Law and Opinion.[1]

By the Rev. W. EDWARD CHADWICK, M.A., B.Sc.

ONE great function of the Church should be so to teach that she may be a strong factor in the formation of a wise public opinion. Another should be an effort to direct the mental, moral, and social forces of the present, as far as possible, into good and useful channels. The clergy are not the Church, but they are, from their position, a very important body within the Church, and they are called to be teachers and leaders. For the discharge of these offices they need knowledge; they must have "understanding of the times." Now, things to-day are as and what they are, very largely, because they were what they were, not five hundred or three hundred years ago, but because they were what they were fifty or twenty-five years ago. An intelligent knowledge of the present is hardly possible without an intelligent knowledge of the *immediate* past, and both are essential if we are to exercise any real power in the shaping of the future.

But is it not true that many men, and perhaps especially clergymen, who could give an intelligent account of the great religious, social, and political movements of the fifteenth and sixteenth centuries, know comparatively little of such movements in the nineteenth century? They may know that certain events occurred, that certain changes in public opinion took place, but are they able to trace clearly the genesis and development of those changes? Can they describe and explain the intellectual and social forces which have been strong enough to produce considerable alterations in our laws, which have, in their turn, affected the lives of large sections of the community?

This book is upon "Law and Opinion." I may say, in passing, that as "opinion" generally precedes "law," and in such a country as ours is generally the real creator of law, I

[1] "Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century." By A. V. Dicey, K.C., B.C.L. London: Macmillan and Co. 1905.

wish the order of these words in the title had been reversed. It contains an excellent account of the various changes in public opinion which have taken place from the opening of the nineteenth century to the present time, and of the effect which these changes have had upon legislation. But, as Professor Dicey points out, "the public opinion which finds expression in legislation . . . often takes the form of a compromise resulting from a conflict between the ideas of the Government and the feelings and habits of the governed" (p. 10). Then, again, in matters of legislation men are guided in the main by their real or apparent interests. This raises the question, What is the connection between men's interests and their beliefs? Do we not come all too easily to believe that arrangements which are agreeable to ourselves are also beneficial to others? Or, as George Eliot once put the same thought, we easily persuade ourselves that a thing is wrong because it is unpleasant to us personally. Still, even in this case, men's belief is their "opinion"; and so the legislation for which they are responsible is ultimately the fruit of the same. It is well to bear this in mind, because men who have been accused of exceptional selfishness, say in opposing beneficial changes in the law, have more frequently been the victims of "an intellectual delusion unconsciously created by the bias of a sinister interest." Were this fact more generally remembered it would be more easy to treat with charity those who in social and political strife are our opponents.

In the second chapter, which deals with "The Characteristics of Law-making Opinion in England," we are shown that while opinion creates laws, "laws in their turn foster or create law-making opinion." As examples of this, Professor Dicey instances the first Reform Bill of 1832, the first grant of money to public education in 1833, and the new Poor Law of 1834. Each of these Acts has been fertile in producing further legislation, itself the result of a change in public opinion, this change being largely due to the effects of the first of each of these Acts, for each has proved to be only the first of a series.

Chapter III. deals with "Democracy and Legislation," and here some all too readily accepted fallacies are excellently exposed. Undoubtedly, during the last hundred years, in England as in other countries, society has advanced in a democratic direction—"the transition during that period from an aristocracy to a democracy is undeniable" (p. 49). At the same time the "advance of democracy affords much less help than might have been expected in an attempt to account for the growth and evolution of modern law in England." Mr. Dicey then shows how the use of the word "democracy" demands care; for it may mean either "a form of government," or a "special condition of society"—one in which "there exists a general equality of rights, and a similarity of conditions, of thoughts, of sentiments, and of ideals." Few prophecies have proved more false than those which were made with regard to the results of democratic government in England. The fact is that "democracy in England has to a great extent inherited the traditions of the aristocratic government of which it is the heir." This chapter closes with some interesting contrasts between the spirit of democracy in England and in foreign countries.

Lecture IV. is especially interesting, for in it we have a description of the three main currents of public opinion in England during the last hundred years. These Professor Dicey describes as ruling three periods: (1) "The period of old Toryism," or "legislative quiescence" (1800-1830); (2) "the period of Benthamism," or "individualism" (1825-1870); (3) "the period of collectivism" (1865-1900). To a more extended description of each of these periods the next five lectures are devoted. We will not dwell on the first period, of which it must suffice to say that in it (and especially in the latter part of it) the public opinion which was to govern the second period was slowly forming. The social condition of England was changing, and the incongruity between the new social conditions and the legislative institution was becoming so glaring that rapid changes in this became palpably inevitable. Possibly the

legislative quiescence during the greater part of this period was due to reminiscences of the excesses of the French Revolution, and, in consequence, to a dread of rapid changes—indeed, of legislative changes generally.

In Lecture VI. we have a description of the second period—that of "individualism." The most powerful influence during this period was, without doubt, that of Jeremy Bentham, whose teaching from about 1825 onwards exercised "so potent an influence, that to him is fairly ascribed that thorough-going, though gradual, amendment of the law of England, which was one of the main results of the Reform Act" (p. 125). "Benthamism" may be said to have impressed upon men three great principles: (1) That legislation is a science; (2) that the right aim of legislation is the carrying out of the principle of utility; (3) that every person is in the main the best judge of his own happiness.

