A history of French public law

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I might instance in other professions the obligation men lie under of applying themselves to certain parts of History; and I can hardly forbear doing it in that of the Law,—in its nature the noblest and most beneficial to mankind, in its abuse and debasement the most sordid and the most pernicious. A lawyer now is nothing more (I speak of ninety-nine in a hundred at least), to use some of Tully’s words, "nisi leguleius quidem cautus, et acutus praecepio actionum, cantor formularum, aenepe syllabarum." But there have been lawyers that were orators, philosophers, historians: there have been Bacons and Clarendons. There will be none such any more, till in some better age true ambition, or the love of fame, prevails over avarice; and till men find leisure and encouragement to prepare themselves for the exercise of this profession, by climbing up to the vantage ground (so my Lord Bacon calls it) of Science, instead of grovelling all their lives below, in a mean but gainful application of all the little arts of chicane. Till this happen, the profession of the law will scarce deserve to be ranked among the learned professions. And whenever it happens, one of the vantage grounds to which men must climb, is Metaphysical, and the other, Historical Knowledge. Henry St. John, Viscount Bolingbroke, *Letters on the Study of History* (1739).

Whoever brings a fruitful idea to any branch of knowledge, or rends the veil that seems to sever one portion from another, his name is written in the Book among the builders of the Temple. For an English lawyer it is hardly too much to say that the methods which Oxford invited Sir Henry Maine to demonstrate, in this chair of Historical and Comparative Jurisprudence, have revolutionised our legal history and largely transformed our current text-books. — Sir Frederick Pollock, Bart., *The History of Comparative Jurisprudence* (Farewell Lecture at the University of Oxford, 1903).

No piece of History is true when set apart to itself, divorced and isolated. It is part of an intricately pieced whole, and must needs be put in its place in the netted scheme of events, to receive its true color and estimation. We are all partners in a common undertaking,—the illumination of the thoughts and actions of men as associated in society, the life of the human spirit in this familiar theatre of co-operative effort in which we play, so changed from age to age, and yet so much the same throughout the hurrying centuries. The day for synthesis has come. No one of us can safely go forward without it. — Woodrow Wilson, *The Variety and Unity of History* (Address at the World’s Congress of Arts and Science, St. Louis, 1904).

A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect. — Sir Walter Scott, "Guy Mannering," c. XXXVII.
CONTINENTAL LEGAL HISTORY SERIES

GENERAL INTRODUCTION TO THE SERIES

"All history," said the lamented master Maitland, in a memorable epigram, "is but a seamless web; and he who endeavors to tell but a piece of it must feel that his first sentence tears the fabric."

This seamless web of our own legal history unites us inseparably to the history of Western and Southern Europe. Our main interest must naturally center on deciphering the pattern which lies directly before us,—that of the Anglo-American law. But in tracing the warp and woof of its structure we are brought inevitably into a larger field of vision. The story of Western Continental Law is made up, in the last analysis, of two great movements, racial and intellectual. One is the Germanic migrations, planting a solid growth of Germanic custom everywhere, from Danzig to Sicily, from London to Vienna. The other is the posthumous power of Roman law, forever resisting, struggling, and coalescing with the other. A thousand detailed combinations, of varied types, are developed, and a dozen distinct systems now survive in independence. But the result is that no one of them can be fully understood without surveying and tracing the whole.

Even insular England cannot escape from the web. For, in the first place, all its racial threads—Saxons, Danes, Normans—were but extensions of the same Germanic warp and woof that was making the law in France, Germany, Scandinavia, Netherlands, Austria, Switzerland, Northern Italy, and Spain. And, in the next place, its legal culture was never without some of the same intellectual influence of Roman law which was so thoroughly overspreading the Continental peoples. There is thus, on the one hand, scarcely a doctrine or rule in our own system which cannot be definitely and profitably traced back, in comparison, till we come to the point of divergence, where we once shared it in common with them. And, on the other hand, there is, during all the intervening centuries, a more or less constant juristic sociability (if it may be so called) between Anglo-American and Con-
Continental Law; and its reciprocal influences make the story one and inseparable. In short, there is a tangled common ancestry, racial or intellectual, for the law of all Western Europe and ourselves.

For the sake of legal science, this story should now become a familiar one to all who are studious to know the history of our own law. The time is ripe. During the last thirty years European scholars have placed the history of their law on the footing of modern critical and philosophical research. And to-day, among ourselves, we find a marked widening of view and a vigorous interest in the comparison of other peoples' legal institutions. To the satisfying of that interest in the present field, the only obstacle is the lack of adequate materials in the English language.

That the spirit of the times encourages and demands the study of Continental Legal History and all useful aids to it was pointed out in a memorial presented at the annual meeting of the Association of American Law Schools in August, 1909:

"The recent spread of interest in Comparative Law in general is notable. The Comparative Law Bureau of the American Bar Association; the Pan-American Scientific Congress; the American Institute of Criminal Law and Criminology; the Civic Federation Conference on Uniform Legislation; the International Congress of History; the libraries' accessions in foreign law,—the work of these and other movements touches at various points the bodies of Continental law. Such activities serve to remind us constantly that we have in English no histories of Continental law. To pay any attention at all to Continental law means that its history must be more or less considered. Each of these countries has its own legal system and its own legal history. Yet the law of the Continent was never so foreign to English as the English law was foreign to Continental jurisprudence. It is merely maintaining the best traditions of our own legal literature if we plead for a continued study of Continental legal history.

"We believe that a better acquaintance with the results of modern scholarship in that field will bring out new points of contact and throw new light upon the development of our own law. Moreover, the present-day movements for codification, and for the reconstruction of many departments of the law, make it highly desirable that our profession should be well informed as to the history of the nineteenth century on the Continent in its great measures of law reform and codification.

"For these reasons we believe that the thoughtful American lawyers and students should have at their disposal translations of some of the best works in Continental legal history."

And the following resolution was then adopted unanimously by the Association: