as I know, without parallel. But *The Times* only accorded him a third of a column. Spenser has been called the poets' poet; Maitland seems to be the historians' historian. Today when there is talk of history as literature it is the rarest thing for Maitland to be named. Yet the union of grace, wit and humour with the most exacting standards of scholarship and the most exquisite sense of language is not so common that we can afford to forget Maitland.

If we attempt to define the peculiar merits of Maitland as a historian and to estimate his contribution to the interpretation of English history, we shall find, I think, that there is one and the same explanation for his special gifts and for his failure to attract

¹ T. Seccombe, in *The Bookman* (February 1907), p. 216.

² Munro Smith, in *Political Science Quarterly* (1907), p. 282.

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the general public. Law was his guiding light; and the legal approach to history is too impersonal for the average reader, who demands incident and characterisation from his historical writers. Maitland came to history by way of law. His sister has traced the stages of the fourteen-year journey; from mathematics (where he did badly), and moral sciences (where he excelled), by conveyancing work in chambers (that admirable introduction to the science of diplomatic),¹ and extension lecturing to workmen and others,² to his first brilliant essays in legal journalism and the meeting with Vinogradoff, on a Sunday tramp in January 1884, which ‘determined the course of his life’.³ He was to be not a legal practitioner, but a legal historian; he had ‘discovered the work that it was best for him to do’.⁴

Of his great services to the study of law others can speak; we are concerned here with his services to history. He brought law to bear on history. The history of law was not a specialised subsection of the history of England; it was an integral part of it; it was the key to the whole story. Stubbs had traced in masterly fashion the evolution of English self-government from the practices of primitive local communities; Maitland put the common law back in the centre of the picture, and with it the monarchy. It was the king’s court that had made the law common to all England: by making himself the protector of the lawful possessor, great or small, the king had bound together the rights of ruler and subject. And the work of Henry II was carried on under his grandson. By dwelling on the great constructive work of the great judges, Bracton’s masters, Maitland restored the reign of Henry III to its proper position in English history, taking the eyes of the student off the wearisome involutions of the struggles between king and barons.

Later historians were to pursue in detail the amazing story of the branches thrown out by that central trunk—‘the transformations of the Curia Regis’; but even before his great *History of English Law* had appeared Maitland had fitted parliament into the picture. As he had said of the jury, ‘it was not popular, but

¹ H. A. L. Fisher, *Frederic William Maitland* (Cambridge, 1910) (henceforth cited as Fisher), p. 17.

² His lectures on ‘The Cause of High and Low Wages’ at the Artizans’ Institute, Upper St Martin’s Lane, when he was twenty-four, seem to have anticipated W.E.A. technique. See H. Solly, *These Eighty Years*, vol. II, p. 440.

³ Letter to Vinogradoff, 15 November 1891 (Fisher, p. 51).

⁴ Mrs Reynell in *Cambridge Law Journal* (1951), p. 73.

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royal'; as his American disciples were to emphasise, it was judicial before it was legislative.

But if Maitland brought law to bear on history, he brought history to bear on law. Again and again he emphasised the danger of imposing legal concepts of a later date on facts of an earlier date—a common fault, before his time, of the majority of legal historians and of many constitutional historians. We must not read either law or history backwards. We must learn to think the thoughts of a past age—'the common thoughts of our forefathers about common things'. 'We must not attribute precise ideas or well defined law to the German conquerors of Britain.' It is as if 'we armed Hengist and Horsa with machine guns or pictured the Venerable Bede correcting proofs'.¹

The debt of Maitland's two mistresses was mutual. The technique which makes his exposition of general principles so vivid and arresting is that of the lawyer. Every generalisation is seen in terms of the individual, every principle in its application to a particular case. As Vinogradoff said, 'what he wanted most was to trace ideas to their embodiment in facts'.² A brilliant example of his method is the imaginary situation arising from a homicide by which Maitland drives home the effects of the impact of feudalism on Anglo-Saxon law and the practical reasons for the substitution of amercement for the old *wite* and *bot* system.

Let us suppose that a man learned in the law is asked to advise upon a case of homicide. Godwin and Roger met and quarrelled, and Godwin slew Roger. What must be paid; by whom; to whom? Our jurist is not very careful about those psychical elements of the case which might interest us, but on the other hand he requires information about a vast number of particulars which would seem to us trivial. He can not begin to cast up his sum until he has before him some such statement as this: Godwin was a free ceorl of the Abbot of Ely: Roger, the son of a Norman father, was born of an English mother and was a vavassor of Count Alan: the deed was done on the Monday after Septuagesima, in the county of Cambridge, on a road which ran between the land which Gerard a Norman knight held of Count Eustace and the land of the Bishop of Lincoln: this road was not one of the king's highways: Godwin was pursued by the neighbours into the county of Huntingdon and arrested on the land of the Abbot of Ramsey: Roger, when the encounter took place, was on his way to the hundred moot: he has left a widow, a paternal uncle and a maternal aunt. As a matter of fact, the result will

¹ *Domesday Book and Beyond*, pp. 356, 520.

² *English Historical Review* (1907), p. 282.

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probably be that Godwin, unable to satisfy the various claims to which his deed has given rise, will be hanged or mutilated... The old law consisted very largely of rules about these matters; but it is falling to pieces under the pressure of those new elements which feudalism has brought with it.¹

This descent to the concrete brings us close to the circumstances and ways of life of the *dramatis personae*, as well as to the rules of law. And the introductions to the Year Books which, he says, ‘come to us from life’, are also introductions to the mental habits of young lawyers learning the law by listening to older lawyers discussing the cases and of judges illustrating their judgments with anecdotes. As G. M. Trevelyan has said, Maitland uses law as a tool to open the mind of medieval man. He never loses sight of the individuals who created and worked the institutions that he is investigating.

