

THE LETTERS OF FREDERICK WILLIAM MAITLAND. Edited by C. H. S. Fifoot. Cambridge, Mass.: Harvard University Press in Association with the Selden Society, 1965. xxiv, 397 pp., \$12.50.

Maitland's professional writings, his treatises on law and history, long ago disclosed the brilliance of his mind. Now five hundred and one of his letters uncover the moods, the spirit, and the figure of his personality. They constitute, in effect, almost an autobiography, one that eliminates an author's self-consciousness about his subject. Maitland himself felt that "it is sad work reading old letters," yet his own have made a book to be read with sheer delight.<sup>1</sup>

The great question is this—how accurate is the portrait that the reader draws from these letters? How close a likeness is it to Frederic William Maitland: the man born in 1850 at 53 Guilford St., London, sent to Eton in 1863, on to Trinity College, Cambridge in 1869, enrolled in Lincoln's Inn in 1872, called to the bar in 1876, an anonymous author of his first legal paper in 1879, the first Reader in English law at Cambridge University in 1884-85, and in 1888 Downing Professor of the Laws of England. The living Maitland loved music, tramping, and mountain-climbing; he lived at Cambridge and taught law and wrote books and articles; he went to London and searched manuscripts; he suffered from diabetes, pleurisy, and neuralgia, wintered for seven seasons in the Canaries and once in Madeira; and in 1906, he caught influenza while en route, died of pneumonia at Las Palmas on 20 December, and became immortal as England's finest legal historian. How much of this man's personality do these letters reveal, and how correctly?

*The Letters*, though a fragmentary kind of evidence, suggest traits of character that comport with the intellect that designed the histories and set them down in jewelled prose. A consummate style also marks Maitland's letters, even in their informality. Several themes run through the book, and they give it continuity and coherence. Naturally, there is much about Cambridge University, about other historians and men-of-law, and about the Selden Society. Surprisingly, Harvard and America loom large, as do Maitland's writing of *The Life and Letters of Leslie Stephen* and his constant combat to keep his health. Then there are bits of history and of early law—contracts, corporations, and trusts—and throughout all there is an intuitive understanding of both men and law, whether Roman, canon, civil, or common.

As Downing Professor, Maitland taught courses on real property,

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1. P. 387.

torts, and contracts, and in 1887 "constitutional law", as he himself styled the lectures posthumously printed as *The Constitutional History of England*.<sup>2</sup> As lecturer, he prescribed for English students a few books by Americans, like M. M. Bigelow's "little book on torts." And in 1889 when teaching contracts, he proposed "to try a little Americanism," the case method.<sup>3</sup> Harvard Law professors sent him copies of their books, and in 1887 he acquired *Stearns on Real Actions* and *Jackson on Real Actions* (Boston 1824 and 1828). Then he wrote to Bigelow, Professor of Law at Boston University: "the old learning was so much better kept up on your side of the water than on ours."<sup>4</sup>

Maitland's concern for the law, both new and old, dominated his career and, in fact, his life. It produced a flow of trans-Atlantic correspondence beginning in 1885 with his first letter to Bigelow through those of 14 October 1906 to Charles Eliot Norton, "a sort of father confessor to English literary gents," and to Mr. Justice Holmes.<sup>5</sup> His correspondence with the law professors, Ames, Gray, and Thayer and with the historian, Charles Gross, inspired an admiration for Harvard, especially its Law School, and it intensified his interest in America—almost a synonym for Boston and its environs. When the proposal to remove law books from the University Library at Cambridge to the Squire Library was made in 1905, America was still in Maitland's mind and in his sage advice:

I guess you hardly know how exceedingly bad the Univ. Libr. is as a law library—in the matter of foreign books and periodicals it is shamefully poor. I don't like taking an American into it: the land is so naked. Now we shall have a little Squire money and I hope that in course of time we may be able to get together a creditable collection of foreign—remember that includes American and colonial—books. . . . Then, as to the Copyright Act, I don't say there is no danger, but I do think that the danger is trifling when compared with that which we are incurring all day and every day by allowing books to be taken out of the library . . . books are not to go out of the Squire building.<sup>6</sup>

In a romanticized America, Maitland found hope for promoting legal history. He was heart-broken at having to decline an invitation to teach a year at Harvard, and when he had to "'make the grand refuse,'" he wrote to Gross: "you know how I regard the Harvard Law School: I feel

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2. P. 35.

