

From: Alan Macfarlane, **The Making of the Modern World: Visions from the West and East** (Palgrave, London, 2002).

### MAITLAND ASSESSED

Maitland died over ninety years ago and a huge amount of research has been undertaken along the lines he sketched out. Before we accept his account of the making of the modern world it is worth briefly summarizing the modifications and corrections to his work since his death.

There have been a number of detailed assessments which summarize the modifications. James Cameron's **Frederick William Maitland and the History of English Common Law**(1961), points out that Maitland's theory of the origin of English boroughs is no longer accepted and that in relation to Roman law, Bracton was probably a better Romanist than Maitland believed. He also notes that as Holdsworth and others have shown, Maitland exaggerated the danger of a 'Reception' of Roman Law in England in the sixteenth century. Yet, in relation to ninety-five percent of Maitland's work, Cameron suggests that the interpretations he put forward are still trustworthy. H.E.Bell's **Maitland, a Critical Examination and Assessment**(1965) echoes the above three criticisms and adds minor modifications in relation to three particular topics.<sup>1</sup> Otherwise, again, he leaves almost all of the findings intact, for instance pointing out that in the debate about the pre-Norman roots of feudal relations, scholarship has swung back in favour of Maitland's interpretation.<sup>2</sup> Bell generally endorses the vision of a man he describes as 'the greatest English historian'.<sup>3</sup> In relation to Maitland's **History of English Law**, Bell places it as the third of the great syntheses of English law, alongside Bracton and Blackstone, and notes 'how very much later scholars have depended on Maitland's groundwork, and, second, how rarely, in matters of great importance, they have found serious fault with it'.<sup>4</sup>

More recently, G.R.Elton's **F.W.Maitland** (1985) summarizes the same set of minor criticisms. To these he adds three other technical criticisms.<sup>5</sup> Elton also draws attention to one other area of challenge.

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<sup>1</sup> That is scutage, **Quia Emptores** and the writ of trespass, all technical matters.

<sup>2</sup> Bell, **Maitland**, 30

<sup>3</sup>Bell, **Maitland**, 2.

<sup>4</sup> Bell, **Maitland**, 68

<sup>5</sup> He argues that Maitland's disparaging view of the law

This was a view put forward by F.C.Milsom in his introduction to the re-print of **The History of English Law**(1968). Milsom suggested quite tentatively that while Maitland's picture of a flat, two-dimensional world in law was correct by the later thirteenth century, possibly Maitland underestimated the strength of feudal power relations between about 1160 and 1260.

It is worth pointing out that even if Milsom turns out to be right, this only makes a small difference to one sub-aspect of Maitland's work. Milsom himself recognizes this when he writes 'if all this is right, and if the modifications required now seem important, they are not important when compared with the original picture.'<sup>6</sup> When he returned to the same allegations fourteen years later, Milsom remained diffident about whether his 'heresy' was right at all and concluded with the words, 'And now the dwarf must stop grumbling about his vantage-point on the giant's shoulder...'<sup>7</sup> Elton considers Milsom's claim that 'Maitland failed to give proper weight to the social structure of a feudal or seigneurial world'.<sup>8</sup> He summarizes Milsom's view that 'Maitland antedated the settled and sophisticated state of the law by a hundred years at least, whereas in his view the feudal relationship predominated down to the end of the twelfth century over the King's rule...'<sup>9</sup> As Elton writes, 'In the end, the two pictures differ in emphasis rather than essentials...'<sup>10</sup> In any case, even this minor heresy may be wrong: 'No attempt has yet been made to assess this new interpretation, and for all I know Milsom may not in the end prevail.'<sup>11</sup> That the heresy has gained so little ground either from its original proponent or others in the eighteen years of its life leads one to wonder as to its importance and plausibility.

When we consider that some five thousand pages of detailed findings, written about a hundred years

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book **Fleta** is too strong, that his theory that Domesday Book was a 'geld' book is wrong, and that Maitland has ignored the plaint by bill.

<sup>6</sup> Milsom, in Maitland, **History**, I, lxxiii.