Such a technique could only be used by a master of original material. Maitland’s first work had been the editing of legal records,² as his last years were to be spent on editing law reports. No one has sung the praises of the Public Record Office more eloquently than Maitland, to whom ‘the whereabouts of the first-hand evidence for the law of the Middle Ages’ had come as a dazzling discovery seven years after he was called to the bar³—it was ‘the most glorious store of material for legal history that has ever been collected in one place’.⁴

II

Such an approach to law and history involves intimacy not only with persons⁵ but with places. Along with a taste for first-hand evidence Maitland inherited from his grandfather, the ecclesiastical

¹ *History of English Law* (2nd edition), vol. 1, pp. 106–7.

² *Pleas of the Crown for the County of Gloucester, 1221* (1884); *Bracton’s Notebook*, containing 2000 cases extracted from the rolls of the King’s Court, 1217–40 (1886).

³ Maitland was working at the Record Office as early as February 1884, well before the May conversation with Vinogradoff described by Fisher, pp. 24 ff. For evidence see Powicke, *Modern Historians and the Study of History* (1955), p. 10; and Plucknett in ‘Maitland’s view of Law and History’, *Law Quarterly Review* (1951), pp. 85–7. For his familiarity with medieval printed court rolls by 1881, see his postcard to Pollock (Fisher, p. 38).

⁴ Inaugural lecture, reprinted in *Collected Papers of F. W. Maitland*, vol. 1, pp. 495–6.

⁵ Maitland’s eldest daughter was named after a lady in *Bracton’s Notebook*, i, pp. 16, 93–5; iii, no. 1843 (margin). Cf. letter to Vinogradoff, 12 June 1887 (Fisher, p. 40).

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historian, an estate in Gloucestershire. The Downing Professor was Lord of the Manor of Brookthorpe.¹ Like Stubbs he comes down to the earth he knows in his picture of his native county in 1221—or rather, as he says, ‘a photograph of English life as it was early in the thirteenth century in its most vital parts—the system of local government and police, the organisation of county, hundred and township’. Look again at the two sections of the Ordnance Survey placed between pages 16 and 17 of *Domesday Book and Beyond* to make his point about nucleated villages and hamlets; or at his picture of the open fields of his other home, Cambridge, in the Ford Lectures on *Township and Borough* (No. I, below). Only those who have themselves tried to write the history of the city of Cambridge can justly value the depths of his knowledge of ‘the town in which I live’. But both in his study of Cambridge and in that of the manor of Wilburton (No. II) the special local problems are never isolated from the general problems that they may help to elucidate: in the one case the corporation theory, in the other the transformation of villein into copyholder. Maitland’s analysis and interpretation of the Wilburton rolls has been the model for and the precursor of many such studies since 1894, but their value is in no sense superseded. Each manor has its own history, and it is as true now as when Maitland wrote that ‘the time has not yet come when generalities about *the* English manor and its fortunes will be safe or sound’.

The interest of No. II is mainly economic; that of No. III is mainly legal and administrative. Leet and Tourn are constantly mentioned in manorial and constitutional history, but it is doubtful if they are fully understood. In his introduction to *Select Pleas in Manorial Courts*, the Selden Society volume for 1889, Maitland described their origin and working in fuller detail than he allowed himself in the *History of English Law*. The theory, first stated here, that associated their presenting juries with the Assize of Clarendon (1166) has not been impugned. His description of the double presentment by free and unfree jurors makes clear the functioning of an institution intimately bound up with the king’s peace and the king’s revenue, and not only the king’s. To the sheriff’s tourn corresponded the courts leet held by lords of manors to whom the functions and profits of such a court had been delegated by the

¹ Strictly speaking, farmer of the manor, which the family held at lease from the see of Gloucester.

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king—or who had annexed them without grant. An essential part of the machinery of justice and police in the twelfth century, courts leet and private views of frankpledge had a solid financial value to their holders long after the justices of the peace had made them superfluous for judicial purposes. Maitland's description can stand by itself, without the records which it explains.

III

'Pollock and I have mapped out a big work, too big I fear for the residue of our joint lives.' So Maitland wrote in November 1889,¹ and *The History of English Law before the time of Edward I* was his principal concern for the next five years. He wrote all of it except the chapter on Anglo-Saxon law, about which, he told Vinogradoff in May 1892, he was not too happy. 'My effort now is to shove on with the general sketch of the Norman and Angevin periods so that my collaborator may have little to do before we reach the Year Book period—if we ever reach it.'² No student of English history needs an introduction to the First Book; its four last chapters are indispensable reading for anyone who would understand the origins of our constitution. The essays included in this volume are less familiar. No. V, written for the *Encyclopaedia Britannica* in Las Palmas in December 1899—'the work of a bookless imagination, but dates were brought from England'³—is a dazzling *œuvre de vulgarisation*. No. VI, published in the second volume of *Social England* in 1894, sketches later medieval developments after Edward I and ends with one of Maitland's happiest paradoxes. It prepares the way for No. VII, the Rede Lecture, given in 1901, in which Maitland drew a picture of English Law against the European background of the sixteenth century; a picture whose colours, critics today agree, are unduly heightened. But in no other essay in this volume do we so unmistakably catch the accents of the speaker who 'heard his words as he wrote them'.⁴ Further, it exemplifies its author's dictum 'History involves comparison, and the English lawyer who knows nothing and cares nothing for any system but his own hardly comes in sight of the idea of legal history'.⁵ Reading these three essays

¹ Letter to M. M. Bigelow, 24 Nov. 1889, in Boston University Library.

² C.U.L. Add. MS. 7005 D, no. 14. The Year Books proper begin after 1272.

³ Letter to Pollock (Fisher, p. 117).

⁴ Miss Ermengard Maitland.

⁵ Inaugural Lecture: *Collected Papers*, vol. 1, p. 488.

