

The problems considered by Dr. Williams have been widely discussed in the journals. Dr. Fletcher's recent *Morals and Medicine*<sup>33</sup> and Herman Mannheim's earlier *Criminal Justice and Social Reconstruction* cover much of the same ground. Though at times Dr. Williams is less than rigorous in his analysis and argument, his book is always stimulating and disquieting.

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SELECTED HISTORICAL ESSAYS. By F. W. Maitland, edited by Helen M. Cam. New York: Cambridge University Press, 1957. Pp. xxix, 278. \$5.00.

ONE does not review Maitland; one only wonders at his artistry. Architect in the grand design of his greater writings, poet in his skill to pick and place the *mot juste*, and designer of epigram and paradox, he "put the common law back into the centre of the picture"<sup>1</sup> of English history. Just as Blackstone's *Commentaries*, with its balanced reason and balanced sentences, provided English law with a bulwark against Bentham's logic and utility, so perhaps the sum total of Maitland's writings may help to save Anglo-American law from those who deny its humanism. After all, the law is historically humanistic, for it has provided values as well as rules of human conduct which moral philosophy and social experience, more than logic, have determined.

To the lawyer, whose task it is to define social values and to apply the rules, Maitland's writings offer much of use. Of Stubbs's *Constitutional History*, Maitland wrote, "to read his great book is a training in justice";<sup>2</sup> and to read his own even greater ones will train men not only in justice but in human nature, in the use of evidence and in the law itself. For Maitland's technique, as Miss Cam puts it in her informative "Introduction," was that of the lawyer: "every generalization is seen in terms of the individual, every principle in its application to a particular case."<sup>3</sup> By a "descent to the concrete,"<sup>4</sup> he made "the common thoughts of our forefathers about common things"<sup>5</sup> and even their rules of law intelligible to modern men. And these thirteen historical essays also exhibit in variegated displays the art of precise expression, a boon to any man whose livelihood depends upon his skill in using words.

Maitland's chapter on "The Anglican Settlement and the Scottish Reformation" from the *Cambridge Modern History*, where this gem has been

33. There is an excellent symposium on Dr. Fletcher's book in 31 N.Y.U.L. REV. 1157-1245 (1956).

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1. P. x (Introduction by Helen M. Cam).
2. P. 275.
3. P. xi.
4. P. xii.
5. P. xi, Cam quoting MAITLAND, DOMESDAY BOOK AND BEYOND 520 (1897): ". . . the thoughts of our forefathers, their common thoughts about common things . . ."

embedded since 1903, seems his most scintillating tour de force. Here, the lawyer's historian outplayed the political historian at his own game and produced a narrative which is a delight to read for both substance and style. He followed all the rules laid down for the Cambridge *Histories*, that their chapters be sound and scientific, objective, and full of facts. He did not cheat, but he was not dull. What sport for him with "his passion for historical truth and legal exactness"<sup>6</sup> to outsparkle the Victorian literary historians; what satisfaction to prove that he, too, could be as accurate as any fact-finder and pack as many details onto a single page without numbing his reader. A little self-conscious, and perhaps sinning a little in a pardonable pride, Maitland displayed throughout this chapter his mastery of wordplay. With wit and paradox and poetic prose, this "very Protestant agnostic"<sup>7</sup> converted a tedious tale of warring theologues into a fast-paced epic and a work of art. Time and again on these sixty pages he created what Miss Cam calls "an atmosphere from details skillfully selected"; he drove "home a point with an epigram, and hit off a character or a situation in a phrase that provokes delighted laughter."<sup>8</sup>

The same distinctive talents appear, though less highly concentrated, in other essays. From the *Encyclopaedia Britannica*, the "History of English Law" compresses wisdom, reflection and learning into the minimum of space; while "English Law, 1307-1600" is a compendium of conclusions and inspirations drawn from centuries the history of whose law Maitland did not write. Even so, he threw out themes and theses for many a monograph. The judges' claim of "some vague right of disregarding statutes which are directly at variance with the common law, or the law of God, or the royal prerogative"<sup>9</sup> has yet to be traced from Richard II's time to Marshall's doctrine of judicial review. No matter how often one rereads Maitland, a fresh idea is always there.

Most impressive of all is the way Maitland's conclusions, even his suggestions and conjectures, stand up today. Miss Cam's "Introduction" goes deeper into Maitland and his work than anyone has yet done, but for her, it is clear, this was not an act of duty but an exhilarating opportunity. She points out where he exaggerated or where additional data require a modification of his interpretations; and for the first time she tells how Maitland, in 1893, came to edit the *Memoranda de Parlamento* of 1305. There, his contention that Parliament was first of all a court of justice set constitutional historians off in a new direction, and now their histories present in broader perspective the origin of the foremost modern legislature. For the lawyers, too, he offered good counsel. In describing legal education at the late-medieval Inns of Court, he told how, under their orthodoxy and rigidity, "English

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6. P. xx.

7. *Ibid.*

8. P. xxii.

9. P. 124.

jurisprudence became an occult science and its professors 'the most unlearned kind of most learned men.'"<sup>10</sup> Against such a fate the reading and rereading of Maitland may protect lawyer and student alike. By studying what he wrote and above all how he wrote it, they may avoid the accusation he directed against the post-Edwardian judges and lawyers who "knew their own business very thoroughly, and they knew nothing else. Law was now divorced from literature; no one attempted to write a book about it."<sup>11</sup> Happily, many books on the law are being written today, but only seldom does one reveal the art of a Maitland.

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**SOLDIERS OF THE STATES: THE ROLE OF THE NATIONAL GUARD IN AMERICAN DEMOCRACY.** By William H. Riker. Washington: Public Affairs Press, 1957. Pp. 129. \$3.25.

PROFESSOR Riker presents his study of the National Guard as a contribution to the theory of federalism in American government. The subject is well chosen, for, as he points out, defense is one of the gravest problems of federal government, and the militia "is the only area in which the nation and the states have attempted to work together throughout most of our history."<sup>1</sup> In a compact and suggestive monograph of 117 pages, the author examines the central question whether federalism as a system of joint administration is worth the inefficiency which it occasions.

The author's answer is a qualified but resounding "No." It is furthermore a conclusion which he suggests has implications for other fields of joint federal-state administration in this age of technological and social complexities. Surveying the history of the militia from the eighteenth century to the present, Riker concludes that the militia and its modern successor, the National Guard, have made little or no contribution to national defense. In its most recent test, the second World War, National Guard divisions, as the *Gray Board Report* of 1948 observed, required two years of training before they were ready for combat—as much or more training than was required by selective service divisions raised from scratch. In theory, the National Guard is the first-line national reserve force; successive congressional enactments since the first Dick Act of 1903 have established and elaborated that role. In fact, the Guard, hamstrung between federal and state authorities, has in time of emergency never been found prepared to take up the role Congress made

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10. P. 126.

11. P. 125.

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1. P. 9.