

MODERN ENGLISH LAW.

One cause at least of the failure of attempts to codify the law, lies in a feature of the Benthamite movement, which has received insufficient attention. Bentham's disciples were compelled to carry out their reforms by means of the only instrument which lay ready to their hands. This instrument was the British Parliament. Now, the House of Commons has great merits. Its main function is to represent English opinion, and this function it admirably performs; but its other and subordinate functions is to legislate, and this subordinate duty it performs, and always will perform ill. Parliament, moreover, had till within the last fifty or sixty years, never been habitually employed as what may be termed a law making machine. The long roll of the statute books gives an exaggerated idea of the amount of legislation actually turned out by Parliament. Many of the acts enrolled among the statutes are merely administrative measures. There are, indeed certain law-making epochs, such, for example, as the reign of Edward I or Henry VIII, but on the whole, the quantity of legislation, at any rate affecting private law, was, down to the present century, much smaller than is easily believed by a generation accustomed to see each session produce a good sized volume of new law. In early times, further, Parliament had little concern in the drafting of acts, and down to a quite modern period the discipline of party checked the indiscriminate legislative activity of individual members. At the time when Bentham commenced his career, legislative changes were rare. Innovations came not from St. Stephen's but from the Court of Queen's Bench, and the judge-made law of Lord Mansfield, may compare favorably with the work of parliamentary reformers. Law made by judges has defects, but it has the merit of being made by men who understand the system which they mean to improve. The inevitable result of the general effort to improve the law was, as already pointed out, to work the parliamentary machine for a purpose to which it was not properly adapted. The effect has been that the work turned out has been marked by the merits and the defects of the machine which produced it. The public wished for the abolition of various abuses. Parliament, representing the public, has abolished these abuses;

and wherever the mere repeal of bad laws was all that was needed, Parliament has done all that the occasion required. But the careful statement of complex rules in precise language, which constitutes the essence of codification, is not a matter in which electors can be interested. If the constituents, indeed, should by any chance clamor for a code, Parliament would be itself unable to provide it. Parliament might conceivably delegate its powers to competent persons; but as members, like all other men, love power even which they can not use, they will not, except under extreme pressure, delegate to others the glory of making laws. This pressure has never arisen. Hence, while the substance of the law has been remodelled, its form has been hardly improved. In India, Englishmen can make a code, but in India Englishmen are despots. The man who could easily carry a whole code through the council at Calcutta, would probably fail in getting a single clause of a bill through the House of Commons. Other causes, no doubt, have contributed to the failure of English reformers to produce a code, but the nature of the House of Commons is the most obvious cause of their want of success. To the fact, at any rate, that the reforms which mark the history of modern English law have not been embodied in a striking form, must be attributed the comparatively small amount of fame which has fallen to the share of Bentham and his disciples. To compare Napoleon as a jurist with Bentham, would be as absurd as to consider whether Bentham equalled Napoleon as a general; but the French emperor, who could plunder the fruits of other men's labors will go down to posterity with his code in his hand; the English jurist will never be known to any but students. A story is current of Bentham's predicting to a friend that in the next generation he would be seated on a throne giving laws to England. The prophecy has been half fulfilled. He now legislates for England, but he has not received his throne.—*N. Y. Nation.*