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we get a notion of what Pollock meant when he spoke of the transformation that Maitland's genius had accomplished. Twenty-five years ago the early history of the Common Law, he said, had been 'obscure, isolated, a seeming chaos of technical antiquities. Maitland commanded the dry bones to live, and henceforth they are alive.'¹

IV

If we were to ask what had been Maitland's chief impact on the teaching of history we should, I suppose, put first his presentation of Henry II as founder of the Common Law, and with it of the English monarchy as the effective guardian of justice to all. But today we should unhesitatingly set alongside this his contribution to the history of Parliament in his edition of the Parliament Roll of 1305—The *Memoranda de Parlamento* (No. IV). Yet when the 'trail-blazing' introduction² appeared in 1893, it passed largely unregarded. Its wider implications were not perceived. It was a seed cast on barren ground and the germination was slow. Not until McIlwain's *High Court of Parliament* appeared in 1910, three years after Maitland's death, was there any explicit recognition of what it meant for parliamentary studies, which had, in effect, marked time for some twenty years.

The genesis of this volume has not, I think, been traced before now. Early in the New Year of 1889, shortly after his election to the Downing Professorship, Maitland agreed to edit a volume of 'Petitions to Parliament' for the Rolls Series, and the Treasury formally approved the project in May.³ In August Maitland confided to Vinogradoff, 'I have had a good holiday and am now going to do a little work in the Record Office. I want just to start the edition of the 10,000 odd petitions to King and Council but when it is well started I hope to get out of it.'⁴ But on 1 October Maitland reported to Maxwell Lyte that he must suggest a change of plans. It was impossible to produce a scholarly edition of the petitions until they had been dated, and as their original grouping had been disturbed by editors whose identifications must be tested, this would be the work of years. Instead, Maitland proposed to

¹ *Proceedings of the British Academy*, 1905–6, p. 456.

² The adjective is Professor Schuyler's. *American Historical Review* (1952), p. 318.

³ P.R.O. 8/131, pp. 387, 424. I have to thank the Deputy Keeper of the Records for permission to see this correspondence.

⁴ C.U.L. Add. MS. 7005 D, no. 10.

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edit 'one very early roll of parliament that has not yet been printed' and to 'illustrate the enrolments of the petitions and responses by the petitions themselves and by the writs whereby effect was given to the responses...thus bringing out the connection between the different parts of the government machinery. ...I cannot help thinking that one roll of parliament properly illustrated would be of much greater value than a mere collection of petitions conjecturally dated.'¹ The change of plan was apparently approved before the end of November 1889, but Maitland's other weighty commitments presumably took precedence. In April 1892, however, 'his head was full of it',² and by May the printers were receiving the text. Early in 1893 the first part of the introduction was being submitted to Maxwell Lyte³ and by the end of November the book was out.⁴

In October, while revising the proofs, Maitland had written to Round 'I am trailing my coat through many fairs.'⁵ But no one was moved to tread on it. When, in June 1894, Maitland wrote to thank Round for 'an extremely kind review of my parliament roll in the *Athenaeum*' he added 'Your praise is the more welcome because no one else out of Scotland has said one word of the book.'⁶ Apart from Round's review, a negligible note in *Notes and Queries* and an admirable notice by Langlois in the *English Historical Review*,⁷ it would seem that critics had failed to react to the provocation insinuated by Maitland. Round and Langlois, like Baldwin later, concentrated on the value of the introduction for the history of the Council; Fisher and Tout stressed the value of the text in illustrating the activities of an early parliament. But Stubbs' model parliament in effect held the field until well after Maitland's death. A. L. Smith in his deeply felt eulogium of Maitland, indeed, went so far as to regret that Maitland should

¹ P.R.O. 8/131, pp. 482 ff.

² Letter to Round, 10 April 1892, London University Library 653, (henceforth cited as L.U.L. 653).

³ P.R.O. 8/212. Letters of 7 May 1892, 30 May 1893.

⁴ Information from Director of Publications, H.M.S.O.

⁵ Letter to Round, 30 October 1893 (L.U.L. 653).

⁶ Letter preserved at Girton College, Cambridge. I have been unable to trace any Scottish notice of the *Memoranda*. George Neilson, or possibly Bain, may have written to Maitland.

⁷ *The Athenaeum* (March 1894), pp. 273 f.; *Notes and Queries*, 22 September 1894; *E.H.R.* (October 1894), pp. 755–8. Even Langlois, however, failed to appreciate the implications of Maitland's essay for English parliamentary history.

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have been put to such hack work. To him it was 'a harnessing of Pegasus to a cart...'. It was 'like finding an electric light left on in a cellar'.¹

As late as 1911, Tout, criticising Fisher for his failure to appreciate Maitland's permanent contribution to the study of English medieval history, makes no reference to it.² In 1920 A. F. Pollard declared that Maitland's essay had been generally ignored by English instructors of youth for nearly a generation.³ Whatever may have occurred in lecture-rooms—and Lapsley, in 1936, suggests that it was being recommended to students as a 'standard' work before 1910⁴—there seems no evidence in print of the recognition by scholars that it was a turning point in parliamentary studies before McIlwain proclaimed its importance.⁵ America and France appear to have been before England. Pasquet in 1914⁶ showed a fuller appreciation of Maitland's work than any English writer had so far done. It was not till 1920 that Pollard's lively and readable sketch sent his readers back to the *Memoranda* to discover, as Petit Dutailis indicated later,⁷ that it was as well to take their Maitland first hand. As Baldwin put it, in his review of *The Evolution of Parliament* in 1921, 'The entire history of Parliament must be rewritten';⁸ but it had taken nearly thirty years for that conviction to be generally accepted. The following thirty-five years have seen a laborious and fruitful cultivation of the field that Maitland opened up.⁹

This imperception may in part be attributed to Maitland's modesty¹⁰ and to the seeming tentativeness of his approach.

