



SIR FREDERICK POLLOCK, BART.

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1845-1937

FREDERICK POLLOCK was born in London on 10 December 1845 and died there on 18 January 1937, at the age of ninety-one. Pollock was one of the most learned and cultured English lawyers of his time. Belonging to a family renowned for its achievements in the legal profession, he more than any other member of that family possessed the genius of his grandfather, Lord Chief Baron Pollock. Unlike the Chief Baron, however, he never distinguished himself either in the Courts or in political life, though he was an active member of the Liberal Unionist party at its foundation, and was a Liberal candidate for Glasgow and Aberdeen Universities, but was defeated in the election. He will always be remembered for his notable career as Professor of Law and Jurisprudence and as Editor of the *Law Quarterly Review* and of the Law Reports. His chief title to fame rests, however, upon his learned and illuminating contributions to the literature of law, legal history, jurisprudence, and political theory.

Pollock was not only a scholar versed in the lore of the ages, but also a constant and eager observer of the modern world, sensitive to its trends of thought and conversant with its larger movements. To the solution of some of its most difficult legal and political problems he devoted his remarkable abilities as a lawyer-statesman. In these and many other ways Pollock proved himself to be one of the leaders of thought in the national and international life of his times. In the breadth of his knowledge, however, which was not confined to any one branch of learning, he stood out from our over-specialized age, and was far more like a man of the Renaissance than a modern. It is this humanistic outlook and culture which give character to all his writings on the subject-matters that chiefly engaged his attention.¹

¹ In writing this memoir of Sir Frederick Pollock, I have drawn chiefly upon the following published sources of information: *D.N.B.* (several articles); *Personal Remembrances* (2 vols., 1887), by Sir Frederick Pollock, second baronet, Queen's Remembrancer; *Lord Chief Baron Pollock* (1927), by the first Lord Hanworth; *For My Grandson* (1933), by Sir Frederick Pollock, third baronet, subject of this memoir; *The Pollock-Holmes Letters* (2 vols., Cambridge, 1942); and the memorial number of the *Law Quarterly Review* (April 1937), with articles by Lord Wright, Lord Maugham, Sir William

I

Frederick Pollock's great grandparents were David Pollock, saddler to King George III, and his wife Sarah Homera, a daughter of Richard Parsons, Esq. The third son of David and Sarah Pollock, who are well known in family history as persons of marked ability and high character, was Jonathan Frederick, born on 22 September 1783. Jonathan Frederick Pollock (1783-1870), Frederick Pollock's grandfather, was educated first at St. Paul's School and then at Cambridge, where he attained high distinction in mathematics and the classics, and was elected a Fellow of his College, Trinity. After a memorable career at the Bar and in Parliament, he became in 1844 Chief Baron of the Exchequer, and presided with renown over that famous Court until he retired in 1866, when he was made a baronet. He was twice married. His first wife was Frances, daughter of Francis Rivers of London, whom he married on 25 May 1813. Their eldest son, William Frederick, born on 3 April 1815, was the father of Frederick Pollock, the subject of this memoir.

William Frederick Pollock (1815-88), like his father the Chief Baron, was educated first at St. Paul's School and then at Cambridge, where he was a member of Trinity College: he distinguished himself in both mathematics and the classics. After several years of successful practice at the Bar, he became a Master in the Court of Exchequer and later Queen's Remembrancer. He was a man of scholarly tastes and abilities who took a deep interest in science, literature, and the liberal arts, and was recognized as one of the foremost Dante scholars of his time. He married, on 30 March 1844, Juliet, daughter of the Rev. Henry Creed, Vicar of Corse, Gloucestershire. Soon after their marriage the Pollocks took No. 21 Torrington Square, W.C., where on 10 December 1845 their eldest son, Frederick, was born. On 7 February 1851 they moved to No. 59 Montagu Square, W., which was ever afterwards their home.

Frederick's boyhood appears to have been exceptionally happy. In later life one of his earliest distinct memories was of evenings at home when his father used to read out Waverley Novels and his mother the plays of Shakespeare. His father's *Personal Remembrances* picture Frederick as a grave and serious

Holdsworth, and others. To two Cambridge friends, Professor Sir Percy Winfield and Professor H. A. Hollond, I am indebted for kindness in advising me as to the abridgement of my original typescript. I wish also to express my cordial thanks to Sir John Pollock, who has been good enough to help me by confirming certain facts in the life of his father.—H. D. H.

boy who was devoted to his studies, but yet sensitive to the lighter side of life. At home he was already beginning to take part in the private theatricals which his parents were fond of staging. Unfortunately he was nearsighted, the chief cause of his shyness and awkwardness of manner throughout his life.

After more than a year as a pupil in Dr. Huntingford's school at Brook Green, Hammersmith, Frederick began in 1858 his studies at Eton as a King's Scholar. Late in his life he gave in *For My Grandson* (1933) an account of his studies at Eton (1858-63), wherein he stressed the point that it was his 'particular good fortune' to be one of the pupils of William Johnson (afterwards Cory). His Greek and Latin, and his permanent interest in those tongues, were mostly of Johnson's planting; and, moreover, Johnson not only introduced him to some of the classics of English literature, notably Meredith's *Shagpat*, but taught him the living interest and importance of history.

While he was at Eton, Frederick and a school-friend had a boat and used to row on the river; and as a member of the Eton College Corps he learnt some of the rudiments of military drill. Later he was a member of the University Corps at Cambridge, and later still he was in the Inns of Court Corps and the School of Arms attached to it.

In 1863 Frederick left Eton for Trinity College, Cambridge, where he passed some of the happiest and most profitable years of his life. He remained throughout life deeply attached to the College, of which he was a Scholar and became a Fellow in 1868 and an Honorary Fellow in 1920. He won in 1865 the University Pitt Scholarship for Classics, and in 1867 was placed sixth of the Senior Optimes in the Mathematical Tripos and second in the First Class of the Classical Tripos. He was also First Chancellor's Medallist.