<sup>7</sup> Milsom, 'F.W.Maitland', 281

<sup>8</sup> Elton, **Maitland**, 45

<sup>9</sup> Elton, **Maitland**, 47

<sup>10</sup> Elton, **Maitland**, 46

<sup>11</sup> Elton, **Maitland**, 48

ago, have been modified in only a few minor emphases and one or two facts, and that the bulk of Maitland's edifice still stands, we can begin to understand why he has an almost god-like status among historians who know the problems he faced and the elegance of his solutions.

The great legal historian Vinogradoff disagreed with Maitland on some specific points, but shortly after Maitland's death wrote of him as 'the greatest legal historian of the law of England' and as a man to whom lawyers, historians and sociologists were equally indebted: 'lawyers because of his subject, historians because of his methods, sociologists because of his results.'<sup>12</sup>

J.H.Hexter referred to Maitland as 'the greatest of English historians' in his book on modern historians.<sup>13</sup> R.G.Collingwood referred to the 'best historians, like Mommsen and Maitland'.<sup>14</sup> Denys Hay in his overview of western historiography describes him as a 'giant' who, with Marc Bloch, is one of the 'two greatest historians of recent times'.<sup>15</sup> Bloch himself referred to 'the great English jurist Maitland'.<sup>15</sup> The medievalist Helen Cam ends her preface to his **Selected Essays** by concluding fifty years after his death. 'Let us say with Powicke, "Maitland is one of the immortals" and leave it at that.'<sup>16</sup> G.O.Sayles wrote that 'In the range of his interests, the fineness of his intellect, and the considerable bulk of what he wrote in barely twenty-five years, Maitland has no match among English historians.'<sup>17</sup> Part of the reason he has not been more generally appreciated is explained by John Burrow. Comparing him to the great William Stubbs, Burrow writes that 'Maitland's was a comparable mind, sharper, finer, more theoretical and impressionable, but in Maitland's case ... there is no single work which is so obviously the summation of his talents and learning.'<sup>18</sup>

K.B. McFarlane wrote in 1965 that if when Seccombe talked in his obituary of Maitland of 'the

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<sup>12</sup> Vinogradoff, 'Maitland', 288-9

<sup>13</sup> Hexter, **Historians**, 156

<sup>14</sup> Collingwood, **Idea**, 127

<sup>15</sup> Bloch, **Feudal Society**, I, xxi

<sup>16</sup> Maitland, **Selected Essays**, xxix

<sup>17</sup> Sayles, 'Maitland'.

<sup>18</sup> Burrow, **Liberal Descent**, 131

shallowness of the ripple caused by the passing of England's greatest historian since Gibbon and Macaulay', he 'means to suggest that Maitland's greatness as a historian fell short of the heights attained by Gibbon and Macaulay, he did his friend an injustice. Probably he wished only to indicate how select was the company to which Maitland belonged. Few with any right to an opinion would find fault with that estimate for claiming too much. As we look back over the whole range from a distance, we can see that the summit of Mount Maitland overtops them all. What other English historian has combined such exact scholarship with so much imaginative insight, intellectual grasp, and brilliance in exposition. Outside Britain his only rival is Mommsen.<sup>19</sup> Even his most learned critic, Milsom, writes of him as 'a still living authority'. Maitland, he wrote, 'would probably wish his work to be superseded. There is little sign that this will happen soon.'<sup>2</sup>

In a recent symposium, a number of distinguished medieval historians and two lawyers have combed through his great work on the **History of English Law** a hundred years after its publication. They have found very little to quibble with, making only minor technical adjustments to his account.<sup>20</sup> Often where they do differ in interpretation, this merely lends weight to Maitland's more general argument. For example, Patrick Wormald suggests three 'heresies' but concludes that 'one outcome of what I am arguing would be to buttress a central plank in Maitland's case', namely that 'the history of law in England and in other European countries differed because the king of England was in command of his courts... To me that seems an essential truth...'<sup>21</sup> Likewise, in a foreword to a new edition of **Domesday Book and Beyond**, J.C.Holt has pointed to some technical errors in the book, yet still recommends it as 'the greatest single book on English medieval history'.<sup>22</sup>