¹ F. W. Maitland, *Two Lectures* (Oxford, 1908), p. 38.

² *Scottish Hist. Rev.* (1911), p. 74.

³ *Evolution of Parliament* (1920), p. vi.

⁴ Maitland, *Selected Essays* (Cambridge, 1936), p. 2.

⁵ But Baldwin, reviewing *The High Court of Parliament*, observed that the author's views were 'current among various writers of the school of Maitland'. *Amer. Hist. Rev.* (1910–11), p. 598. I have failed to find evidence for this.

⁶ *Les origines de la Chambre des Communes* (Paris, 1914, translated by R. G. D. Laffan, 1925).

⁷ *Studies Supplementary to Stubbs* (English translation, Manchester, 1930), p. 334.

⁸ *Amer. Hist. Rev.* (1921–2), p. 108.

⁹ For a brief survey, see Powicke, *The Thirteenth Century* (Oxford, 1953), p. 747; for a more elaborate bibliography, see the *Relazioni* of the Tenth International Congress of Historical Studies (Florence, 1955), vol. 1, pp. 36–46.

¹⁰ Even with his reputation established, he could write to Poole, on his election to Ford's Lectureship 'Didst ever feel like a bubble that was going to be pricked?' *Camb. Hist. Jour.* (1952), p. 324. (A letter to Round of the same date—23 February 1897—establishes the reference.)

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Twice in his introduction he says that it would not be right for an editor in the Rolls Series to propound theories touching debatable matters.¹ In one footnote only does he define a difference from the accepted views.² Moreover, much of what he says is to be found in his magnificent but ambiguous master, Stubbs,³ who was able to cling to his faith in a 'Model Parliament' whilst supplying a wealth of evidence that proved that concept misleading. Once again, it is the light of the law that Maitland turns on to history, and in that light the parliaments of Edward I's reign look very different from Stubbs' bifocal vision of them.

What was the new light brought to bear on the history of parliament by what McIlwain has called 'the most penetrating of all Maitland's works'? Maitland suggested, only too cautiously, that parliament was in essence royal, not popular; a court of justice before it was a legislature; an expansion of an aristocratic and bureaucratic council before it had any representative character. But if his observation that things were done in full parliament (a characteristically curial phrase) after both representatives and barons not of the council had gone home⁴ was outstandingly significant, the statement that a parliament was 'an act rather than a body of persons' was the one most calculated to shake readers out of their established assumptions. Parliament was not an institution, but an event. Things were done *in* parliament, not *by* parliament. 'Parliament' cannot, at this stage, be the subject of a verb, nor the object. 'One cannot address a petition to a colloquy, a debate.'⁵

To whom, then, were the petitions addressed which Maitland had originally been asked to edit?⁶ There was in existence in 1305 a body of persons, already an institution, which could be described as taking action; its constitution might be fluctuating, but it could be linked with the king when petitions were addressed to him. 'A session of the king's council is the core and essence of every *parliamentum*.'⁷ In its judicial capacity, reinforced by legal experts,

¹ Introduction, pp. xxxiv, lxxxiv; for the latter, see below, p. 91.

² See below, p. 94, n. 3.

³ See below, pp. 54, 95.

⁴ See below, pp. 53, 55–7, 80, 94.

⁵ See below, p. 78.

⁶ In writing to Maxwell-Lyte, 6 January 1889, Maitland speaks of petitions *to* parliament; on 7 August 1889, 'having made himself familiar with the already printed petitions', he describes them as petitions *in* parliament; on 1 October 1889 he says 'though these petitions are said to be heard *at* or *in* a parliament they are addressed to the King or the King and council'. P.R.O. 8/131.

⁷ See below, p. 94.

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it constitutes the king's highest court, in a supremely solemn session, a tribunal superior to the court *coram rege*, 'where judicial doubts are determined, new remedies established for new wrongs, and justice is done to every one according to his deserts'.¹

Starting from the hearing of petitions, Maitland is mainly concerned with the judicial business of a parliament. But the council has executive and advisory functions, and the wrongs for which remedies are sought may have been committed by the king's own agents.² The answer to a petition need not be the outcome of a judgment: the writ that implements it may be purely administrative. 'The whole governmental force of England is brought into a focus' in a parliament.³

A caveat ought here to be entered, necessitated by the results of the research which Maitland's essay has stimulated.

The nature of his record, which is far from giving a complete account of the parliament of Easter, 1305,⁴ leads him to underestimate the unofficial or political aspects of a parliament. In this he has had distinguished followers; but the evidence not only of the chroniclers but of Edward's own correspondence is clear.⁵ The introduction to the Memoranda was a magnificent attack on 'after-mindedness'. We were not to interpret the roll of Edward's reign in the light of those of his grandson's or any later reign.⁶ But Edward I 'entered into a traditional inheritance'.⁷ Maitland might justifiably have considered the parliaments of Henry III's reign. It had been the magnates who, in 1258, had provided for three parliaments a year, 'to see the state of the realm, and to treat of the common business of the king and the kingdom'. The colloquy or debate might be of a political nature: the judgments, as in Segrave's case,⁸ might have political overtones due to the fact that his judges included not only legal experts but the leading men of the land. The 'equitableness' of the tribunal⁹ might at times be attributable to political expediency rather than to theories of discretionary power. Perhaps the ultimate supremacy of the king's high court of parliament would owe as much to these factors as to its judicial omnicompetence.

¹ See below, p. 89.² See below, p. 79.³ See below, p. 82.⁴ See below, pp. 53, n. 4, 77.⁵ Powicke, *The Thirteenth Century*, p. 343.⁶ See below, p. 91.⁷ Powicke, *The Thirteenth Century*, p. 345. See also J. G. Edwards in the *Bulletin of the Institute of Historical Research* (1954), pp. 35–53.⁸ See below, pp. 85–6.⁹ See below, p. 92.