Many passages in Pollock's writings on jurisprudence, ethics, and philosophy prove to us that he made good use of the mathematical knowledge which he had gained at Cambridge. Chiefly, however, it was his Eton and Cambridge studies in the classics of antiquity which formed the basis of his life's work as a scholar. It is of interest to observe, therefore, that when he was at Cambridge he came under the influence of two eminent classical scholars: William Hepworth Thompson, who was Regius Professor of Greek from 1853 to 1866 before becoming Master of Trinity, and Richard Shilleto, of Trinity College, who was one of the leading classical teachers in the University.

Of Pollock's classical scholarship there could be no better

judge than the late Professor J. W. Mackail, of Oxford, who kindly wrote the following appreciation for insertion in the present memoir:

Of Pollock it might justly be said, in the words used by himself of Sir Henry Maine, that 'not only was he a humanist before he was a jurist, but he never ceased to be a humanist', and that 'nothing ever came from his hand that was not visibly the work of an accomplished scholar'. [At Cambridge Pollock won high distinction in the classics.] Under the continuous inspiration and direction of Shilleto, Trinity then sustained, while it gradually widened, the tradition of Bentley and Porson: and Pollock was one of Shilleto's favourite pupils. His rendering of a scene from Shakespeare in Aristophanic iambs, written in 1866 and printed among the Cambridge Tripos verses of 1867, elicited an enthusiastic acknowledgement from Shilleto when sent to him in manuscript. *Pollux O lepidi digne nepos avi!* was his greeting of response, and he anticipated in Pollock one who would inherit in full measure his own minute accuracy and fine literary sense, and be 'a pupil who excelled his master'.

Nor was this prediction wholly unfulfilled: for while the science of jurisprudence claimed him for its own and became the main field of his life's work, the wide area which that science covered in the history of European civilization called for extension of its bases from the ancient classics to the largely unexplored field of medieval Latin, and to the Latin literature of the Renaissance, thus passing beyond the austere limits of what was then regarded as the proper province of scholars, and rejecting what was in consequence the weakness of classical education as understood or practised at Cambridge, the belief, as Pollock himself trenchantly put it, that 'literature exists for the sake of grammar'. 'A jurist [he declared] can get on without Liddell and Scott, but not without DuCange.'

Pollock's years at the University not only developed his enlightened knowledge of the classics begun at Eton, but benefited him in still other ways. His interest in speculative philosophy was awakened: above all, after looking one day into Spinoza's *Tractatus Theologico-politicus* in the University library, he was so much attracted to that philosopher's ideas that he made their study one of his life-long avocations. Moreover, while at Cambridge he came under the influence of Edward Byles Cowell, the first Cambridge Professor of Sanskrit. It was Cowell who taught him the elements of Sanskrit and gave him an introduction to Indian philosophy and ways of thought.

In his second year at the University Pollock was elected a member of the famous Cambridge Conversazione Society, commonly called 'The Apostles'. Throughout his life, since age was

no bar to a comradeship which was not of one generation only, the apostolic fellowship gave a special zest to some of Pollock's friendships, such as those with Alfred Tennyson, Henry Maine, W. K. Clifford, Henry Jackson, Henry and Arthur Sidgwick, A. J. Butler, Walter Raleigh, and Frederic W. Maitland.

In 1867, the year in which he took his B.A. degree, Pollock was elected a member of the Alpine Club, and thereafter he had many thrilling experiences as an expert climber in the high Alps. After his most active days of mountaineering were over he became the honorary librarian of the Alpine Club, and in that capacity made valuable additions to the Club's collection of books, prints, and maps.

Before Pollock left Cambridge in 1868 he had already acquired the rudiments of fencing at the gymnasium then lately set up by the Passingham brothers. But Waite, a pupil of Pierre Prévost, to whose school of arms he attached himself on settling in London, was his first serious instructor. Throughout his life fencing, in which he excelled, was one of Pollock's chief pastimes.

II

After leaving Cambridge, Pollock became in 1868 a member of Lincoln's Inn; and he then entered an eminent conveyancer's chambers as a pupil. Pollock has himself told us that after a year in these chambers, where he had acquired 'pretty confused notions of the laws of England and the foundations of legal science', he thought seriously of returning to Cambridge and the classics. As it was, however, he went on to say, he was kept straight in his course by becoming attached in different ways to 'two great masters of the law': Nathaniel Lindley, then a leading junior in the Chancery Courts, and Mr. Justice Willes of the Common Pleas. Pollock became Lindley's pupil in the regular course, and in the summer of 1870 he was Willes's marshal on the Western Circuit.

The influence of Lindley and Willes on Pollock's career was profound. It was they who taught him to perceive clearly the great value attaching to historical and comparative studies in the treatment of English Common Law and Equity from the scholar's point of view; and it was they, moreover, who inspired him with the ambition of becoming a writer on law and jurisprudence.

In 1871, the year following his marshalship with Mr. Justice Willes, Pollock was called to the Bar by Lincoln's Inn; and he then entered upon the practice of the profession in which his

grandfather, his father, and other members of his family had already distinguished themselves.

During his early years at the Bar Pollock formed friendships that were of the highest importance to him in his chosen vocation. Prominent among these early legal friends were James Bryce, Courteney Peregrine Ilbert, Frederic William Maitland, and Oliver Wendell Holmes, Jr. The influence of each of these distinguished legal scholars on Pollock's life and career was marked. It was Bryce who directed his attention to the writings of Savigny, the great Romanist, while Ilbert showed him the importance attaching to the Anglo-Indian Codes. It was Maitland who intensified his interest in the history of English laws and institutions. Holmes inspired his life-long study of the spread of English law to America and other parts of the world.

On 13 August 1873, two years after his call to the Bar, Pollock married Georgina Harriet, daughter of Mr. John Deffell, of Calcutta, a lady of great personal charm with social and intellectual gifts of a high order. After their marriage the Pollocks lived first at Bryanston Street and then at 48 Great Cumberland Place, W., a house dating from the reign of George III, where their son and daughter, Frederick John and Alice Isabella, spent their youth. On the death of his father in 1888, Frederick Pollock became the third baronet and the head of his family. In 1904 Sir Frederick and Lady Pollock moved to 21 Hyde Park Place, W., where they spent the rest of their lives. They also had a house in the country—Hind Head Copse, Haslemere, Surrey.