3. Pp. 3, 73.

4. P. 31.

5. P. 332.

6. P. 336.

as if I lived in the 12th century and was rejecting a 'call' to Bologna."<sup>7</sup> Maitland's faith that Americans would advance the knowledge of English law was such that the Selden Society, inspired by Maitland in 1886 and founded in 1887, appointed its first Honorary Secretary for America in 1888—Professor J. B. Thayer of the Harvard Law School.

Concern for the Selden Society, worries over its misfortunes and rejoicing at its successes reflect a theme that recurs in many a letter from 1886 to the very last one in the book. Long letters and memoranda went to the first two secretaries, Dove and Lock; then there are letters about the Society to English legal scholars—Buckland and Bryce, Carr, Carter, and Markby, Pollack, of course, and Vinogradoff. Letters went to Thayer, Bigelow, Ames and Gray about American participation and to Gross about editing the ninth volume. Nor is the Selden Society story without melodrama. In 1894 it reached an early climax, its end Maitland thought, when Dove, the Secretary, took the money, sought and found *la femme*, and then "destroyed himself."<sup>8</sup> Maitland panicked at this "horrible disaster" which, for the moment, seemed to terminate his chance to forward "the knowledge of the history of English law."<sup>9</sup> Instead, the Society was reorganized under an expanded royal patronage and the aegis of several lords justices.

A second villain, this time from Boston, was the publisher, C. C. Soule. He arrived in England in the spring of 1902 with a grandiose project to translate and reprint all the medieval Year Books from their old, imperfect texts. Again, Maitland's composure was ruffled, and he pursued Soule's calls on Green, Pike, and Markby with a series of letters and memoranda to the Selden Society. One valuable letter resulted—a long one to Sir William Markby describing the inadequacy of the printed reports and setting forth just how to edit a Year Book properly. "Without the formation of a good French text with sufficient notes from the records," Maitland contended, a translation of the old texts would be only "a laughing stock."<sup>10</sup> Eventually, this mad-cap scheme evaporated, for Soule failed to get the "large sum of money in America" that Sir William had anticipated.<sup>11</sup>

Neither Soule, Dove, nor two World Wars have stopped the course of the Selden Society which has produced over eighty volumes of legal

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7. P. 179.

8. P. 125.

9. *Id.* and motto of Selden Society.

10. Pp. 255, 261.

11. P. 259 n.1.

records. Appropriately, the Society and the Harvard University Press now publish *The Letters*. The editor, C. H. S. Fifoot, is a Vice-President of the Selden Society and a member of its Council. As editor, he has included all of Maitland's letters that he could find, and he has provided a *List* indicating the date and place, the correspondent, and the present location of each letter. The first fifty-five letters date from 1868 through 1888; the next 179 between 1889 and 1898; and the last 267 from 1899 through 1906. Fifoot has provided as a preface to each section a brief statement of essential facts about Maitland's life during the succeeding years. Throughout, he has been an unobtrusive editor, so much more attractive than the overeager scholar who obscures the text and distracts the reader with his own erudition. Instead, the annotatory apparatus is minimal, enough but not too much, and is closer to bare necessity than to a luxuriance of footnotes. However, there are times when one wishes that he might have at hand the letter Maitland was answering and the reply to his. Actually, many such exist, and from them Fifoot has extracted illuminating facts for the notes. In addition, his *List of Correspondents* contains instructive biographical data. By limiting the letters printed here to only Maitland's, Fifoot has kept the focus sharply upon a single author, and this gives the volume a single point of view.

The state of Maitland's health is a theme that runs through the letters as it did through his life. In and after December 1898, when he was only forty-eight, his physical condition came to govern his professional career and his private activities. Already, he had "had ten happy and busy years under the ban" of diabetes, he could write to a fellow sufferer, and "slowly it is doing for me; but quite slowly."<sup>12</sup> Attacks of influenza, quinsy, and pleurisy occurred and recurred, and lumbago and neuralgia gave him "pain." He came to fear "that cold wind," and "the thought of Cambridge" made him "shiver."<sup>13</sup> Doomed to fenland damp and the "cold of an English June" or "of an English summer," Maitland came to love the Canaries and to be content "with silence and sun worship."<sup>14</sup> Annually, his wife and their two daughters, Ermengard and Fredegond, set forth to prepare a place for him *ultra mare* at Las Palmas or Telde or Funchal. There the sun restored his energy, and he tramped into the hills "for six or seven hours" one day in 1898 and in 1905 "for some nine hours."<sup>15</sup> He climbed moun-

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12. P. 202.