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But in 1893 it was the judicial, the official aspect of parliaments that needed to be emphasised. Stubbs' saving clauses had been generally disregarded, and students of history had to be reminded that in 1305 the 'assembly of estates' had not yet become part of the national council, and that the elected representatives were not necessarily called upon to vote taxes—the function which in the long run was to give the full-grown House of Commons the key to parliamentary sovereignty.

V

Nos. VIII, IX and X deal with ecclesiastical history. In a much quoted phrase, Maitland called himself a dissenter from all the churches. One who knew him intimately describes him as a 'very Protestant agnostic'; but whatever his personal predilections were, his passion for historical truth and legal exactness made him a papalist when determining an issue long obscured by ecclesiastical controversy. In his lectures on constitutional history (1888) he had given a lucid sketch of the relations of church and state in medieval England; in the *History of English Law* (1895) he had traced the frontiers of Common and Canon Law at length. In the summer of 1895, while working on a course of lectures on Canon Law for law students, his study of Lyndwood's *Provinciale*¹ convinced him that Roman or Papal Law had been authoritative in English church courts and that 'any special rules of the Church of England had, in the view of the canonist, hardly a wider scope than the by-laws of London in the eye of the English lawyer'. English Canon Law, in fact, 'was only English because it was universal'.² This opinion, expounded fully (1896–7) in the three articles reprinted in the volume *Roman Canon Law in the Church of England* (1898) was 'an assault on the established theory'. Stubbs had said in 1882 that 'in England neither the civil law nor the canon law was ever received as authoritative, except educationally',³ and had justified this position at length in the historical appendices to the Report of the Royal Commission on Ecclesiastical Courts in 1883. The High Anglican party took this

¹ Written in 1430; the leading English authority on medieval canon law.

² Pollock and Maitland, *History of English Law* (2nd edition), vol. 1, p. 115.

³ *Seventeen Lectures on Medieval and Modern History* (1900 edition), p. 354. In 1900 Stubbs, without being fully convinced, deferred to Maitland's superior learning. *Ibid.* p. 335. Maitland is today considered to have proved his case. See Holdsworth, *History of English Law* (1922), vol. 1, p. 582.

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as proving the legal continuity of the modern Church of England from that of the Middle Ages. There had been no revolution in the sixteenth century. As Maitland put it, they held that the Church of England 'had been Protestant before the Reformation and Catholic afterwards'. In 1888, Maitland had summed up the effects of that revolution in the words 'Religion has now become an affair of statute'.¹ By agreeing to follow up his articles on Canon Law with a chapter on the Elizabethan Settlement in the *Cambridge Modern History* projected by Acton and himself² he was drawn further into the controversy. Acton, he said later, had induced him to put his hand far into a very nest of hornets.³ But he had known from the first that he was 'trailing his coat',⁴ and his correspondence with Round, a Protestant of a very different kidney, reflects a curious alliance. From 1897 to 1899 Round was fanning the flames of controversy with articles in the *Nineteenth Century* and the *Contemporary Review*, on 'The Idolatrous Mass' and kindred sixteenth-century subjects. Maitland wrote to him in December 1897 'I do not wonder that your articles should have won praise in more than one camp. I have lately re-read and admired. My suspicion is that the Anglican legend of the Reformation has seen its best day, and that its popularizers have done it a mischief by their recklessness.'⁵ One of these popularisers, a Canon of Ripon with a large reading public, published an article⁶ in which he sought to prove that the Elizabethan Settlement had been approved by Convocation as well as by Parliament. He had gone far out of his depth, and his assault on historical fact evoked a rejoinder written, as Le Bras would say, with 'une verve discrètement impertinente' (No. X). Maitland, who had just offended Round by his review of the *Commune of London* (No. XI) hoped that his prickly ally might be mollified by this trouncing of a common enemy;⁷ but apparently in vain. The insensible Mr MacColl returned to the attack in *The Reformation Settlement examined in the light of History and Law* in 1900, and the ignorance of Canon Law revealed in it was well and truly exposed by

¹ *The Constitutional History of England*, p. 512.

² 'It will be a very strange book, that *History* of ours,' he wrote to H. Jackson in 1900 (Fisher, p. 124). ³ Letter to Jackson (Fisher, p. 152).

⁴ Letter to Poole, 15 August 1895, *C.H.J.* (1952), p. 322.

⁵ Letter at Girton College.

⁶ *Fortnightly Review* (October 1899).

⁷ Letter to Poole, 26 November 1899 *C.H.J.* (1952), p. 328.

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Maitland in a more academic article in the *English Historical Review*.¹

The chapter on the Anglican Settlement and the Scottish Reformation (No. VIII), Maitland's main concern after the completion of *Domesday Book and Beyond* (January 1897) and *Township and Borough* (February 1898), was being revised in the summer of 1899. 'Just at present', he wrote to Round in July, 'I keep Elizabeth for Sundays.'² It was in Acton's hands before Maitland left England for the Canaries in November of that year;³ it only reached the reading public when volume II of the *Cambridge Modern History* came out in 1903. But its by-products, the first four 'Elizabethan Gleanings' (No. IX) had appeared in the *English Historical Review* in 1900.⁴

Maitland 'liked most centuries better than the sixteenth'.⁵ He also doubted his own ability to handle narrative; as to this the reader will judge for himself. Undoubtedly he can create an atmosphere from details skilfully selected. He can drive home a point with an epigram, and hit off a character or a situation in a phrase that provokes delighted laughter in the reader. Competent judges have borne witness to the 'vast erudition' concealed by this lightness of touch. He treads warily, almost daintily, among the complexities of diplomatic and theological rivalries.⁶ His interpretation of the steps by which the two great acts of the parliament of 1559 were reached is not accepted by all; but the latest historian to treat of the Elizabethan religious settlement describes it as still 'shrouded in mystery'.⁷ Nor does Maitland's detachment from the conflict mean lack of sympathy or doubt of the genuineness of opinions he does not share. He is at home with the personalities of the sixteenth century. Elizabeth, he held, was actuated by religious rather than by political motives in rejecting Rome;⁸ and he wrote to Round in February 1898, 'I am among Calvin's letters. I think that he and Elizabeth understood each other.'⁹

¹ *E.H.R.* (January 1901). Reprinted, *Collected Papers*, vol. III, pp. 137–56.