Sir Frederick and Lady Pollock enjoyed more than sixty years of domestic happiness.¹ During the latter part of that time they were surrounded by an intimate circle composed of their son and daughter with their families. At their beautiful London home the Pollocks welcomed in cordial hospitality, down to the very end, their many friends in the world of law, letters, science, art, music, and the stage.

In 1920, at the suggestion of the Lord Chancellor (Lord Birkenhead), Pollock took silk. It seems clear, from the available evidence, that the Lord Chancellor regarded Pollock's attainment of this high rank in the profession as a fitting recognition, not of his place in advocacy, but of his eminence in legal scholarship and of his distinguished work as General Editor of the current Law Reports ever since 1895.

Pollock has himself told us that after a few years at the Bar it

¹ Lady Pollock died in 1935, two years after their diamond wedding.

became clear to him that his bent was for writing and teaching rather than practice. It was in fact as legal writer, teacher, and editor, not as practitioner, that he rose to eminence in his chosen profession.

During the fifteen years ending in 1890 Pollock published nearly a dozen books, most of which were works of major importance, such as *Principles of Contract* (1876), *Law of Torts* (1887), and *Possession in the Common Law* (1888). In the midst of this intensive literary activity, which in preparatory research alone must have occupied much of his time, Pollock became a public teacher of law and jurisprudence. In 1882 and 1883 he was Professor of Jurisprudence at University College, London, while in the latter year (1883) he was elected as Maine's successor to the Corpus Christi Professorship of Jurisprudence at Oxford, a post which he held with distinction until 1903, when he resigned it. Meanwhile, from 1884 to 1890 he had been Professor of Common Law in the Inns of Court. Some of the lectures which Pollock delivered from 1882 to 1903 were published later in his *Oxford Lectures and Other Discourses* (1890) and *Essays in the Law* (1922).

Pollock delivered courses of lectures abroad as well as in England. Thus he gave the Tagore Lectures in the University of Calcutta: these he published in his *Law of Fraud, Misrepresentation and Mistake in British India* (1894). In 1904 there appeared his *Expansion of the Common Law*, a volume based on a course of lectures which he delivered in 1903 in several American Law Schools. The Carpentier Lectures which he delivered in Columbia University were published in *The Genius of the Common Law* (1912).

Although Pollock was a brilliant after-dinner speaker, yet as a formal lecturer he lacked the qualities which make for success. In the delivery of his lectures on law and jurisprudence he did not speak freely from a few notes; on the contrary, he merely read out laboriously a carefully prepared manuscript and only rarely looked at his audience. His mode of delivery was somewhat slow and hesitant and almost destitute of anything which one may describe as 'life' or 'fire', as I can myself testify, having heard one of his lectures at Oxford in 1902. Professor Edmund M. Morgan of the Harvard Law School, who in the autumn of 1903 as a student heard Pollock deliver at the School the first of his four lectures on 'The Expansion of the Common Law', writes to me:

The only spark of life in a dull lecture was when Pollock lifted his

eyes from his manuscript and remarked that a judge in one of the western States had taken judicial notice that a five-cent drink of whiskey must be a small drink. It was only later, after I had read Pollock's lecture in its published form, that I realized how much I had missed owing to his dull and bored manner of delivery.

Outside the lecture-room Pollock made a special appeal to advanced students and those who were interested in legal research. In the words of Holdsworth, 'to any serious student Pollock was kindness itself—always willing to advise and encourage. It was in his relations to these students that he proved himself a great [oral] teacher.'¹

III

In 1884, the year following his election as Corpus Christi Professor of Jurisprudence, Pollock and five of his legal colleagues at Oxford—Holland, Anson, Bryce, Dicey, and Markby—decided to found a new periodical for the promotion of legal science without neglect of practice. Pollock was chosen by his friends to be editor of the new periodical, *The Law Quarterly Review*, the first number of which appeared in January 1885. Pollock held the editorship for thirty-five years, resigning it in 1919. He was succeeded as editor first by A. E. Randall, a member of the Bar, and then in 1926, on Randall's death, by Arthur L. Goodhart, then a lecturer at Cambridge, afterwards the holder of Pollock's Chair at Oxford (now attached to University College).

Although with his customary modesty Pollock always insisted on giving to others the major part of the credit for the founding of the *Review*, many of the older members of the legal profession ascribe to Pollock himself the original idea of establishing a legal periodical for the promotion of the study of law from the view-points of history, comparison, theory, and practice. Certain it is that Pollock was the chief of those who, in the words of Mr. Justice Holmes, 'fostered scholarship and sharpened insight' by means of this famous legal periodical.² There can be no doubt, as Professor Goodhart has declared, that Pollock was the 'true creator' of the *Review*. 'To him it owes everything that makes it valuable.'³

In 1891 Pollock began his successful work as general editor of the *Revised Reports*, a republication of the Reports of cases

¹ 53 *L.Q. Rev.* 180 (1937).

² 51 *L.Q. Rev.* 4 (1935).

³ 53 *L.Q. Rev.* 204 (1937).

decided by the Courts of law and equity from 1785 to 1865. This was a valuable training for the far more difficult and important task of editing the current Law Reports for the Council of Law Reporting.

Pollock's work as general editor of the Law Reports during the more than forty years from 1895 to his death in 1937 stands out in retrospect as one of his most notable achievements. In his own person the Council's principle of unity of command had been so successfully enforced that it now seems difficult to imagine the anarchic days of reporting before 1895. The high standard of reporting which now prevails has been due in greatest measure to the skill, learning, and scholarship which Pollock devoted, so unselfishly, to his labours. He was the general editor of all the series of Law Reports; but in performing the duties of that office he was in reality the chief of the reporters. The Law Reports which appeared during the many years of his editorship might well be described, with fairness to all who helped him, as 'Pollock's Reports', on the analogy of Coke's Reports and Plowden's Reports.

Among other aspects of Pollock's professional career not the least is his work as Literary Director of the Selden Society. After the death of Maitland, the first Literary Director, late in 1906, Pollock and Vinogradoff were appointed in 1908 joint Literary Directors; and then, on Vinogradoff's retirement, Pollock served as sole Literary Director until his death in 1937.

