

MODERN ENGLISH LAW.

In a very limited sense this is true, but it should be noted that the alterations effected by the revolutionists were in many cases far from radical, and that the spasmodic activity of three or four years of feverish excitement will never attain the results gained by fifty years of energetic improvement. Moreover, what we are here concerned with is not the cause but the fact of French conservatism. An attempt to change the law of divorce, though that law is not really consistent with the idea of civil marriage, an authoritative determination of the moot question whether a Catholic priest can legally marry, the introduction of free trade, or the establishment of true religious equality, are all measures beyond the force of the revolutionists or the despots who have ruled France. The intense conservatism of the country is too strong either for republicans or for emperors. Changes which would pass through an English Parliament almost without attention would, if attempted in France, drive the whole country into fits of excitement or panic. Nor is there any real paradox in the fact that a country which has suffered from revolutions cannot bear reform. The impossibility of violent change is a necessary condition for systematic reform. The absence of all dread of revolution has, combined with other circumstances, produced in England the condition of public feeling which allows for incessant innovation. For half a century the thoughts of Bentham have been working in the minds of men, many of whom have forgotten or have never known the name of the great jurist. The fruit of his ideas has been a movement of which the last generation saw the beginning, and of which the present generation will not see the end.

That the principles which have guided all Englishmen who have attempted to reform the law were derived from Bentham is also too manifest to deserve mention. His leading principle, that the test of a good law is its promoting the greatest happiness of the greatest number, may be now considered an admitted axiom of legislation. A subordinate principle, which is rather assumed than put forward by Bentham, has exerted even greater practical influence on the course of legislation than the axiom on which his whole philosophy depends. This

subordinate principle is that every man will be found to be in the long run the best judge of his own happiness. That maxim itself, which is roughly embodied in the proverb, "No one knows where the shoe pinches but the wearer," is true only under considerable limitation is apparent. It is nevertheless the necessary foundation of the theories on which the greater number of modern legal reforms are grounded. Thus the establishment of free trade, the abolition of legal restraints on the expression of opinion, the repeal of the combination laws, the permission of divorce, are all, under different forms, expressions of the same fundamental idea that each individual is the best judge of his own happiness. But the triumph of Bentham is seen much less markedly in the tacit adoption by all the world of what were once his peculiar principles, than in the success with which in several departments his theories have been carried into practice. For a lifetime he laboured to convince lawyers that the way to come at truth was to give free admission to all evidence which could possibly be relevant. At last his suggestions on this matter have been all but completely carried into effect. When a conservative lawyer, such as the Recorder of London, recommends that a prisoner on his trial should be allowed to give evidence, the triumph of Benthamite principles, in one department of the law at least, is nearly complete. The various attempts made, with more or less success, in this country no less than in England, to codify the law are also distinct results of the teachings of Bentham and Austin. Strangely enough, the efforts of law reformers have, in England at least, been far more successful in improving the substance than in amending the form or expression of the law. That this should be so seems at first sight strange, because common sense suggests that it is easier to express a law in good language than to make a good law. But this suggestion, like many others made by common sense that is suggested by obvious appearances, turns out, in fact, ill-founded. The substance of English law approaches, in many departments, to a very high degree of merit; but the style of English statutes has rather deteriorated than improved, and an English code is still merely the dream of reformers.