² 7 July 1899 (L.U.L. 653).

³ Letter to Jackson (Fisher, p. 125).

⁴ The fifth Gleaning was published in July 1903 in the *E.H.R.*

⁵ Letter to Round, 29 December 1898 (L.U.L. 653).

⁶ As originally drafted, paragraph 1 on p. 203 ended 'So Cox and Knox were satisfied.' *Cambridge Law Journal* (1923), p. 286.

⁷ J. E. Neale, *Elizabeth I and her parliaments* (1953), p. 51.

⁸ See below, p. 167.

⁹ Letter at Girton College.

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In the last four articles (Nos. X–XIII) we hear Maitland passing judgment on the work of others. Between 1888 and 1906 he wrote at least thirty-five learned and suggestive reviews of the publications of English and foreign scholars,¹ and his longer writings, both in the text and in the footnotes, constantly, and often warmly, acknowledge his debt to others.² From these reviews, and from his correspondence with R. L. Poole, editor of the *English Historical Review*, 1893 to 1906,³ we can deduce his code for critics. He could master a book with amazing rapidity, and he knew very well what he thought of it, but in pronouncing on its merits his judgments are most delicately balanced between the demands of scholarship and those of the special character and circumstances of the writer. He is reluctant to offer purely destructive criticism. H. B. Simpson on the Constable is ‘pretty perverse’ but contains ‘no corrigible mis-statements’.⁴ Apropos of an error that he is intending to correct, he inquires about the writer. ‘If he is a young man he might like the opportunity of having a second word about his document, and I should be unwilling to hurt his feelings’; and later, in the same connection, ‘I don’t like to see that document lying about unqueried, but would not make an unnecessary fuss.’⁵ But he took off the gloves when dealing with the egregious errors of the Dean of Lichfield as to the law of marriage in the Middle Ages,⁶ and in his exposure of MacColl’s discovery of a non-existent convocation (No. X), as we have seen, he could be gaily ruthless, though he admitted to Poole that MacColl was an experienced controversialist and a clever tactician.⁷ It is in relation to Round, most learned of scholars and most merciless of critics, that these qualities of Maitland shine out most notably. The two had corresponded since 1888.⁸ They had exchanged references on such subjects as early fines, and Maitland had held his hand on

¹ See A. L. Smith’s bibliography of Maitland in *F. W. Maitland: Two Lectures* (Oxford, 1908).

² E.g. Liebermann, Round, Stevenson, Vinogradoff.

³ Printed in the *C.H.J.* (1952), pp. 318–51.

⁴ 7 June 1895 (*C.H.J.*, p. 319).

⁵ 29 August 1898, 3 August 1899 (*C.H.J.*, pp. 325–7).

⁶ *E.H.R.* (1895), pp. 755–9. Reprinted, *Collected Papers*, vol. III, pp. 21–30.

⁷ 30 October 1900 (*C.H.J.*, p. 331).

⁸ See correspondence in the London University Library.

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Domesday Book until Round's *Feudal England* should appear.¹ Maitland was a keen admirer of Round's work and that the admiration was returned appears not only in Round's many reviews of Maitland's books, but in the eloquent tribute to him which he published after his death.² But Maitland, like many other scholars, found Round's passion for controversy over the *minutiae* of history unedifying and wearisome. 'Is the battle over yet?' he had asked, with some amusement, in June 1894,³ but Round's 'terrific conflict' with Freeman and his followers over the battle of Hastings, opened in 1892, was still raging in 1899 when amusement had long ceased and the object of dispute had become 'that infernal palisade'.⁴

The controversy between Round and Hubert Hall over the *Red Book of the Exchequer*, however, had had uglier aspects and had caused Maitland acuter discomfort. Hall, the much loved helper of generations of workers at the Public Record Office, had been appointed joint editor with Round of the *Red Book* for the Rolls Series in 1890, but the two differed fundamentally as to the trustworthiness of Swereford, the thirteenth-century compiler of the *Red Book*, and after a few months Round resigned. The *Red Book* was published in April 1897. Round had seen the proofs beforehand, and his mouth should therefore have been closed on the subject,⁵ but none the less he attacked the editor's errors savagely in various periodicals and finally in a privately printed pamphlet. The controversy was opened by Hall's review of *Feudal England*⁶ which had contained observations about the *Red Book* which 'my friend Mr Hall' was editing, and Maitland, knowing both men well, foresaw trouble. 'I quite agree', he wrote to Round privately, 'that the Quarterly Reviewer has a weak spot in his love for Swereford, but I think this is evident enough and will do no harm—certainly not to you, nor I think to any one else, and as there are few people in the world who are of such a right good sort as he is, I am hoping that you will be content with the

¹ Letter of 18 July 1894, and letter no. 10, which should follow it (L.U.L. 653); letter to Poole, 15 July 1895 (C.H.J., p. 320); preface to *Domesday Book and Beyond*, p. v.

² *Peerage and Pedigree* (1910), vol. 1, pp. 145–7.

³ Letter at Girton College.

⁴ Letter to Poole, 26 November 1899 (C.H.J., p. 328). For a bibliography of the whole controversy, see *Sussex Archaeological Collections*, vol. xlii.