Pollock was the ideal Literary Director of a society formed for the express purpose of publishing manuscript materials for a history of English laws and institutions. He was a trained medievalist with an intimate knowledge both of palaeography and diplomatic and of Norman-French and medieval Latin, the two languages in which most of the earlier materials were written; and he was himself, moreover, an eminent historian of the laws and institutions of England from medieval times to the twentieth century. The help which he rendered as Literary Director to the editors of the Selden Society volumes published from 1908 to the time of his death was invaluable. Pollock's own contribution to the publications of the Society was his edition of Selden's *Table Talk* (1927), based on a hitherto unpublished manuscript in the library of Lincoln's Inn.

In 1911 Pollock was made a Privy Councillor; and then, early in 1914, he was appointed by the Lord Warden of the Cinque Ports to be his Official—that is, Judge of the Admiralty Court of the Cinque Ports. Although to his great regret no

actual case came before Pollock as Judge of this ancient Court, he delivered before the Society of Public Teachers of Law an address on 'Cinque Ports Jurisdiction: In the Matter of a Whale'.¹

Many of Pollock's professional activities were associated in one way or another with Lincoln's Inn, by which he had been called to the Bar in 1871. Over many years, down to the time of his death, his chambers at 13 Old Square were the centre of all his work as counsel and legal writer and as editor of the *Law Quarterly Review* and of the *Law Reports*; and, moreover, he used to visit the admirable library of the Inn almost daily, fetching himself from the shelves any books which he wanted. Becoming a Bencher of Lincoln's Inn in 1906, he was Treasurer of the Inn during the year 1931, that is to say, during that year its official Head.

There can be no doubt that of all Pollock's duties as Treasurer of Lincoln's Inn the one which gave him the most pleasure was that of presiding at the Grand Day dinners in the hall of the Inn. On other special occasions he presided with equal distinction. Thus on 21 July 1931 the Benchers of the Inn gave a dinner to a number of Canadian lawyers: Pollock as Treasurer presided. Immediately before dinner Lord Maugham, a Bencher of the Inn, approached Pollock and suggested to him in an undertone that it would add to the pleasure of their Canadian guests if after dinner he were to give them some account of Lincoln's Inn as an institution. In the words of Lord Maugham: 'After dinner was over Pollock rose and delivered without notes a most admirable history of the origin and constitution of the Inns of Court.' His after-dinner speech clearly indicated 'the range of knowledge and the extraordinary powers of memory which were necessary to enable him to deliver without preparation a most admirable address on so difficult and abstruse a subject'.²

A further delightful glimpse of Pollock at Lincoln's Inn has been furnished by Professor Henry A. Hollond of Cambridge, Honorary Bencher of the Inn, in a memorial note.

It is my belief [Professor Hollond writes], though I am not really qualified to have an opinion, that the decade between his eightieth and his ninetieth year (unfortunately in the latter year his wife died) was one of the happiest of his life. During that period he was constant in his

¹ For this address, see 41 *L.Q. Rev.* 453-6 (1925).

² For Lord Maugham's account, see 53 *L.Q. Rev.* 170-1 (1937). In response to requests Pollock set down the substance of his address in writing. Bearing the title *The Origins of the Inns of Court*, it was privately printed by the Oxford University Press in 1931.

attendance at Lincoln's Inn as a Master of the Bench, and served his year of office as Treasurer. The way in which he acquitted himself won the admiration of all. It was my privilege during his last two years to see him from time to time in the company of his colleagues, and to hear their talk about him. I shall always treasure my memory of the universal veneration and affection in which he was held by them.¹

Throughout his career Pollock was always greatly interested in American legal education and legal practice, and during his visits in the United States he made the acquaintance of many academic and practising lawyers. He not only lectured in American law schools and met some of their distinguished professors, such as Langdell, Ames, Gray, Thayer, Beale, and Williston at Harvard, but he also attended several annual meetings of the American Bar Association: at the meeting held in 1903 he read a paper on 'English Law Reporting'.² Pollock also kept in close touch with members of the French Bar. Thus in 1904 he, Mackenzie Chalmers, and Courteney Ilbert represented the English Bar at the celebration in Paris of the centenary of the *Code Civil*. Moreover, through his conversations with great scholars like Ihering, Brunner, and Gierke he kept abreast of the trends of legal thought in Germany.

In any survey of Pollock's professional activity there should be no failure to mention his work for the British Government. Thus during the years from 1891 to 1894 he was a member of the Royal Commission on Labour, while in 1892 he journeyed to Trinidad as a member of the special Commission appointed to report on the justice administered by the Supreme Court of the Colony. In October 1910 he was officially named Chairman of the Royal Commission on Public Records, a post for which he was admirably fitted. By his efficient work as Chairman of the Commission Pollock did much to further studies in the English political, constitutional, legal, social, and economic history revealed by the public records.

On several occasions Pollock helped the British Government solve political problems by his legal advice. Thus, when the famous boundary dispute of 1895-6 between Venezuela and British Guiana had reached the state of an international crisis caused by President Cleveland's special message to Congress of 17 December 1895, the British Government called upon Pollock to draft a memorandum on the British case. As a result of 48 hours' intensive labour in January 1896, Pollock prepared and

¹ *Journal of the Society of Public Teachers of Law* (1937), 50.

² See Pollock's *Essays in the Law* (1922), 241-57.

presented his memorandum. In the arbitration which followed this complicated dispute Sir Richard Webster, then Attorney-General, successfully maintained the claims of Great Britain. In writing of this arbitration Sir Richard Webster (Lord Alverstone) observed in his *Recollections of Bar and Bench* (1914): 'A most able memorandum of the British case had been prepared by Sir Frederick Pollock, which, though not in a form suitable for a case before arbitrators, yet contained all the information of importance bearing upon the matter.' But Pollock had not been asked to state a case for the arbitrators; his memorandum was for the Colonial Office.

