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### **Preface to this study of F.W.Maitland**

In order to understand this account of the work of F.W.Maitland it is essential to understand how I came to focus on his ideas. In the **Origins of English Individualism; the Family, Property and Social Transition** (1978) I tried to explore the origins of our modern world. There were, however, several unresolved issues left by the book. One concerned the precise dating and sources of modern individualism. I was unable to explore in any depth where this individualism had come from and why England developed in a way that made it so different from most of continental Europe. Another omission concerned the wider context of power relations, particularly the relations between politics and economics within feudalism. A further area concerned the question of how people as individualistic as those I uncovered achieved so much. In my reaction against certain theories concerning the nature of medieval peasantry, I went to the other extreme and largely reduced the English to Robinson Crusoe-like figures. This was perhaps a healthy corrective at the time, but clearly it is difficult to explain the power and influence of modern civilizations if we do not understand what holds them together as much as what splits them into tiny fragments.

The first part of this book revolves round the thought of the man whom I have found most helpful in re-thinking the past and who was the most important single source of inspiration for my earlier book. In studying the work of Maitland I will try to explore some of the difficulties mentioned above and in doing so extend a series of later attempts to move beyond my work on English individualism.<sup>1</sup> In the way in which I have treated him, I have seen Maitland as the man who finally solved the problem of combining individualism and associations in a new way.

This is therefore a polemical work and so it should not be read as if it were a highly objective and critical study. As will be clear, I admire Maitland greatly. Inevitably, though, I have found the Maitland I sought, fitting his ideas into my own arguments and experience, though hopefully without distorting his work too much. Inevitably, also, my glosses and paraphrases or summaries of his ideas will sometimes go beyond what he would have said or over-simplify his message. Constantly I use phrases or words which have a slightly different sense from those which he used over a hundred years ago. The reader needs to be warned of all this, but I hope that I have quoted enough of Maitland to make it possible to check most of my interpretations against his texts.

I am fascinated by Maitland because he seems to have been struggling throughout his life with something more than merely technical legal and historical problems. I believe he was facing the wider

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<sup>1</sup> For some of the later work, see Macfarlane, **Marriage and Love** (especially the concluding chapter), **Culture of Capitalism, Savage Wars of Peace, Riddle of the World**.

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problem of how to combine liberty, equality and fraternity. Through his work, I would argue, he solved more satisfactorily than anyone else, the problem of the dichotomy between group (status-based) and individualistic (contractual) civilizations which has faced many great thinkers. Having solved the problem, Maitland was able to sketch out the powerful mixture of rigidity and flexibility which lies behind much of the achievements of those living in modern societies.

This interpretation of Maitland is different from those of almost all those who have previously written about him. Instead of treating him mainly as a great historian or legal historian (both of which are incontestable), I have tried to set him implicitly and at times explicitly alongside three of the greatest political philosophers, Montesquieu, Adam Smith and De Tocqueville. For I believe that if we consider his early interests in philosophy, and look behind his writings, we can claim that he is of the same rank and shares the same interests as these great thinkers. Like Tocqueville who only used 'America' as a pretext to write about 'democracy' and 'modernity', so I believe Maitland was ultimately using the history of English law as a way of trying to solve the problems of the origins and nature of the modern world.