Subsequently Wormald has produced the first volume of his magisterial two volume work on **The Making of English Law**. He pays tribute to Maitland as 'the greatest legal historian of all time', an 'Immortal'.<sup>23</sup> He suggests that Maitland believed that the Common Law had sprung with 'marvellous suddenness' from the head of King Henry II (1154-89) and that this indicates that Maitland under-estimated the importance of its roots in the Anglo-Saxon period.<sup>24</sup> Since, as I have argued above,

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<sup>19</sup>McFarlane, **Mount Maitland**

<sup>20</sup> See the essays in Hudson (ed.), **History of English Law**

<sup>21</sup> In Hudson (ed.), **History of English Law**, 19

<sup>22</sup> Holt, 'Foreword', v

<sup>23</sup> Wormald, **Making**, xi, 17

<sup>24</sup> Wormald, **Making**, x

I do not interpret Maitland in this way, but rather as stressing the Anglo-Saxon origins of English civilization at a wider level, I do not find it necessary to correct Maitland. Everything which Wormald argues merely reinforces what I think Maitland was more generally arguing. For example, Wormald writes that 'Henry II made law like no other twelfth-century king, because he inherited a system of royal justice that was already uniquely old and active'.<sup>25</sup> Or again he writes that 'the kingdom where something singular happened to law in the twelfth century was also one where something without European parallel was happening in the tenth and eleventh. Henry II legislated as Alfred, Aethelstan, Edgar and Cnut had, but as the last Carolingians, Ottonians and Capetians had not.'<sup>26</sup>

Thus it may well be true that Wormald has spotted an inconsistency in Maitland's presentation of his argument, but the general thrust of Wormald's enterprise serves only to re-inforce the story which Maitland told about the peculiar nature of English history. The theme of the projected second volume is announced on the back cover of the first and again fits extremely well with what I take to be Maitland's more general argument. We are told that the book will show 'how a formidable system of formal and informal control was established by England's first kings in the fields of Church law, crime and punishment, law-courts and property.' The achievements of Henry II and his successors would have been impossible without this. I believe that Maitland would have been delighted with Wormald's conclusion that 'England has a unique legal history because it is the oldest continuously-functioning state in the world.'

Another very recent work which basically endorses much of the argument for continuity and Anglo-Saxon origins which Maitland advanced is James Campbell's **The Anglo-Saxon State**. In a number of reprinted essays he argues, for example, that the 'individual' characteristics which I detected in medieval and early modern England, on the basis of reading Maitland and other sources, 'existed earlier'. He relates this to other phenomena in Anglo-Saxon England: 'a high proportion of land transfers were by sale; women had very considerable rights; legal procedures rather than being, as used to be argued, archaic and irrational by our standards, have been powerfully argued to be perfectly sensible and rational in a modern sense, with much stress on written evidence: there was a lot of literacy in that society.'<sup>27</sup>

He stressed again and again the commercial sophistication, the strong sense of national unity, the powerful state apparatus, the relative weakness of kinship, the seeds of democratic politics and other factors which fit perfectly with Maitland's account. Maitland's work is very frequently cited and almost always endorsed. That arguably the most learned Anglo-Saxon and early medieval scholar of his generation should continue to support the Stubbs-Maitland vision in a publication nearly a hundred years

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<sup>25</sup> Wormald, **Making**, xi

<sup>26</sup> Wormald, **Making**, 19

<sup>27</sup> Campbell, **Anglo-Saxons**, 27-8

after Maitland's death is worth noting.

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We have seen that Maitland took the argument on a stage by documenting the theories suggested by Tocqueville and others. They put forward a hypothesis of what had happened based on some historical research, but were unable to go deeply into the most important case, England, for lack of sources and training. Maitland had the training and sources and was one of the leaders of the great movement of the last quarter of the nineteenth century which opened up the public records and printed selections for the first time. He was a great editor and student of original documents, from Anglo-Saxon times onwards. His intuitions were checked against, and also arose from, a deep understanding of historical documents. Yet he only had a few years of healthy life in which to do this, and there were some tasks he bequeathed to his successors. We earlier saw the fruits of this labour in various publications and the founding of the Selden Society.

