

*Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century.* By A. V. DICEY, K.C., B.C.L., LL.D. (London: Macmillan and Company. 1905. Pp. xx, 503.)

This is a book presenting not so much new facts as a new and masterly analysis and interpretation of facts, such as appears from time to time in many cases from British writers. The author belongs to the class of publicists who can discuss large political problems for serious students, in a clear and interesting style, free both from the vagueness of elementary works and from the pedantry of technical treatises. He is already known in this country as the author of an *Introduction to the Law of the [English] Constitution*; and the present work will rank with that and the writings of Maine, Sidgwick and Bryce.

A course of lectures delivered at the Harvard Law School in 1898 form the basis of the book; but these have been modified and altered in subsequent presentation at Oxford University. Three opening lectures discuss the relation between law and public opinion, the characteristics of law-making opinion in England, and the influence of democracy on legislation. These prepare the way for the central theme, an analysis of the leading tendencies of English legislation during the past century. Three periods are marked off, in each of which the main current of legislation is clearly shown to be in accordance with certain definite principles: first, the Blackstonian period of Old Troyism from 1800 to 1830, marked by legislative quiescence; second, the period of Benthamism from 1830 to 1870, marked by profound legislative changes in accordance with individualistic ideals; and third, the period of collectivism, from 1865 to 1900, marked by the same Benthamite method of legislative activity, but by an antithetic socialistic or collectivistic ideal. This central discussion is followed by two chapters on counter-currents and cross-currents of legislative opinions and on illustrative tendencies in judicial legislation during the period under review. A final lecture discusses the relation between legislative opinion and the general tendencies of English thought in other spheres and in the writings of notable individuals, such as Harriet Martineau, Charles Dickens and John Stuart Mill.

It is the analysis of the three main currents of legislation which

form the most interesting and valuable part of the work. With admirable skill and clearness, the most vital and significant measures are detached from the voluminous mass of statutory legislation; and are shown to belong, perhaps unconsciously, to one or other of the steady tides of opinion which prevailed during each of the three periods. While statutes of considerable importance were passed in the first period, they are seen to be either reactionary or caused by different purposes than the later measures. In the second period the various acts for the transfer of political power, the extension of individual liberty, and the protection of rights are shown to have developed from the definite ideas and systematic programme of reform outlined by Bentham. In the third period there is an absence of any recognized leader of opinion, and of logical completeness in the movement, which contrasts sharply with the preceding era. And in fact there is a distinct aversion toward accepting the systematic views of the Socialists. Nevertheless, the trend of legislation is steadily toward that increased state activity to which Mr. Dicey gives the somewhat vague title of collectivism.

As an illustration of cross-currents of legislative opinion, deflecting from the main course, Mr. Dicey discusses the history of ecclesiastical legislation from 1830 to 1900. And as an example of the tendencies of judicial legislation, he traces the development of law as to the property of married women, with reference to the inter-relations between judicial and parliamentary legislation.

It is with hesitation that one ventures to point out some deficiencies in a book by such a recognized authority, which does so much as this volume. But to the writer of this review it seems in some respects to fail to meet the promise of its title, and in some of its views to open the way to queries as to their soundness.

The book is a most excellent analysis of the trend of *legislative opinion*; and shows how the prevailing views in legislation accord with the writings of prominent leaders of thought. But it just fails to analyze the elusive element of *public opinion*, which bridges the gap between the ideas of the writers and the acts of the legislature; and yet this analysis the title of the book gives us a right to expect.

Perhaps some of the difficulty arises from the author's failure to define clearly what is meant by public opinion. His only specific suggestion as to what is meant by this term is inadequate. On p. 10 he speaks of it as "the ideas as to legislation held . . . by the

majority of those citizens who have at a given moment taken an active part in public life." And he follows this with the statement, as an obvious conclusion, "that the public opinion which governs a country is the opinion of the sovereign, whether the sovereign is a monarch, an aristocracy or the mass of the people."

Under such an interpretation there is nothing unusual in a close relation between law and public opinion. Not only in England, but in every country and at all times, law would necessarily agree with public opinion. The author's discussion of the ideas of Jeremy Bentham and John Stuart Mill would have no place in the volume; and he should rather have analyzed the views of the parliamentary leaders of the century.

But Mr. Dicey's treatment shows that he does not act on his own definition. And the ideas of Bentham, Mill and the other writers have a proper place in the discussion. We can only wish he had taken another step, by giving a satisfactory definition of the vague term public opinion; and had then shown how the ideas of the writers became vitalized by public opinion, and how this in turn influenced legislation. We might also look for some explanation as to why the highly individualistic views of so prominent a writer as Herbert Spencer have apparently not affected public opinion, and more clearly have been ignored in the trend of legislation during the third period.

All of this is a task beyond the limits of a review; and it may be admitted beyond the powers of the reviewer. But it may not be amiss to point out the problem suggested by Mr. Dicey's lectures; and to express the belief that it is one on which he might have thrown much light had he thoroughly appreciated the implications of his subject.

Some exceptions may also be taken to Mr. Dicey's view as to the relation between the democratic movement and legislative tendencies. He has done a service in criticising the view that democratic governments always favor the same kind of legislation. But it is surely of more significance than he admits that the years which mark the transitions from one main current of legislation to another are very close to the great changes in the English constitution during the nineteenth century. The changes in government are themselves the result of public opinion; but it would seem that they also in turn affect public opinion on other questions. And while public opinion

must not be considered simply as the ideas of those who held political power, there seems evidence for believing that it is affected by the political system. Certainly in England legislative policy under the ten pound household suffrage was markedly different from the legislative policies under the earlier franchise and under the more democratic system since the second Reform Act.

Attention may also be called to another significant feature of the trend to collectivism, which is not mentioned by Mr. Dicey. That is its influence on the political parties. The new collectivistic tendency is out of harmony with the old principles of both the Conservative and Liberal parties. Yet both parties have enacted much collectivistic legislation; and the movement has gained ground whichever party has been in power. Here is evidence of a broader tide of public opinion, which sweeps over the party divisions, and for which at least a partial cause would seem to be the more democratic suffrage of the later decades.

Such points of criticism do not, however, detract from the value of Mr. Dicey's book. It is indeed not the least of its merits that it is likely to make its readers think and to provoke discussion on the various ideas presented. And the relations between law and public opinion is certainly a subject which deserves much attention and discussion.

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*Le Droit International: Les Principes, Les Théories, Les Faits.*

Par ERNEST NYS, Conseiller à la Cour d'Appel, Professeur à l'Université de Bruxelles. (Bruxelles: Alfred Castaigne. Paris; Albert Fontemoing. Tome I, pp. 546. 1904. Tome II, pp. 432. 1905.)

These two volumes are the first instalments of what is probably the most elaborate and comprehensive treatise on international law that has been undertaken in recent years. M. Nys is already well known as the author of several books, as an editor, and as a contributor to the leading international law reviews. The work now under consideration aims to be a systematic treatise covering the whole field of international law. Some idea as to its scope may be formed from the statement that the two volumes already out, cover only about one-third of the entire ground. The first volume con-