Until the very end Pollock placed his legal learning at the disposal of the Government whenever his counsel was desired. It is especially noteworthy that just before his ninety-first birthday, which fell on 10 December 1936, Pollock had advised Sir John Simon (as he then was) on the form which the Abdication Act should take. He wrote from a sick bed, and relied on his memory alone. As Sir John Pollock, his son, has justly observed, it was the

habit of viewing everything from the standpoint of principle that made Pollock's advice on the crisis of the abdication of King Edward VIII decisive. While the legal advisers of the Crown were searching in an agitated vacuum for nonexistent precedents, Pollock went straight to first principles of constitutional usage, and drafted the heads of a Bill which, in the upshot, were very closely followed in the Act of Abdication.¹

IV

Although not attracted by the subtleties of conveyancing, Pollock found that Equity, in its broader and more enlightened features, is the intelligent companion, not the arbitrary mistress of the Common Law. In fact he took pains to point out that Common Law and Equity are not separate systems, but complementary parts of our unique system of private law.

This attitude towards our dual system of civil justice appears clearly in Pollock's *Principles of Contract at Law and in Equity*, first published in 1876. Writing as he did soon after the Judicature Act, he sought to give an equal and concurrent view of the principles and doctrines of Common Law and Equity. In the literature of the English law of contract this was an entirely new design. The second of Pollock's main contributions to our knowledge of the modern Common Law is his *Law of Torts*, which appeared for the first time in 1887.

¹ See *Pollock-Holmes Letters* (1942), Sir John Pollock's Introduction, p. xiv.

The appearance of Pollock's works on Contract and Tort, which have long ranked as classics written by a master of English legal style, inaugurated a new era in the history of the literature of our modern Common Law. Pollock achieved an advance on earlier writers by reason of two main accomplishments: first, his exposition of the fundamental principles of obligation arising *ex contractu* and *ex delicto* as found in the cases; and, secondly, his combination of an exact and penetrating analysis of modern reported decisions with historical perspective and the illumination that comes from comparison.

Of Pollock's other writings on modern English law, one of the most important is his *Digest of the Law of Partnership*, first published in 1877. In its fifth edition (1890) Pollock's *Digest* became an edition of the Partnership Act, 1890, which he himself had drafted. His Partnership Act, 1890, proves to us that as a draftsman of consolidating legislation on a highly important branch of modern English law he displayed not only consummate skill and great learning, but also a legal statesmanship of the first order.

To our knowledge of modern English law Pollock made other notable contributions, including not least of all his many articles in legal periodicals; and, moreover, he always kept his works on Contract, Tort, and Partnership abreast of the latest research and the most recent judicial decisions by bringing out new editions from time to time.

Distinguished lawyers of many lands, notably those who owe allegiance to the Common Law, have spoken in high praise of Pollock's writings on modern English law: included among them are Lord Wright¹ and the late Sir William Holdsworth,² who have placed Pollock among the makers of English law.

To these appreciations there should now be added the illuminating paragraph written especially for this memoir by Sir Percy Winfield, sometime Rouse Ball Professor of English Law in the University of Cambridge. Sir Percy, who is himself the author of standard works on Contract and Tort, here observes that Pollock's

influence on our legal literature and his influence upon law students and practitioners through his writings was of the highest value and of the widest range. He had the initial advantage of a graceful and polished style. When Pollock produced his works on Contract and on Tort, he was a pioneer in making these subjects readable by the student.

¹ See 53 *L.Q. Rev.* 151-67 (1937).

² See 53 *L.Q. Rev.* 175-89 (1937); *Makers of English Law* (1938), 279-90.

And of equal importance with the form of his works was their substance. The influence of *The Principles of Contract* and of *The Law of Torts*, especially the latter, is not to be measured merely by their repeated new editions, nor by the judicial adoption of this or that passage from either book, but by the method of approaching the problems of the Common Law which they taught to those who were to achieve the best type of success at the Bar or on the Bench. For Pollock was, above all, a great Common Lawyer. He had the ability to pick out from the confused kaleidoscope of decisions that surrounds many a legal principle the pattern of the principle itself. I learned many things from him, but I think that the greatest of them all was the true relation of decided cases to the Common Law,—that a good lawyer must never let the reports dominate him and that the Common Law will suffer most when it is taken to consist exclusively of what has been decided instead of what will be decided.

Inspired by the teaching of Mr. Justice Willes that to an understanding of English law historical studies are essential, Pollock throughout his career devoted attention to origins and development in all his writings on our modern law. Thus in his works on Contract and Tort, he dealt with the history of these two main branches of the Common Law. In some of his other writings, moreover, he still further added to our knowledge of the historical development of the English law of contract and tort. His most important contribution to the history of the English law of real property is *The Land Laws* (1883), wherein he sketched in brilliant outline the development of this branch of our law from pre-Norman times down to the end of the nineteenth century.

The idea of writing a systematic historical account of English law before the time of Edward I appears to have originated in the mind of Maitland about 1888, the year of his election as Downing Professor of the Laws of England in the University of Cambridge. Seven years later the first edition of *The History of English Law before the Time of Edward I* (1895) made its appearance, being issued under the joint names of Pollock and Maitland. Pollock's Note, appended to the Preface, reads as follows: 'It is proper for me to add for myself that, although the book was planned in common and has been revised by both of us, by far the greater share of the execution belongs to Mr. Maitland, both as to the actual writing and as to the detailed research which was constantly required.' In a letter to Holmes, dated 23 August 1895, soon after the appearance of the first edition of the *History*, Pollock said:¹ 'I want to tell you how little of the *History*

¹ *Pollock-Holmes Letters* (1942), i. 60.

of *English Law* is my writing: viz. the Introduction (not quite all), the chapter on Anglo-Saxon law, and the bulk, not the whole, of the chapter on Early History of Contract, which is expounded and re-arranged from an article in *Harvard Law Review*.¹ In the second and last edition of the *History* (1898) there is no hint that Pollock had made any contributions to the text in addition to those indicated in his letter to Holmes.

Some of Pollock's most important contributions to learning are devoted to special aspects of the history of our dual system of Common Law and Equity. Prominent in this category of writings is his essay entitled 'Has the Common Law received the Fiction Theory of the Corporation?'² As historical proof that the English Common Law had never adopted the fiction theory of the corporation Pollock's essay has had much influence in converting English lawyers from the fictional to the realist doctrine. Pollock's brilliant essay on 'The Transformation of Equity'³ also deserves special mention; for, although the significance of the change from an archaic dispensing power to an equitable jurisdiction based on precedent and reason was already well known to the most learned students of English law, it was Pollock who first illumined this transformation of Equity as one of the most important aspects of English legal history. Pollock's essay on 'The History of English Law as a Branch of Politics'⁴ illustrates his thought that law and politics are intimately related to each other both in history and in theory. In this essay he explained the way in which English legal institutions and ideas have been a great and effectual power in politics, so that our political institutions and ideas are not only distinctively English, but have a definite and marked colouring of English law.