Maitland was well aware that he was only just scratching the surface. In the introduction to **Select Pleas in Manorial and Other Seignorial Courts** he wrote that 'A few sets of rolls completely printed beginning in the thirteenth and ending in, let us say, the sixteenth century, would be of inestimable value, especially if they began with surveys or 'extents' and ended with maps.'<sup>28</sup> He was well aware that vast treasures awaited the social and legal historian in areas of local records which he could only touch on.

His own work was mainly on early manorial records and those of the central courts of the Common Law. He was unable to explore thoroughly whole ranges of other documents, the rich records of equity jurisdiction, local ecclesiastical records and so on. And although he did make a more detailed study of some of the Cambridgeshire area, he never really undertook a detailed study of one village or set of manors which would bring together the records.

Maitland was the leading figure in the first archival revolution, when the central records became usable and used for the first time. The second archival revolution took place roughly in the quarter of a century after 1950 when local history and the re-organization of the local record offices suddenly revealed an immense new set of materials.<sup>29</sup> These materials allow us to see how far Maitland's still somewhat intuitive conclusions were substantiated by microscopic work on how the system he postulated actually worked at the local level. This forms a fascinating case rather similar to a biologist predicting certain things would be found when the microscope becomes strong enough. The work I briefly summarize below allows us to test his conclusions.

Large quantities of historical materials at the local level have been published since Maitland died,

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<sup>28</sup> **Select Pleas**, xi-xii

<sup>29</sup> For one overview, see Macfarlane, *Guide*.

particularly by record societies. There have also been a number of well-known studies of villages and manors. The study I have been engaged on since 1970 with my colleagues, and particularly Sarah Harrison, is somewhat different from these. Firstly we have endeavoured to track down all the records for a particular parish, Earls Colne in Essex, over the period from the earliest records through to 1850, some five hundred years. Secondly all these records have been typed into a computer, published on microfiche and are now available on the World Wide Web.<sup>30</sup> We thus have available, for the first time, very long runs of manor court rolls, which can be combined with other excellent manorial records including a detailed map of 1598, to reconstruct landholding over half a millenium. This material is complemented by the extensive records generated by the ecclesiastical authorities, including parish registers and wills, and by the central courts, in particular the rich and hitherto largely unused records of the equity courts (for example Chancery). At one period we are also taken down to the personal level through the diary of Ralph Josselin, the vicar of Earls Colne, through the middle part of the seventeenth century.<sup>31</sup>

All this material has been indexed very extensively and family histories and land patterns have been re-constructed. This has taken a team effort involving several computer programmers and many person-years of work. It is unlikely that it will ever be repeated, but it does give us a chance to see how well Maitland's vision works.

It is not possible to do more than summarize some impressions from this dense mass of material. In relation to some of Maitland's major arguments, it would seem that his preliminary hunches fit the data very well. The Earls Colne documents show that English law and society had a continuous evolution from 1200 onwards and that there was no great break, no 'transformation' from one kind of civilization ('feudal', 'peasant') to another ('capitalist', 'individualist'). Anyone who reads through the documents for Earls Colne, and who investigates how the system worked which generated them, will endorse Maitland's vision. There is change, but the deeper structures have great force and evolve without any revolutionary break. Even if we go behind the documents as much as we can, we can see no shadow of the Marxist or other transformations.

Maitland had argued that the English system feels very different from what one reads about in relation to France or much of 'peasant' Europe during the period between the fourteenth to eighteenth centuries. For example, that the attachment to the land in England is far weaker than in France and the strength of the family-land bond is never the same. The conclusion of Maitland concerning the English case again seems fully borne out by the Earls Colne documents.

Maitland had argued that the system in England was never based on the idea of a 'village community', with 'community' ownership of land or other assets and a deeply immobile society where blood and neighbourly relations formed people into a 'gemeinschaft'. Maitland's description of the mixture of

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<sup>30</sup> Ref. to Web address XXX

<sup>31</sup> See Macfarlane, *Family Life and Diary*.

individualism and association appears to capture how the system worked in Earls Colne very well indeed, and there is no sign between 1350-1850 of the movement from community to individualism.