⁵ C. Johnson in *Trans. R. Hist. Soc.* (1946), p. 8.

⁶ *Quarterly Review* (July 1896).

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status quo. I am thoroughly convinced that you can “afford” to let the matter be. Pray do not think that I am tendering advice—nothing of the kind! I am pleading for a friend.’¹ Maitland’s pleadings had no effect and the unedifying conflict continued. Maitland had little doubt that Round was in the right, historically speaking. When he received Round’s pamphlet he wrote to him ‘I shall learn much, though I expect to feel in my proper person some of the blows that you inflict upon H.H. I fear that what I read will be all too true, and yet of the said H.H. I am fond.’² Both parties appealed to the editor of the *English Historical Review* for a judgment, and Poole asked Maitland to act as umpire. Maitland was ‘tormented’ by the request. He begged Poole to look elsewhere—‘Would not the good Bishop (Stubbs) intervene?’—he had known that ‘his very good friend’ Hall was incapable of sustaining an argument but had not, when he saw Hall’s proofs, suspected the blunders. ‘If all that R. says is true, I still think that he is using language that should be reserved for cases of a very different sort.... Poor Hall has a curious fluffy mind, but never scamps work, besides being (but this alas is irrelevant) the most unselfish man I have ever known.’³ So Poole had to undertake the thankless task himself,⁴ and Hall retired wounded from the fray. ‘This, alas! is irrelevant.’ So Round himself would have said, omitting the ‘alas’! When in 1899 the *Athenaeum* sent Maitland Round’s *Commune of London* for review,⁵ Maitland, we are free to believe, was not sorry to have a chance of saying what he thought of Round’s methods.

The review (No. XI), anonymous but unmistakable, has not before been reprinted. It is a learned and appreciative estimate of an important book, but it puts its finger unerringly on Round’s weak points—his failure to produce large-scale constructive work,⁶ and his bad manners in writing history. Round did history invaluable service by his devotion to exact scholarship, too often

¹ 7 September 1896 (L.U.L. 653).

² 31 August 1898 (L.U.L. 653).

³ 7 September 1898 (C.H.J., 1952, pp. 325 ff.).

⁴ *E.H.R.* (1899), p. 148.

⁵ The editor was Norman MacColl, Maitland’s fellow as one of the ‘Sunday Tramps’. The review appeared in the number for 21 October 1899.

⁶ The bibliography of Round’s writings by W. Page, in *Family Origins and other Studies, by the late J. Horace Round* (1930), pp. xlix–lxxiv, is the best evidence of the truth of this allegation.

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displayed in exposing the errors of others.¹ In this he excelled; but he completely lacked the courtesy and modesty with which Maitland advanced his corrective views. Now at last Maitland unsheathes his rapier to counter Round's battle-axe. Too much of Round's brilliant gifts, he suggests, are devoted to slaughtering his opponents. 'Gnawing off the nose of a butchered foe' is not the technique of the good historical critic, 'who executes justice, in an appendix, as noiselessly and painlessly as may be.' If Round goes out of his way to sneer at Kate Norgate's 'lady's Latin' 'We do not say that Mr Round's German is gentlemanly' when he mis-spells the name of a distinguished historian. Did Maitland really find this part of his task unpleasant? We may doubt it. But having sheathed his blade, he gives the greater part of his review to a close and appreciative examination of the valuable contributions to knowledge in Round's non-controversial sections.² The review appears to have terminated the intimacy of the two. Round, who was as vain as he was learned, wrote a peevish rejoinder in the *Athenaeum*,³ insinuating that the 'erudite critic' was of those who received only with carping comments the results of 'the dreary work of exploration'⁴ which they were nevertheless ready to use.

'I am sorry', wrote Maitland to Poole, 'that Round has taken offence. I tried to do him full justice and thought that by this time he would have lost the taste for unmitigated praise such as is rightly bestowed upon promising young persons.'⁵ He himself had warmly welcomed Tait's criticisms of *Domesday Book and Beyond* in 1897,⁶ all the more, because he had, according to Poole, 'suffered from too much adulation'.⁷ But Round lacked both the humour and the generosity of his critic, and six months later Maitland wrote 'I foresee that I shall have J. H. R. as an assailant until the end of our joint lives'.⁸ Round was to outlive Maitland by twenty-one years, and was to pay posthumous tribute to the

¹ That he sometimes overreached himself as a critic is shown by Powicke, *Modern Historians* (1955), p. 57. For an estimate of Round's positive achievements, see Stenton, *English Feudalism* (1932), pp. 1-6.

² Subsequent research has borne out his criticism of Round's view of the bull *Laudabiliter*, p. 262 below. ³ 28 October 1899.

⁴ Contrast Maitland's enjoyment in compiling an Anglo-French grammar for the use of students of the Year Books (Fisher, pp. 166-7).

⁵ *C.H.J.*, p. 328. Note 44 on this page misses the allusion.

⁶ See his letter to Tait printed by Powicke, *Modern Historians*, pp. 55 ff.

⁷ *Ibid.* p. 54.

⁸ To Poole, 6 May 1900 (*C.H.J.*, p. 329).

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‘great genius’ of the historian who had ‘to prove all things’,¹ but he was incapable of valuing justly that combination of absolute intellectual integrity with courtesy, modesty and kindness in which Maitland the critic has never been excelled.