Pollock's article on 'The Continuity of the Common Law'⁵ may rightly be regarded as a preliminary sketch of the theme which he elaborated in *The Expansion of the Common Law* (1904) and *The Genius of the Common Law* (1912), two of his most important works on the main aspects of English legal development. In the first of these works he lays stress on the remarkable power of the Common Law, throughout both medieval and modern times, to assimilate foreign and cosmopolitan elements. In the

¹ For Pollock's article on 'Contracts in Early English Law', see 6 *Harv. L. Rev.* 389-404 (1893).

² *Essays in the Law* (1922), 151-79.

³ *Op. cit.*, 189-98.

⁴ *Essays in Jurisprudence and Ethics* (1882), 198-236.

⁵ 11 *Harv. L. Rev.* 423-33 (1898).

second work, which is in general complementary to the first, one of the main ideas developed by Pollock is the continuity of the Common Law from the early days of its Germanic origins, through the periods of its struggle against inner and external enemies, down to the twentieth century.

Although both these books deal chiefly with the Common Law in its island home, they embody also glimpses of the spread of English law to North America, India, and other parts of the world. In many of his other writings Pollock also studied the fortunes of English law in its oversea environments. Although he was always greatly interested in the spread of English law to the American colonies, an historical factor which resulted in the Anglo-American law of the States of the American Union, in his writings he devoted special attention to the adoption of English law in British India.

If we survey the whole of Pollock's contribution to our knowledge of English legal and institutional history, perhaps we are entitled to conclude that the closest parallel is the similar work of John Selden (1584-1654). Pollock may justly be regarded not only as the legitimate and worthy successor of Selden, but as one of the three most eminent English legal historians of our time. Although he never wrote a systematic treatise on the history of our law, he made nevertheless many contributions to our knowledge of English legal and institutional development from early medieval times down to our own day. These writings, the result of his own original research among the sources, are all marked by the profound learning, the breadth of view, and the literary brilliance which are characteristic of everything that he wrote. Pollock's title to fame as an English legal historian rests not so much upon his few contributions to Maitland's *History of English Law before the Time of Edward I*, important though they are, as upon the many books, essays, and articles wherein he has left us a priceless treasury of learning in regard to the history of our dual system of Common Law and Equity.

To our knowledge of the history and principles of the Law of Nations, in which he always took a deep interest, Pollock made important contributions, one of which is contained in his essay on 'The History of the Law of Nature':¹ here he treated the Law of Nations as a body of doctrine derived from and justified by the Law of Nature. In both his article on 'The Sources of International Law'² and his chapter on 'The Modern Law of Nations

¹ *Essays in the Law* (1922), 31-79.

² 18 *L.Q. Rev.* 418-29 (1902).

and the Prevention of War' in the *Cambridge Modern History*¹ he traced the history and sketched the structure of the law. To the study of International Law as a branch of legal science he devoted attention in his essays on 'The Nature of Jurisprudence'² and 'The Methods of Jurisprudence'.³

In the province of international relations Pollock became an authority on the history and meaning of the famous Monroe Doctrine. His discourse on 'The Monroe Doctrine', first published in the *Nineteenth Century* (October 1902), was ordered by the Senate of the United States of America to be printed as an official paper.⁴ In his article on 'Cosmopolitan Custom and International Law',⁵ published in the midst of the First World War, he dealt with the fundamental problem of securing perpetual peace under the rule of law. It is noteworthy that the movement in favour of a League of Nations, which began in the closing period of the war, won Pollock's hearty support; indeed, he was one of the originators of the idea of it. In 1918, before the close of the war, he published at Oxford a pamphlet on *The League of Nations and the Coming Rule of Law*. Then early in 1920 his *League of Nations* made its appearance: the second edition was published in 1922. When the Protocol of Geneva was rejected in 1924, he considered that the usefulness of the League in major matters was ended.

In all his writings on the history and principles of the Law of Nations Pollock gave clear proof of the fact that in addition to his remarkable gifts as an historian and jurisconsult he possessed also the broad outlook and sagacity of a statesman. While not ranking with the foremost of our authorities on International Law, his writings on the development and doctrines of this branch of Public Law have always been treated with great respect by the specialists.

V

Pollock based his study of jurisprudential thought on law and not on either ethics, or morality, or metaphysics, or logic. His writings are proof of his profound knowledge of the juridical ideas to be found not only in the Common Law of England and America and in the Civil Law of Rome and modern Europe,

¹ Vol. xii (1910), 703-29.

² *Essays in Jurisprudence and Ethics* (1882), 1-41.

³ *Oxford Lectures and Other Discourses* (1890), 1-36.

⁴ See 53 *L.Q. Rev.* 196 (1937).

⁵ 29 *Harv. L. Rev.* 565-81 (1916).

but also in the laws of Asia and of many communities in other parts of the world, such as Quebec and South Africa. His studies embraced, moreover, the jurisprudential ideas embodied in several cosmopolitan systems of law and justice, notably the Canon Law, the Law of Nature, the Law Merchant, and the Law of Nations.

In basing his jurisprudence on law Pollock stressed the importance of English law. Before his time the English jurisprudential studies had been influenced to an overwhelming degree by Romanist conceptions. It is not surprising, therefore, as Professor Goodhart has rightly observed, that 'it was difficult to reconcile the theories carefully worked out in the books with the practice of the Courts, for the theories came from Roman Law while the practice was English'.¹ It was Pollock who turned the current of thought towards the laws and institutions of England as a profitable and inspiring subject for study by jurists: he gave practical expression to this idea in many of his own writings, notably in his principal works on the Common Law and in his *First Book of Jurisprudence for Students of the Common Law* (1896). He never advocated, however, an abandonment of studies in the Civil Law of Rome and the continent of Europe. Quite on the contrary, he steadfastly maintained that a comparative study of the Civil Law and the Common Law should be one of the main aims of the jurist; and in his own writings he illustrated the jurisprudential value attaching to a comparison of these two great systems of law.

