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Outline of Legal History (Book Review)

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OUTLINE OF LEGAL HISTORY. By Franklin Ferris Russell. New York, (1929), pp. 152.

Professor Russell has made a notable addition to the students' law library. Alas, in these days of efficiency, even education has fallen a prey to the necessity of serving its neophytes with culture in a nutshell. Behold, therefore, a history of English and American law, from its earliest beginnings to the present day in one hundred and fifty-two pages.

The author tells us that his Outline is the result of class-notes taken in Holdsworth's famous course in legal history. One is reminded of the origin of Blackstone's Commentaries, which are said to have been evolved in the same way; and similarly one is impressed by the pertinency of the criticism that has been made of the more ancient work,—the total absence of a philosophy of law. Holdsworth himself in his great work has drawn largely upon secondary sources and has not revealed any philosophy of legal history that enables the student to see either cause and effect or any other ready explanation of the process of legal development. The Outline suffers even more from this need. Even Pound's four stages of legal development are lost sight of, and its pages become a depository of what the student will most certainly regard as extremely useless facts. There is no devotion to legal history among the students in a modern law school. They can only be attracted to it, if they see how the lawyer can make practical use of it.

This reviewer thinks that the history of law is extremely practical for the proper understanding of recent decisions and for the certain diagnosis of legal problems. In the legal world, judicial habits of mind are even of greater importance to the growth of law than specific precedent. As a consequence, legal history is important for it shows the stuff from which the judicial mind has been formed.

So much must be read into the Outline, that it is doubtful whether it can fill any such need. Even Holdsworth has not become a practitioners' manual. Where we have grown accustomed to judicial reference to Holmes, Cardozo and Pound, and to their historical comments, it is a rare judge who finds comfort in the pages of Holdsworth. Can it be doubted that it is because his treatise has proved merely informative of the legal situation as it existed in the various ages of legal history? More and not so much is needed. A useful compendium of legal history will tell us not what that law was from Aethelbert to Canute, but rather how, such as it was, law solved or met the social and economic problems of the day; to what extent the law as judicially enforced proved an important element of social control. In these days when people are beginning to lose faith in legal institutions, it would be helpful to recast our foundations and learn the lessons that history has to teach. Was there ever a time when law was so just and effective that people relied upon it with a feeling of security? We fear that the answer to that question is not to be found in the pages of the Outline, nor yet in those of its ancestor, Holdsworth's History of English Law.

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