Maitland had suggested that the English system consisted of a complex web of rights and duties which was both centralized and de-centralized, and which nested people in levels and layers. A study of the land and other records of Earls Colne is beautifully illuminated by Maitland's account of how feudalism worked, and in particular the detailed descriptions in some of the large court cases in Earls Colne, involving such notables as the Earl of Oxford and Lord Treasurer Burleigh, illustrate the immensely sophisticated links between power and property which Maitland analysed so well.

Maitland presented a picture of an unstable, meritocratic and mobile, social structure in which people were constantly jockeying for wealth. In other words, there were no castes, no hereditary blood ranks, but rather wealth could buy status. This is illustrated throughout the history of Earls Colne, with property changing hands, with new rich London merchants entering the village, with children of the same parents rising and dropping in wealth and rank.

Maitland suggested that the family system was based on negotiation and a basic premise of equality, for instance that there was an absence of patriarchal male power over children and women. There is abundant evidence in Earls Colne, again especially in the equity records, but also in wills and other records, of the relative autonomy and power of women and children. There is, as Maitland argued, no evidence of a gradual improvement in women's status over the centuries and, if anything, the women of the fourteenth to sixteenth century appear more autonomous than those of the nineteenth.

Maitland documented the power and ubiquity of law and due process. This is everywhere apparent; the heart of the system in Earls Colne was the multiplicity of courts, the respect for law, the widespread knowledge of and involvement of people down to almost the bottom of the society in the legal system. It was, as Maitland realized, a society soaked in law, but law of a curiously confrontational, customary and rights-based kind.

Maitland suggested that what held the system together was the ability of non-related persons to work together in small associations and units based on the concept of the Trust. Even at the local level of Earls Colne we can see his ideas reflected, often indirectly, in a thousand ways. We can see it in the organization of the school, the church, the manor, the county administration; the way in which the clergy, the teachers, the jurors in the manorial courts, the small nonconformist sects worked. All this and many other signs show us a world where people collaborated to run their own activities with their neighbours, friends, co-religionists or whatever in numerous informal associations. Many of these were based on trust and honesty, on time freely given to benefit not the community as a whole, but either the association or something at a higher level, though it was not yet called the State. Thus the individualism was curbed by the proliferation of associations and by the obligations to work with others.

In a short book such as this, all this can only really be asserted. I can only affirm that in studying Earls Colne over the last thirty years, in comparing it to another English parish in the north of England, Kirkby Lonsdale, and by comparing both of these to what I have read about as an anthropologist, and a long study of a Himalayan village and the history of Japan, I have found that Maitland's vision fits and

illuminates the English case beautifully.<sup>32</sup> I did not undertake the village study to test Maitland, but after the event, when we compare his hypothetical model against the superb documentation for one English parish for five hundred years, it is impossible to find anything that he seems to have seriously misjudged.

This is more than can be said for many of those who have come after him and it is another hint that we can have some confidence in his conclusions. Inspired by Maitland's heritage, we have made available many thousands of pages of original documents against which his vision can be tested.<sup>33</sup>

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Since Maitland's account, if correct, would be such an elegant demonstration of the accuracy of the guesses of Montesquieu, Smith and Tocqueville, it is worth assessing his authority by one further test. Although he was deeply knowledgeable about continental law and far from being a 'little Englander' we may wonder whether England was really so odd, and whether the divergence during the twelfth to fifteenth centuries is as real as Maitland argued. In order to pursue this, we can look at the problem from another angle, through the eyes of arguably the only other medievalist who can vie with Maitland in width and depth, namely Marc Bloch. What did Bloch think of that comparison between continental and English development which was at the centre of the theories of all these thinkers?