In analytical jurisprudence Pollock may rightly be regarded as a disciple of Hobbes, one of the forerunners of the English school of analytical jurists. He was, however, far more than a mere disciple of Hobbes; and indeed it is unquestionably true to say that he was himself the principal founder of a new school of analytical jurisprudence, the purpose of which was far removed from the abstract dogmatism of the Austinian school. In the province of analytical jurisprudence Pollock rose to his commanding position by basing his analysis of English legal ideas upon the history of those ideas as revealed by the sources of the law, notably the cases decided by the Courts in medieval and modern times. And, moreover, he still further illumined English legal ideas by viewing them in the wider perspective provided by a comparison with the ideas to be found in foreign legal systems, notably the Civil Law.

Striking examples of Pollock's analysis of legal ideas are to be

¹ 53 *L.Q. Rev.* 205 (1937).

found in his works on the English law of contract and tort and in that part of his *Jurisprudence* devoted to general legal notions. Still another of his main contributions to analytical jurisprudence is his *Possession in the Common Law* (1888). Here Pollock sought to do for English law what Savigny and Ihering and others had attempted to do for Roman law. As Holdsworth has observed, Pollock's book 'set forth clearly for the first time what the English theory of ownership and possession was, and showed that that theory was as logical and consistent as the different theory of Roman law'.¹

In addition to his own constructive work in analytical jurisprudence, Pollock as a jurist will be known to posterity chiefly by his contributions to the literature of jurisprudence as viewed from the standpoints of history and comparison. He used the historical and comparative methods not only in his studies of English analytical jurisprudence, but in a still wider field of research embracing many systems of law throughout the world in ancient, medieval, and modern times. Pollock may justly be regarded as the most eminent representative of the English school of historical and comparative jurists since Maine's time.

Pollock's most enlightening contribution to the history of jurisprudential thought from antiquity to modern times is his now famous essay on 'The History of the Law of Nature'. Equally illuminating are the Notes which he contributed to his editions of Maine's *Ancient Law* (1906; 1930), which form a most valuable study in historical and comparative jurisprudence. Indeed, in many of his writings on the history of English law and of its spread throughout the world he compared English legal ideas with the juridical concepts to be found in other systems of law. In short it may truly be said that the balanced combination of the analytical, historical, and comparative methods of research and exposition was one of Pollock's principal characteristics as a jurist.

Pollock perceived clearly that in their historical development political ideas are closely related to juridical ideas: he held in fact that much political theory is based on law, and has, therefore, a legal character. To the history of political theory, as thus conceived, he devoted some of his most valuable writings.

Pollock's *History of the Science of Politics* (1890), a small book now out of print, has long been recognized by competent critics as the most brilliant essay in English on the history of political theory from ancient to modern times. It should be noticed,

¹ 53 *L.Q. Rev.* 179 (1937).

again, that his essay on 'The History of the Law of Nature' is a notable contribution to the literature alike of historical jurisprudence and of the history of political theory.

One of Pollock's most original and illuminating writings on the history of political thought is the chapter on 'The Citizen and the State' in his *Spinoza: His Life and Philosophy*.¹ In this chapter, where he is concerned, not with the metaphysical parts of Spinoza's philosophy, but with his theory of politics, Pollock elaborates the point that though he was not actually a disciple of Hobbes, Spinoza so closely follows him that the philosophy of law and government worked out in the *Tractatus Politicus* distinctly belongs to the general doctrine characteristic of the English school of jurisprudence first clearly developed by Hobbes. Pollock's comparison of the political ideas of Spinoza with those of Hobbes lends special interest to a chapter brilliant both in design and in execution.

Among Pollock's many other contributions to the history of political theory particular attention may be drawn to the memorable address which he delivered before the British Academy in 1904 on 'Locke's Theory of the State', to mark the bicentenary of the philosopher's death.² There he presented to scholars what appears to have been the first analysis of Locke's *Essay on Civil Government* ever attempted by an English lawyer. In his edition of the *Table Talk* (1927) he took pains to draw attention to those passages where Selden appears to point the way to Locke. Without entering into detail it may be observed, again, that in his writings on the history of international relations and of the Law of Nations Pollock dealt with many aspects of the history of political doctrine in the West.

From his Cambridge days to the very end of his life Pollock was ever an enthusiastic student of the career and writings of Spinoza, the Dutch philosopher. In 1880 he published the work upon which he had been engaged for several years—*Spinoza: His Life and Philosophy*. The second edition made its appearance in 1899: it was reissued with revisions and additions in 1912.

Of the merits of Pollock's work on Spinoza there could be no better judge than the late Professor Harold H. Joachim, of

¹ Second ed. (1899), 289-316.

² *Proceedings of the British Academy*, vol. i, 1904. As reprinted in *Essays in the Law* (1922), 80-109, there is an Appendix on 'The Social Contract in Hobbes and Locke', the summary of a lecture delivered by Pollock at Oxford in 1907.

Oxford, who was good enough to write for my use in the present memoir the two following paragraphs:

Interest in Spinoza—in his life and personality, in some of his famous utterances, and in certain aspects of his teaching—has never been confined [Joachim observed] to the narrow circle of students of philosophy. None of the other great philosophers, with the possible exception of Socrates, has tended to excite the attention and curiosity of so large a body of non-philosophical (and even unphilosophical) followers and would-be disciples. And perhaps the greatest merit of Sir F. Pollock's book on Spinoza is that it succeeds, to an astonishing degree, in satisfying the demands of this larger public as well as those of the specialist and expert. Written in a very lucid and attractive style, with an easy mastery of all the most important literature bearing on the subject; incorporating an immense amount of learning and research in regard to the relevant historical data, and based throughout upon a careful study of Spinoza's own works;—Pollock's book has been for more than half a century, and still remains, the most readable and, on the whole, the most reliable survey of the life and teaching of the Philosopher.