For about forty-five years the influence of Benthamism continued to be predominant, though just as during the latter part of the period of legislative quiescence the influence of Bentham was beginning to be felt, so, during the latter part of the second period, was the influence of "collectivism," which was destined ultimately to take its place.

It is an interesting fact, however we explain it, that the same period during which Benthamism was the predominant influence in politics witnessed the predominance of the influence of individualism in religion. As Professor Dicey says: "From 1835 to 1860 utilitarian philosophy and evangelical theology were each dominant in England. By 1870 both had ceased to be the powers which they earlier were; but though their characteristic watchwords are out of date, many ideas which we really owe to Bentham and his followers, or to Simeon and his predecessors, still exert more power than would be suspected from the current language of the time" (p. 398).

Was there any relation between these two movements? Professor Dicey answers "Yes." There was at least this—"they both represented the development in widely different

spheres of the same fundamental principle—namely, the principle of individualism" (p. 399). To this common trait I venture to add another: They both laid immense stress on the need of a sense of personal responsibility; both were also strongly inspired by a humanitarian spirit. "The weakness of both," says Professor Dicey, "lay in their incapacity for applying the historical method; neither recognised its value nor foresaw its influence" (p. 400).

Professor Dicey then proceeds to show that it was not, in the first instance, to the so-called High Churchman that the beginnings of the new movement in religion (which bore a strong likeness to the new movement in legislation) were due. "Dr. Arnold and F. D. Maurice each brought into prominence the idea of a Christian's position as a member of the Church. . . . Maurice was so profoundly impressed with the evils of unrestricted competition, that at a time when socialists were descried throughout England, he and his disciples preached the doctrine, if they did not create the name, of Christian socialism" (p. 405).

We now pass to the period of collectivism, which succeeded that of Benthamism, and in which we may be said to be still living, though there are those who believe that the crest of the wave is past, and that there are at least some signs of a coming reaction. The fundamental principle of socialism, or collectivism, Professor Dicey defines as "faith in the benefit to be derived by the mass of the people from the action or interference of the State, even in matters which might be, and often are, left to the uncontrolled management of the persons concerned."

As results of collectivist opinion issuing in collectivist legislation, Professor Dicey instances the extension of the idea and range of protection, as seen in the Workmen's Compensation Acts, the Agricultural Holdings Acts, etc. We have another result in restrictions placed upon freedom of contract, and another in the attempts at equalization of advantages, of which the Elementary Education Acts, Employers' Liability Acts, and extensions of municipal trading, are examples. He next deals

with the trend of collectivist legislation seen in the general increase of State control. It is hardly necessary to give instances of this, but the various Factory Acts, Public Health Acts, and the Housing of the Working Classes Acts, are all examples.

One sphere in which collectivism has been specially active is in "the revival of the socialistic element . . . in the English Poor Law." "The strength of this tendency will be best seen by a comparison or contrast between the ideas which produced and characterized the Poor Law Reform of 1834, and the ideas which, in 1905, have already to a certain extent changed the law, and to a still greater extent modified the administration of poor relief."

This period has also witnessed an interesting and instructive change in religious opinion. The leaders of the High Church movement of 1834 "took little interest in, and showed small sympathy with, the humanitarianism which commanded the ardent support of Evangelicals." On the other hand, it may be asserted that, partly under the influence of the High Church movement, men, and especially ecclesiastics, anxious to promote the physical as well as the moral welfare of the people, have of recent years exhibited a sympathy with the socialism of the wage-earners. . . . It is a change of moral attitude which is very closely connected with the reaction against individualism, and, if stimulated by the High Church movement, is not confined to teachers of any one school or creed.

Lecture X. deals almost entirely with what may be termed "ecclesiastical legislation." Taking a survey of the course of such legislation during the last hundred years, Professor Dicey shows that the policy which has in the main ruled in Church affairs—that of concession combined with conservatism—is entirely in accordance with the essential characteristic of English legislation and of English life. He then shows how in England "compromise . . . has averted the intense bitterness which in foreign countries, and notably in France, has accompanied ecclesiastical legislation" (p. 356). Of course, compromise has many advantages, but it has also serious drawbacks, for controversies

dealt with in this way are apt to smoulder rather than to be extinguished. Such a case is that of the Education Controversy, which now for fifty years has divided Church and Dissent. "Each settlement has been the basis of renewed disputes, and even now controversy is not closed, simply because the law has never established any definite principle" (p. 357).

There is much more in this useful book to which, had space permitted, I would have drawn the attention of my readers. It is a book to be carefully studied, and especially so by those upon whom rests, as I have said, a double responsibility—(1) of knowing, and (2) of guiding what is termed "public opinion."

We are sometimes told that to-day the Church is "out of touch" with this. We are also told that the Church "fails to lead." A study of this book will at least help us to make both these charges untrue.

What is Christianity?

By the Rev. BARTON R. V. MILLS, M.A.

I. The Question stated.

OPPOSITION to the Christian religion is no new thing. It began on the Day of Pentecost, and has continued ever since. The motives of its opponents have been very various. Some act on political grounds, from fear of the power of a society which may rival that of the State. Others are offended by the high moral tone of Christianity, which rebukes their own lax lives. The opposition of others is intellectual, and is based on the supposed contradiction between the Christian faith and historical or scientific truth. It is this last kind of opposition which is most common in the present day. There are several things which tend to help its progress. Its appeal is to reason, not to force. The character of its exponents is often high and their ability great. There is nothing in them