In relation to England, Bloch seems to have developed a three-period model which is in many respects parallel to Maitland's. The Anglo-Saxon period constituted the first phase. In his great work on **Feudal Society**, Bloch noted that from Anglo-Saxon times there was something independent and different about England, it was 'a society of a Germanic structure which, till the end of the eleventh century, pursued an almost completely spontaneous course of evolution.'<sup>3</sup> Part of the reason for its oddness, as Maitland had argued, was that 'Britain lacked that substratum of Gallo-Roman society which in Gaul...seems clearly to have contributed to the development of class distinctions.'<sup>4</sup>

Then, as Maitland had argued, there was about a century and a half of considerable overlap, namely between about 1100 and 1250. 'Despite its distinctive features, the course of development in England presented some obvious analogies with that in the Frankish state.'<sup>5</sup> Thus the 'evolution of the **de facto** nobility at first followed almost the same lines as on the continent - only to take a very different direction in the thirteenth century.'<sup>6</sup>

The divergence began pretty soon for, again echoing Maitland, Bloch argued that from about the end of the twelfth century the relations between the power of the Crown and the lords developed in a different direction in England. 'It is here that the two paths noticeably diverge. In England from the twelfth century onward royal justice made itself felt with exceptional force.' In France, on the other hand, 'the evolution of royal justice lagged a good century behind that of England and followed a totally

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<sup>32</sup> Macfarlane **Resources**; Macfarlane 'Law and custom in Japan'; Macfarlane, '"Japan" in an English Mirror'.

<sup>33</sup> Website address XXX

different course.<sup>7</sup>

There were several areas where the growing divergence from the later twelfth century showed itself. Among these were the following. The 'distinction between high and low justice always remained foreign to the English system.'<sup>34</sup> The allodial estates common on the continent, which prevented the final penetration of feudal tenures to the bottom of society, were totally extinguished in England, where all land was ultimately held of the king and not held in full ownership by any subject. England was exceptional in not having private feuding sanctioned after the Conquest; it therefore avoided that disintegrated anarchy which was characteristic of France.<sup>35</sup> Indeed, English feudalism, we are told 'has something of the value of an object-lesson in social organization', not because it was typical of feudal society but because it shows 'how in the midst of what was in many respects a homogeneous civilization certain creative ideas, taking shape under the influence of a given environment, could result in the creation of a completely original legal system.'<sup>36</sup> It is this 'completely original legal system' which provides the key to the problems which we have been discussing.

At a deeper level, Bloch was saying that, as Maitland had argued, England had moved a long way away from that feudalism through which much of the continent had passed. Bloch noted the centralization and uniformity of the English political and social system. This was different from his major feature of feudalism, devolution, disintegration and the dissolution of the state. The contrasts come out when he compares England and France. 'In England there was the Great Charter; in France, in 1314-15, the Charters granted to the Normans, to the people of Languedoc, to the Bretons, to the Burgundians, to the Picards, to the people of Champagne, to Auvergne, of the **Basses Marches** of the West, of Berry, and of Nevers. In England there was Parliament; in France, the provincial Estates, always much more frequently convoked and on the whole more active than the States-General. In England there was the common law, almost untouched by regional exceptions; in France the vast medley of regional "customs".<sup>37</sup> Thus England was uniform and centralized, France varied and regionalized. Because 'the public office was not completely identified with the fief', Bloch argued, 'England was a truly unified state much earlier than any continental kingdom.' Furthermore, the English parliamentary system had a 'peculiar quality which distinguished it so sharply from the continental system of "Estates"' which was linked to 'that collaboration of the well-to-do classes in power, so characteristic

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<sup>34</sup>Bloch, **Feudal**, II, 370