13. Pp. 244, 213.

14. Pp. 175-76, 300, 292.

15. Pp. 185, 338.

tains, he cycled much—even “where cycles have not been before.”<sup>16</sup> Best of all, “this blessed sun converts despondency into hopefulness,” he wrote 20 December 1903 with the cheer and hope of the man of character.<sup>17</sup> However, the letters do not reveal all of the physical pain and mental frustration that their author probably endured. On occasion, he could write, “I am most blessedly free from pain;” or that he had had “a bad assault of the neuralgic fiend;” and even at Las Palmas “the messenger of Satan” would return “to buffet” him and “abate” his “pride.”<sup>18</sup> With such sprightly levity he would cheer those friends condemned to “so grey a place as Cambridge” and, perhaps, cheer himself, for he had to make his way without benefit of insulin or of clergy.<sup>19</sup>

In religion, Maitland was an agnostic, like Leslie Stephen, and also anti-clerical. At Cambridge, his anti-clericalism carried over into University politics and bolstered his determined opposition to the compulsory Greek requirement for admission. He disliked Greek, and compulsion even more, and was consequently hostile toward “clerks in orders and yet more clerical laymen” who handled college patronage.<sup>20</sup> They were the ones who, in 1905, fought and defeated a proposal to modify the Greek requirement. Of this controversy over Greek, Maitland concluded “that at bottom this is a social question,”<sup>21</sup> the same view that his frequent correspondent, Henry Jackson, had expressed: “People are beginning to be alarmed about the new Universities and they want to distinguish the two old Universities and to keep them ‘socially select’.”<sup>22</sup> To this Maitland added,

Having learnt—or what is precisely the same thing—pretended to learn Greek has become a class distinction which is not to be obliterated. . . . I can well imagine that *A Greekless Clergy!* was a good cry, but wonder how Greekful our clergy really is.<sup>23</sup>

Towards Rome, his comments were perhaps a bit less biting. After attending the Roman Catholic requiem for Lord Acton, he wrote, “I am inclined to think that on such an occasion a language not understood by the vulgar and not really heard by anyone is the best.”<sup>24</sup>

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16. Pp. 325, 239.

17. P. 289.

18. Pp. 215, 271, 331.

19. P. 288.

20. P. 149.

21. P. 336.

22. P. 336 n.2.

23. P. 336.

24. P. 246.

About Lord Acton himself, Maitland was at first a bit hesitant, but he had come to recognize him as "an immense benefit to the university." When Acton died in 1902, he wrote, "for myself I learnt to admire A. enormously—and on his merits, for I was not by any means prejudiced in his favour."<sup>25</sup>

Maitland's estimates of other contemporaries were usually generous, though honest, and he considered Sir Henry Maine and William Stubbs to be "two pillars of conservatism."<sup>26</sup> Nonetheless, he held the Bishop of Oxford in great esteem, even though Stubbs was to him "simply and solely the writer of certain books. I never spoke to him. I never saw him but once, and that in church."<sup>27</sup> Nor did they, apparently, correspond. Yet Maitland was hurt to be told "that the Bishop was 'sore'" at his dissent from the elder scholar's views on Roman canon law in the English Church.<sup>28</sup> "Reluctant to revise" and "impatient of the criticism of others," the bishop's academic dogmatism contrasts with his admirer's forbearance:<sup>29</sup>

I feel for him a respect so deep that if you told me that the republication of my essays [*Roman Canon Law in the Church of England*] would make him more unhappy than a sane man is whenever people dissent from him, I should be in great doubt what to do. It is not too late to destroy all or some of the sheets. I hate to bark at the heels of a great man whom I admire. . . .<sup>30</sup>

For Paul Vinogradoff he felt a special fondness, and for his scholarship he expressed the highest regard. Perhaps his own liberalism was why he was so fond of this medievalist whom the Russian authorities in 1904 forced to flee from Moscow University. Never did Maitland rejoice more, so far as the letters disclose—even when Balfour asked him to become the Regius Professor of History at Cambridge—than when Oxford appointed his friend to be Corpus Professor of Jurisprudence.

A forward-looking progressive, Maitland was ever liberal in his outlook. He would recommend to the Selden Society "people who are travelling on the up grade, young men," and he counted on youth to carry through his plans to get the history of English law written.<sup>31</sup> He

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25. P. 261.

26. P. 60.

27. P. 225.

28. Pp. 181-82.

29. A. G. RICHARDSON AND G. O. SAYLES, *THE GOVERNANCE OF MEDIEVAL ENGLAND* (1963),

p. 6.

