

“The History of Law is the History of Ideas”

A Preface to Articles on Intellectual Legal History and Theory Posted on the Minnesota Legal History Project

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The subject of articles posted in this category in the archives of the Minnesota Legal History Project is intellectual legal history. They will address this question: what was the legal community thinking about during a particular period? What were the competing ideas about the law? And what influenced the formation, continuation and abandonment of those ideas? Here will appear articles, speeches and book chapters on a wide range of subjects written by lawyers, judges and other individuals about the law, the legal profession, the judiciary, the constitution as well as economics, culture, society, religion and politics.

The inspiration for posting articles on intellectual legal history and legal theory is the following biographical sketch of Frederic William Maitland by Charles Homer Haskins:

Frederic William Maitland was born in London 28 May 1850 and died at Las Palmas, Canaries, 19 December 1906. The grandson of Samuel R. Maitland, the historian of the “Dark Ages,” he was educated at Eton and Trinity College, Cambridge, where he came under the influence of Henry Sidgwick and won high distinction in philosophy. He entered Lincoln’s Inn in 1872 and was called to the bar in 1876. His interests, however, soon began to turn from the practice of law to its history, and in 1884 he was appointed Reader of English Law in the University of Cambridge, and in 1888 Downing Professor of the Laws of England, a chair which he held until his death. It is, however, characteristic of the English university system that the duties of his professorship consisted of general lectures to undergraduates on the elements of law rather than of the training of scholars in his special field, so that he formed no school of disciples who could develop or continue his work. His professorship, however, gave him considerable leisure for writing, and in spite of the ill health which soon drove him southward in the winter and finally cut him off in

the fulness of his activity, he accomplished an astonishing amount of productive labor.

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As an historian of English law Maitland has never been equalled. He was a finished jurist without the lawyer's reverence for form and authority; he combined the philosopher's power of analysis with the faculty of seeing the concrete; and he had the delicate sense of evidence, the flashing insight, the vivid imagination, and the human sympathy of the great historian. To him the history of law was the history not of forms, but of ideas; through it "the thoughts of men in the past must become thinkable to us." Yet law is not something abstract: its records "come from life," as he said of the Year Books, and must return to life. "English law is English history," he wrote; yet, first of English scholars, he saw it clearly against its Continental background. Unlike many jurists, however, he did not seek to reduce the manifold complexities of life to a few general principles and to clarify what had never been clear; he avoided too definite conclusions and rather let his mind play about a subject in all its variety and illuminate it from different angles.*

Minnesota lawyers and judges were influenced to an extent by the competing ideas expressed in these speeches and articles. This is because the diverse thinking of Minnesota's legal community reflects the equally diverse intellectual environment of the nation—that is, Minnesota legal history is American history.

A short preface will provide some context for each article. Suggestions for future articles are welcome, and submissions of complete articles more so. ■

* Charles Homer Haskins, "Frederic William Maitland," 51 *Proceedings of the American Academy of Arts and Sciences* 904-5 (1916). Haskins (1870-1937), a Harvard Professor, was the nation's foremost medievalist in the early twentieth century; the Haskins Society is named in his honor; and he was the father of George L. Haskins (1915-1991), a professor of law and legal historian at the University of Pennsylvania Law School for decades.

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