<sup>35</sup>Bloch, **Feudal**, I, 128

<sup>36</sup>Bloch, **Feudal**, I, 274

<sup>37</sup>Bloch, **Feudal**, II, 425-6

of the English political structure...<sup>38</sup>

Related to these differences was a peculiar status system. England had no formal blood nobility, while such a nobility did develop in France. It was true that 'England had an aristocracy as powerful as any in Europe - more powerful perhaps...' At the top was a narrow group of earls and 'barons', who were in the thirteenth century being endowed with privileges. Yet somehow these privileges took a different shape from those on the Continent. They were 'of an almost exclusively political and honorific nature; and above all, being attached to the **fief de dignite**, to the "honour", they were transmissible only to the eldest son. In short, the class of noblemen in England remained, as a whole, more a "social" than a "legal" class.' Although, of course, power and prestige lay with this group, it was 'too ill-defined not to remain largely open.' Thus 'In the thirteenth century, the possession of landed wealth had been sufficient to authorize the assumption of knighthood, in fact to make it obligatory.'<sup>39</sup> Therefore 'in practice, any family of solid wealth and social distinction' never 'encountered much difficulty' in obtaining permission to use hereditary armorial bearings.<sup>40</sup>

Bloch's story is that there was a confusion of ranks up to the Norman invasion, and during the crucial twelfth and thirteenth century England did not move in the continental direction. No nobility based on law and blood, no incipient 'caste' in Tocqueville's sense, emerged. This, as his predecessors had argued, gave the English aristocracy their enduring flexibility and power. 'It was mainly by keeping close to the practical things which give real power over men and avoiding the paralysis that overtakes social classes which are too sharply defined and too dependent on birth that the English aristocracy acquired the dominant position it retained for centuries.'<sup>41</sup> It is not surprising that Bloch should head the section, 'The Exceptional Case of England.' At the level of European feudalism, Bloch had demonstrated that indeed, England, as Tocqueville had much earlier guessed, had not moved from contract (feudalism) to status (caste ranks). It had not reversed Maine's famous dictum that 'the movement of the progressive societies is from status to contract'.

Likewise in the lowest rank, there developed something strikingly unlike the situation in France. It is in the same period, namely the second half of the twelfth century, that another structural difference became visible, the peculiar position of the English villein. Bloch points out 'How often has English villeinage been treated as the equivalent of the French **servage** in the 13th, 14th and 15th

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<sup>38</sup>Bloch, **Feudal**, II, 430, 371

<sup>39</sup>Bloch, **Feudal**, II, 331

<sup>40</sup>Bloch, **Feudal**, II, 331

<sup>41</sup>Bloch, **Feudal**, II, 331

centuries...But this is a superficial analogy... Villeinage is in fact a specifically English institution.' This was a result of 'the very special political circumstances in which it was born', namely that 'As early as the second half of the 12th century...the kings of England succeeded in getting the authority of their courts of justice recognized over the whole country.'<sup>42</sup> The differences grew wider and wider so that 'The French serf of the 14th century and the English serf or villein of the same period belonged to two totally dissimilar classes'.<sup>43</sup> Elsewhere he elaborates on how, 'in this remarkably centralized country' the royal authority could re-capture runaway serfs.<sup>44</sup> This was because under the influence of the Normans and Angevins, 'the judicial powers of the crown had developed to an extraordinary degree.'<sup>45</sup> He confirms Maitland's view that in the 'England of the Norman Kings there were no peasant allods' while these were present in France.<sup>46</sup>

All of these structural differences set England along a very different path to much of continental Europe. Bloch even linked these differences to a growing divergence in relation to liberty and property. In his essay 'A Contribution Towards a Comparative History of European Societies' originally published in 1928, Bloch elaborated the effects of some of these differences. English agriculture became 'individualistic' while French agriculture remained 'communal', A 'new notion of liberty' was born in England where 'no man, not even the King, may come between him [the serf] and his lord. But there was nothing like this in France. There, royal justice was much slower in developing, and its progress took a quite different course. There was no great legislative enactments like those of Henry II of England.'<sup>47</sup> Thus although England and France were 'neighbouring and contemporary societies' the 'progress and results' of their individual development 'reveal such profound differences of degree that they are almost equivalent to a difference of kind...'<sup>48</sup>

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<sup>42</sup>Bloch, **Land**, 58-9

<sup>43</sup>Bloch, **Land**, 61-2

<sup>44</sup>Bloch, **Feudal**, I, 271

<sup>45</sup>Bloch, **Feudal**, I, 272

<sup>46</sup>Bloch, **Feudal** I, 248

<sup>47</sup>Bloch, **Land**, 60-1

<sup>48</sup>Bloch, **Land**, 66

Thus we see in Bloch, as in Maitland, a narrative which basically fills out the guesses of earlier theorists. Some of the roots of our peculiar modern world lie in the Anglo-Saxon period. For a century or a little more England and the continent converged. then, from the twelfth century, law and social and political structures diverged. Much of the continent moved towards Tocqueville's caste and absolutism. For particular reasons one island retains a balance of forces and a dynamic tension between parts of the institutional structure. This would provide shelter for the inventions and ideas of its larger European neighbours.

