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F. W. Maitland

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THE
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HISTORY OF ENGLAND

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THE CONSTITUTIONAL HISTORY OF ENGLAND

A COURSE OF LECTURES
DELIVERED BY

F. W. MAITLAND

CAMBRIDGE
AT THE UNIVERSITY PRESS

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PREFACE

“I have written a course of lectures in six months on Constitutional History. Do I publish it? No.” The lectures written in six months, which Professor Maitland told the Cambridge Law Club would not be published, were delivered during the Michaelmas term of 1887 and the Lent term of 1888, and were specially designed for the needs of undergraduates of the University of Cambridge reading for the Law Tripos. The last word of the last lecture was written on April 7, 1888.

Let us observe the date. Maitland had been recalled to Cambridge as Reader in English Law in 1883 and this is one of his early courses of academic lectures delivered before his election to the Downing Chair in the summer of 1888. It was written seven years before the appearance of the *History of English Law*, nine years before *Domesday Book and Beyond*, ten years before *Township and Borough*, twelve years before the *Introduction to Gierke's Political Theories of the Middle Ages*. From internal evidence it would seem that some of the earlier lectures were composed before the completion of *Bracton's Note Book* in 1887. Much of the ground which is here covered was afterwards traversed with greater deliberation and more elaborate scrutiny; some part of the journey Maitland had never the leisure to retrace. Yet the student of his work will find in these early discourses many of the

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seminal ideas which were subsequently developed in the History of English Law, and here, as elsewhere, will admire the union of high speculative power with exact and comprehensive knowledge of detail. This volume then is not a specimen of Maitland's polished and mature work; it does not claim to be based upon original research; for much of his information the Reader of English Law was confessedly content to draw upon the classical text-books, Hallam, Stubbs, Dicey, Anson, the study of which he frequently commends to the attention of his audience. Yet although the manuscript was laid aside, and the larger theme was abandoned for more special researches into medieval law, the author would sometimes admit that, did time allow, the course of lectures upon Constitutional History might be worked up into a shape worthy of publication.

There is much to be said against printing work which was not intended for the press, and I should not have ventured to recommend the publication of these lectures but for three compelling reasons. The first is that the lectures cannot detract from Maitland's reputation; but must, on the contrary, if possible, enhance it, showing, as they do, that the profound student was also a brilliant populariser of knowledge. The second is that the lectures contain several new and original ideas, which Maitland had no opportunity of expressing in his later work and which we cannot afford to lose. The third is that there is no book, to my knowledge, which provides so good an introduction to the study of English Constitutional History or which is likely to be more highly valued by practical teachers of the subject at our Universities. I can vouch good and lawful men to warranty. Professor Dicey, Sir Courtenay Ilbert and Mr C. R. L. Fletcher were kind enough to look over the manuscript and concurred in urging its publication.

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The editor's part has been insignificant. The lectures are printed as they were delivered, and there has been no attempt to rewrite, expand or compress wherever the manuscript was fairly written out. In a few places however the manuscript took the form of brief notes which have been expanded with as strict an economy of words as is consistent with grammar. In one place the substance of a missing page was happily recovered from notebooks kindly lent to the editor by Dr Pierce Higgins of Downing College and Mr A. H. Chaytor of Clare College. For the references and remarks in the footnotes the editor is responsible, save where they are followed by the initials of the author. The references to the Statutes have been verified.

Help has been generously given by many friends, in particular by Sir Courtenay Ilbert, who has contributed many valuable suggestions with reference to the last section of the volume. The editor will be grateful to his readers for any further suggestions by means of which a second edition of the book, should one be called for, may be made more fully worthy of the author and the subject.

H. A. L. FISHER.

NEW COLLEGE, OXFORD.

May 1908.

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[More information](#)ANALYSIS¹

Outline of the course. Sketch of public law at five periods, (I) 1307, (II) 1509, (III) 1625, (IV) 1702, (V) the present day. Reasons for this choice of periods. The first and last sketches will be the most thorough.

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(ii) 1066—1154. What law had the Normans? Survival of English law; confirmations by William I and Henry I. Law books: *Leges Edwardi*, *Willelmi*, *Henrici Primi*; fusion of English and Norman (Frankish) law. Genuine laws of William I; charters of Henry I and Stephen; Domesday Book . . . **6—10**

(iii) 1154—1215. Henry II as a legislator; Constitutions of Clarendon (1164); growth of Canon law; study of Roman law; 'assizes'; possessory assizes and grand assize; assizes of Clarendon (1166) and Northampton (1176). Law books: Glanvill (circ. 1188); *Dialogus de Scaccario*; the first Plea Roll (1194) . . . **10—14**

¹ Printed copies of this analysis or syllabus were supplied to those who attended the course of lectures. A few slight changes have been made, where the order of topics in the lectures does not correspond with that laid down in the analysis.

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¹ Maitland appended a note to the effect that these subjects would be treated 'if time serves.' Time did not serve, but the Legal History of the Reformation is briefly summarised later—pp. 506—13.

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PERIOD V.

SKETCH OF PUBLIC LAW AT THE PRESENT DAY (1887-8).

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Colonies and Dependencies; general principles as to laws in force in them; subjection to legislature of Great Britain and Ireland; taxation of the American colonies. Abolition of slavery and other instances of legislation for colonies. Colonial constitutions; crown colonies and self-governing colonies; wide powers of legislation given to colonial assemblies.

Distinguish institutions which are merely English, from those common to Great Britain or to the United Kingdom or to all the king's dominions; e.g. there is no English Parliament, no English nationality, but English courts of law, English domicile.

Now it becomes important to distinguish carefully rules of law from rules which however punctually observed are rules of 'positive morality,' 'customs or conventions of the constitution,' 'constitutional understandings'; these are much interwoven; reason of this, our conservatism of form 330—343

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The omnicompetence of statute; it may not be a 'law' in the jurists' sense; instances of particular commands given by statute. In the eighteenth century Houses attempt to govern as well as legislate by statute. In the nineteenth century vast new powers have been given to ministers and law courts, and Parliament interferes less with particulars; but the power exists and is exercised, e.g. disfranchisement by statute of A, B, and C, corrupt voters, also Acts of Indemnity, also appropriation of supplies **380—387**

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