30. P. 182.

31. P. 274.

encouraged young men and young women, too, such as Mary Bateson, to become historians, and several did. He had high hopes for G. J. Turner when he was young, and when Turner's *Select Pleas of the Forest* came out, Maitland wrote: "my heart rejoiced at the sight of Turner's book. It looks very good. I am not sure that it is not the best book that we [Selden Society] have issued."<sup>32</sup> His respect for Turner's ability grew into affection for "little T." or "Twidlums."<sup>33</sup> Finally, in the last extant letter he justified Turner to R. L. Poole and concluded, "I need not say more to you for I saw that you love the little man. I love him very much."<sup>34</sup> Turner, despite his dilatory foibles, kept faith and completed Maitland's unfinished Year Books. When flat on his back in April 1906, Maitland wrote to Lock about future Selden Society editors: "I should like to consider Carr carefully, for there seemed to be a chance that he would turn out to be just the sort of recruit that we want. We do want young men, don't we, with a little enthusiasm."<sup>35</sup> Sir Cecil Carr, Counsel to the Speaker, 1943-1955, edited volume 28 in 1913, volume 78 in 1960, and from 1958 to 1960 he was the Selden Society's President. Maitland was a good judge of men, and he inspired in them loyalty.

In the historian's quest for truth, and in self-discipline, Maitland himself was ever rigorous. One of the few times the letters show irritation and impatience was with the work of Hilaire Belloc in 1906:

I have read a queer screed by your friend Belloc, M.P. He had better stick to his novels I think . . . How the devil can Belloc know the income of an average English Jew of the 13th century?<sup>36</sup>

The year before, Maitland himself could still be "downright grateful" for "criticisms" of his biography of Leslie Stephen.<sup>37</sup> He accepted several, and then added, "however, I must say what I think is true and take the risk"—of offending living persons.<sup>38</sup> Yet historical truth, exact truth about the past, sometimes was elusive, even when the evidence seemed abundant. Maitland found a mystery, both exasperating and fascinating, in Leslie Stephen's resignation of his tutorship:

it is quite curious to discover how hard it may be to get the exact truth about facts that are not yet sixty years old. I have . . . a large correspondence concerning the resignation . . . and yet it is ob-

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32. P. 231.

33. Pp. 257, 377 n.2, 389.

34. P. 389.

35. P. 370.

36. P. 368.

37. P. 345.

38. *Id.*

vious to me that none of my correspondents really remember just what happened.<sup>39</sup>

Four weeks later, to the day, he was still intrigued by this "trivial little question," and "the result of many letters that I have written and received is making me more sceptical than I was before concerning all history sacred and profane."<sup>40</sup>

Maitland loved to amuse and to be amused. In a paragraph sparkling with wit, he analyzed canary birds, wild and commercial, and sent it on to amuse a faithful correspondent, Henry Jackson, the Regius Professor of Greek. To amuse the dying Leslie Stephen, he conjured up a dilemma about the Revolution of 1688 for the philosopher, Hobbes, "a delightful old person."<sup>41</sup> He put the question: Had Hobbes lived until 1688, "which would the old gentleman have disliked most, Revolution against Leviathan [James II] or a Leviathan with the Roman fisherman's hook in his nose?"<sup>42</sup>

Wit, humor, and a modesty not affected, affection, and a rare sense of proportion stand out as conspicuous traits belonging to the author of these letters. Gaiety and gladness, high spirits and joy are other qualities he possessed. How often he rejoiced at a friend's good fortune. Enthusiasm and energy, fairness and friendship, gratitude and generosity, tolerance and sensitivity towards the feelings of others, and integrity and truth are attributes of his personality. All these and other traits, too, inferrable from the letters, when put together, form a pattern of a most appealing person. But was he Frederic William Maitland?

These five hundred and one letters from Maitland's own hand are like a few tesserae from a large mosaic. Moreover, they are the red and gold and blue tesserae, not the black and gray ones, for Maitland seldom wrote when he was not in high spirits. "When I am 'down' I feel that I can't write and during the 'ups' I try to do a little bit of professional duty."<sup>43</sup> So even these letters, a prime kind of evidence, do not provide a complete figure of Maitland's personality. Yet one thing they do make evident: the sublimity of his character matched the fineness of his mind.

WILLIAM HUSE DUNHAM, JR.†

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39. Pp. 319-320.

40. P. 322.

41. P. 287.

42. *Id.*

43. P. 374.

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