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F.W. Maitland's work has tended to be set within too small a frame. Most of those who write about him are historians of England or English lawyers, specialists who are technically equipped to follow parts of his argument. They do not often set him within a European frame or a great tradition of intellectual endeavour. They do not see his real interest in the questions of political economy stemming from his early training and fellowship dissertation; they do not consider his extended temporal frame, a metahistory of England from the seventh to nineteenth centuries. They are too close to him.

When we step back, as we now can do since he is quite distant from us, we can see, as K.B.McFarlane put it in his metaphor, that he is indeed a mountain rising far above the technical history of medieval English law, and far more than merely a great editor of English documents, though he is both of those things as well. His central problems concerning the origins of liberty and equality are the same as those of Montesquieu, Tocqueville and, as we shall shortly see, Fukuzawa. And his answers, though limited to one country, make up for geographical width by their time-depth and their deep erudition.

Maitland was not a believer in inevitable progress. He was not a 'Whig' historian. Yet he believed in growth, change with continuity, the deep roots of English liberty. He was not an English chauvinist, yet he was proud of English law and saw its virtues despite, or perhaps partly because of, its muddle and empiricism. He was not a vulgar positivist; he realized that historical work depended critically on intuition, hunches, guesswork. Yet he equally realized that careful research into contemporary documents was necessary to prove and correct the intuitions. He moved with ease between theory and data, between minute and accurate detail and grand overviews. He was both one of the best of local historians and also a thinker on an international scale. As Schuyler wrote, the 'combination of broad views and minute investigations, of what Macaulay called landscape painting and map making in the writing of history, is one of his marked characteristics.'<sup>49</sup>

Driven on by the sense of an impending early death Maitland tried to solve within a period of some twenty years the same riddle as earlier thinkers. How had the strange modern world, with its glimpses of liberty, equality and wealth, been made? Why had it found its expression in a certain part of the world and in its earliest and definitive form in England? What precisely were the constituents of this peculiar

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<sup>49</sup> Schuyler, **Maitland**, p.20

civilization? His solutions, much more deeply based on documents, were in substance the same as those put forward by Montesquieu, Adam Smith and Tocqueville. The essence of modernity lay in the separation of spheres, the tensions between religion, politics, kinship and economy. Out of these contradictions emerged certain liberties and a dynamic energy. Maintaining the balance between them was extraordinarily difficult. What the others had guessed was that the origins must lie somewhere in the period of the Germanic invasions. What Maitland showed was that while the trail did indeed run into darkness there, it was possible to move back and forth along the trail since that time.

If one did so, one could see that maintaining the balance was a gigantic accident. A whole set of factors, from the general (the nature of islandhood, the accident of the Norman Conquest, the absence of Cathar heresies and the inquisition), to the individual (the personality of Henry II or Edward I) played their part. What happened on one small island both reflected what happened on its neighbouring continent, but also transformed it. Like some new species of finch on the Galapagos, there developed a new kind of civilization. This would then be magnified and taken to its extreme through other accidents, the development of America, the expansion of the British Empire and the first industrial revolution and so to the modern world. With Maitland we have a developed theory which puts forward a believable answer to one part of the question of how the modern world has been made.

- 1.Hay, **Annalists**, 169
- 2.Maitland, **History**, I, lxxiii
- 3.Bloch, **Feudal**, I, 181
- 4.Bloch, **Feudal**, I, 184
- 5.Bloch, **Feudal**, II, 370
- 6.Bloch, **Feudal**, I, 184
- 7.Bloch, **French**, 127, 128