It is true, no doubt, that, in his account of Spinoza's philosophy, Pollock passes too lightly over some of the technical difficulties, or is too easily content to offer criticisms and solutions, which would hardly be endorsed or accepted by those who have made the study of philosophy and its history their main concern. His whole treatment, e.g., of Spinoza's conception of the Attribute of thought is obviously unsatisfactory. But Pollock himself would never have claimed completeness or finality for his interpretation of Spinoza's philosophy. And, considered broadly and as a whole, his book undoubtedly deserves the high reputation it has won abroad as well as in this country. It is, beyond all question, the best general introduction to the study not only of Spinoza's life but of his philosophy as well.

Owing to his great interest in Spinoza, Pollock took an active part in the work of the *Societas Spinozana*, founded in 1920 with its headquarters at The Hague. He was one of five 'Curators' appointed by the Governing Body of the Society to supervise the contents and publication of its annual journal, the *Chronicon Spinozanum*.

In 1932 the Spinoza Society commemorated the tercentenary of the philosopher's birth by holding an international conference at The Hague. On this occasion Pollock, who was present as official representative of the Universities of Oxford and Cambridge, delivered an address which adds much to our knowledge of Spinoza's character and influence.

Then in 1935 Pollock published still another work on the philosopher entitled simply *Spinoza*. This small book is con-

cerned not with the exposition of Spinoza's doctrine, but with the exhibition of the philosopher's life and character in relation to the world of his time. At the end of his book Pollock published the address which he had delivered in 1932 at The Hague.

Without entering into detail, it may be remarked merely that Spinoza's ideas exercised a marked influence on Pollock's own thought, as many passages in his writings bear witness. It may also be noted that, in addition to his books on Spinoza, Pollock made other notable contributions to our knowledge of philosophical speculation. Of these writings special attention should be drawn to his essay on 'Marcus Aurelius and the Stoic Philosophy'¹ and the paper which he read before the Oxford Philosophical Society on 'The Relation of Mystic Experience to Philosophy'.²

Although Pollock regarded himself as an amateur in philosophy, his writings have been recognized by professional philosophers as worthy of their close attention; and he used the knowledge which he gained from his study of the history of philosophical speculation to enrich his writings on law and jurisprudence.

VI

Pollock's interests extended far beyond the range of his memorable attainments in legal scholarship. He was a man of wide and deep culture, intimately acquainted with the world's history, literature, and philosophy. Fascinated by the liberal arts, he was thoroughly familiar with and much enjoyed listening to the music of the great composers, and he took delight in viewing the paintings of renowned artists. He made a close and appreciative study of the drama as presented in books and on the stage, and he knew personally some of the leading actors and actresses of his day. He was an enlightened and competent critic of the literary masterpieces of ancient, medieval, and modern times, and he was himself a literary artist of high distinction. He not only clothed his contributions to learning in a supremely literary form, but he wrote many delightful pieces, both prose and verse, in several ancient and modern languages.

Some of Pollock's many literary pieces, such as 'Die Symphonien Beethovens', 'Les Funérailles de Démos', and 'Sir Michael: A Phantasy on an Altar-Piece of Perugino', are to be

¹ *Essays in Jurisprudence and Ethics* (1882), 314-51.

² *Outside the Law* (1927), 9-25.

found in his *Leading Cases done into English and Other Diversions* (1892) and *Outside the Law: Diversions Partly Serious* (1927). *The Etchingham Letters* (1899), a work of fiction written by Pollock and Mrs. Fuller Maitland in collaboration, is a delightful family correspondence, humorous as well as serious.

Fond of travel from his youth Pollock visited many parts of Europe, North America, and India, and also cruised to some of the islands of the sea. His long and intimate friendship with Holmes led him to take a special interest in the American scene: one of his marked personal characteristics was his fondness for the United States. When travelling on the continent of Europe, his command of spoken French, German, and Italian enabled him to converse freely with the legal scholars and other persons of note whom he met.

Pollock was a student of the art of conversation, especially as that art was practised in antiquity and in the England and France of his own time. Moreover, when one or more of those in his company took the lead by expressing some idea or train of thought that awakened his interest, Pollock never failed to come out of his habitual reserve, revealing himself as a conversationalist of rare gifts.

Pollock was brilliant not only as an after-dinner speaker and a conversationalist, but also as a letter-writer. In the letters which he wrote to Holmes and other friends he gave the proof both of his wide range of knowledge and of his own personality, so rich in matters of the heart as well as of the mind. His correspondents have always taken delight in the admirable pen-and-ink sketches which he sometimes drew in the margin or at the foot of his letters.¹ In his letters and sketches, as in his conversation, humour was not lacking.

Although by nature shy and reserved, Pollock was yet endowed with personal traits which enabled him to form close and lasting friendships. There can be no doubt that among his true friends, the men who had counted most in his life, were William Kingdon Clifford, Leslie Stephen, Frederic William Maitland, George Meredith, A. W. Verrall, and Oliver Wendell Holmes, Jr. Pollock formed, however, many other enduring friendships, some of which were among his fellows of the Cambridge Conversazione Society ('The Apostles') and of 'The Sunday Tramps', the famous walking club which he and Leslie Stephen had founded. Sir Frederick saw much of his brother Walter Herries Pollock (1850-1926), for many years the accom-

¹ Two have been reproduced in the *Pollock-Holmes Letters* (1942).

plished editor of the *Saturday Review*; and he was also on terms of close friendship with his cousins, Dighton Nicolas Pollock (1864-1927), a leading member of the Chancery Bar, Sir Ernest Murray Pollock (1861-1936), the first Lord Hanworth, who was Master of the Rolls, and Bertram Pollock (the brother of Sir Ernest), who was headmaster of Wellington and became Bishop of Norwich.

In his teaching Pollock held before the student the ideal of the true and accomplished lawyer as a man who is not only familiar with the law in respect of its history, principles, theory, and practice, but also trained by physical and intellectual exercises outside the law. This lofty ideal, as expressed by Pollock in some of his most eloquent passages,¹ was the very one which he himself made a reality in his own person. Pollock not only possessed the genius of a great scholar, but he was a man of character in the deepest and truest sense. These are two of the main reasons why he has won the admiration and regard of all those familiar with his life and career.

H. D. HAZELTINE

¹ See, for example, *Oxford Lectures and Other Discourses* (1890), 91-111.