This modesty is apparent in his obituary notice of Stubbs, worthy of re-reading by a generation that has heard much of that great man’s small defects. Maitland writes with the deference, not to say the diffidence, of a pupil. As we have seen, he had upheld a view on the authority of Canon Law diametrically opposed to that of Stubbs. But he ‘hated to bark at the heels of a great man whom he admired’, and was prepared, in 1898, to destroy all or some of the sheets of his *Canon Law in England* if the reappearance of his articles in book form would make Stubbs ‘more unhappy than a sane man is whenever people dissent from him’.² As a Cambridge man, and one who had never met Stubbs in person, he only agreed under pressure to write ‘four or five pages’ for Poole.³ But what he had to say came to nine pages. Full measure of honour could be given where honour was due without any sacrifice of truth.⁴

On the tribute to the master follows the tribute to the pupil (No. XIII). Schools of graduate study did not exist in England or in Cambridge when Maitland was professor, but there was one Cambridge scholar of his training whose work had to be appraised in the brief notice that Maitland sent to *The Athenaeum* when the news came of her untimely death. In writing of Mary Bateson he, for once, surrendered some of his characteristic reserve. ‘I don’t feel at all sure that the editor will not suppress what I wrote in a hurry and call it hysterical—and may be he will be right. I was not very cool.’⁵

It was the last thing he wrote; he himself died three weeks later.

¹ *Peerage and Pedigree* (1910), vol. I, p. 145.

² Letter to Poole, 12 September 1898 (*C.H.J.*, p. 326).

³ *C.H.J.*, pp. 331–4.

⁴ The same fine discrimination is seen in his private references to Acton, whose obituary notice he wrote for *The Cambridge Review*, 16 October 1902. Reprinted, *Collected Papers*, vol. III, pp. 512–21. Acton had given History an established position at Cambridge (Letters to Poole, *C.H.J.*, pp. 337–9), but he was a man ‘who could not bring to birth the multitude of thoughts that were crowding in his mind’. Letter to Jackson (Fisher, p. 135).

⁵ To Poole, 5 December 1906 (*C.H.J.*, p. 351).

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VII

If, fifty years after his death, we try to recover the aroma of Maitland—artist and literary craftsman as well as historian—we may begin by clutching at the personal reminiscences of those who knew him; who heard him speaking in the Union or in the Senate House, as in the immortal speech that killed the project of a Queen's University, for ladies only, in March 1897; of those who attended his lectures on English law, given 'in a sort of liturgic rhythm, as though he were some sort of monk reciting the miracles of his order—but they sent one away feeling that the study of twelfth-century law was the only thing worth living for';¹ of his fellow-walkers in the Alps; of the correspondents with whom he shared his enjoyment of Spanish grammar and of the many-coloured landscape of the Canaries; of the friend who found him reading a musical score with his feet on the fender; of his children who heard from him the melodies of Mozart and Wagner and saw with him the drawings of Blake. But in the end we come back to his writings; it is in his words and works that we can best recognise Maitland.

The single-minded pursuit of truth of necessity leads to a concern for words. 'If we speak, we must speak with words. If we think, we must think with thoughts. Perhaps, as Mr Gilbert suggested, it is too late to be Early English. Every thought will be too sharp, every word will imply too many contrasts.'² The desire, the determination to describe justly the truth that he had perceived or the conception he had grasped made Maitland's ear for gradations in the scale of meaning extraordinarily sensitive, as Mr Schuyler has said. It made his style at times allusive—only by recalling a series of analogies can the point be made; at times tentative, as Vinogradoff has described. 'He feels his way, as it were, like a musician running his fingers over the keys in an improvised prelude towards *leitmotifs* and harmonious combinations.' When his children heard him trying out his lectures orally, what they heard was not an orator practising his effects before an imaginary audience, but an explorer eager to communicate his discoveries as he himself had made them. In an undergraduate speech he had giped at the

¹ J. T. Shotall; another student complained that he could take no notes at Maitland's lectures because they were so interesting.

² *Township and Borough*, p. 22.

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‘Lords of the realm of tautology’; twenty-seven years later he is ‘struggling with the unnecessary adjective; we must have as many substantives and verbs as possible’.¹ It is from this rejection of the superfluous that his lapidary phrases are born. ‘The very early concentration of justice in *this conquered country*’ gives us the long-distance effects of the Norman Conquest in two words. ‘Of the old belief that all the Middle Ages lived at the same time there remains the disposition to think that all “Low Latin” is equally low’ kills with one stone two very big birds. ‘I doubt if we Englishmen, who never clean our slates, generally know how clean the French slate was to be’ conveys the legal consequences of the French Revolution, but a good deal more. Something has already been said of his use of the concrete, his ‘tracing of ideas to their embodiment in facts’ (Vinogradoff). In the written word this often flowers into metaphor. Praising a younger historian, he will say ‘one of the virtues which is placing Mr Tout in the very front rank of our historians is his determination to leave no stone unturned, no thicket unbeaten. Out of the thicket may fly a bird worth powder and shot. Under the stone may lurk a toad with a jewel in its head.’² But the metaphor can also be used with the ‘musician’s’ approach. When describing how Leslie Stephen trained his team of contributors to the *Dictionary of National Biography* (of whom Maitland himself was one),³ largely by personal example, he will say ‘In course of time the stroke was caught. Many could raise the flower. A school has been established.’⁴ And, when he reaches the point where words will not serve him, Maitland the poet can still make us share his vision. He is speaking of Leslie Stephen’s wife—Virginia Woolf’s Mrs Ramsay. ‘Her friends Watts and Burne-Jones did their best; Mrs Cameron her best; Leslie himself said a little in the “Forgotten Benefactors”’; eyes that saw and ears that heard can never be satisfied.’⁵

We are in the same case with Maitland himself. Let us say with Powicke, ‘Maitland is one of the immortals’ and leave it at that.

¹ Fisher, p. 14; letter to Round, 27 December 1897 (at Girton College).

² *E.H.R.* (1906), p. 783; *Collected Papers*, vol. III, p. 488.

³ Maitland wrote on Le Breton, Fleta, Glanvill and his own father, John Gorham Maitland.

⁴ *Life and letters of Leslie Stephen*, p. 372. (A post-Victorian generation may require a note on the reference to Tennyson’s ‘The Flower’.)

⁵ *Ibid.* p. 312.