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SEVENTEENTH SERIES

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WORLD?

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NEW LAW
FOR A
NEW WORLD?

BY
LORD TANGLEY, K.B.E., LL.D.

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Lord Tangle

1965

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THE HAMLYN TRUST

THE Hamlyn Trust came into existence under the will of the late Miss Emma Warburton Hamlyn, of Torquay, who died in 1941, aged eighty. She came of an old and well-known Devon family. Her father, William Bussell Hamlyn practised in Torquay as a solicitor for many years. She was a woman of dominant character, intelligent and cultured, well versed in literature, music and art, and a lover of her country. She inherited a taste for law, and studied the subject. She travelled frequently on the Continent and about the Mediterranean and gathered impressions of comparative jurisprudence and ethnology.

Miss Hamlyn bequeathed the residue of her estate in terms which were thought vague. That matter was taken to the Chancery Division of the High Court, which on November 29, 1948, approved a scheme for the administration of the Trust. Paragraph 3 of the Scheme is as follows:

“ The object of this charity is the furtherance by lectures or otherwise among the Common People of the United Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and the Ethnology of the chief European countries, including the United Kingdom, and the circumstances of the growth of such jurisprudence to the intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other

European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.”

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From the first the Trustees decided to organise courses of lectures of outstanding interest and quality by persons of eminence, under the auspices of co-operating Universities or other bodies, with a view to the lectures being made available in book form to a wide public.

The Seventeenth Series of Hamlyn Lectures was delivered in November 1965 by The Right Hon. Lord Tangle, K.B.E., LL.D., at The Law Society's Hall, by courtesy of the President and Council of The Law Society.

J. N. D. ANDERSON,
Chairman of the Trustees.

November 1965

I

THE subject of these lectures is law reform. This subject seems to attract an amount of public attention which fluctuates from time to time. There are periods when reformers are active and succeed in attracting public interest both amongst lawyers and the population at large. There are other times when the reformers appear to be less active and public opinion less concerned. Perhaps this rhythm is necessary in the nature of things. Conceptions of law reform begin in the realm of ideas, but in this country at all events, they become practical politics only under the pressure of practical necessity. They are carried forward into the form of positive law by means of legislation or judicial interpretation. In some instances new institutions may be needed. It is not unnatural that a period of innovation should be followed by a period of assimilation and development. But there seems always to be an overlap between the period of thought and the period of legislation and subsequent practical development. By this I mean that the law and institutions of today naturally reflect the thought and necessities of a previous generation. It takes about a generation for thought to go through the inevitable process of propaganda, discussion and argument before there is a sufficient consensus of public opinion to justify the acceptance or putting into effect of new ideas. Even then there has to be the spur of a

widely felt necessity. By the time this process has been completed the impetus of a new wave of thought has begun the process all over again. The active young spirits who have inspired current institutions have either disappeared or become elderly ornaments of the establishment and so have earned if not the contempt, at least the disregard, of the new generation. In matters of law reform, there is therefore always a certain amount of tension between those whose work has taken form in actual institutions and those whose work will ultimately, if it commends itself to the good sense of the community, result in the new institutions of a generation hence.

It will be generally agreed that at the present moment of time we are living through one of the active phases of law reform. I am thinking not only of the passing of the Law Commissioners Act, 1965, which one hopes may inaugurate a more effective means of converting ideas into institutions. I am thinking also of the extraordinary activity and variety of thought which is coming not only from the universities and other seats of learning, but from those who as judges or former judges and practitioners are, or have been, actively concerned in the practical administration of the law. I doubt whether there has ever been a time when more practising lawyers of distinction have been prepared to extricate themselves from their day-to-day tasks, to survey from the outside the purpose of their daily pursuits, and to contemplate their place in the life and work of the people. If I may respectfully say so, some of the Hamlyn Lectures are illustrations of the process to which I am referring.

On reflection one might think that it would be surprising if this were not so. In the last resort the state of the law must both reflect and depend on the state of public opinion. By public opinion I do not mean merely the whim of the moment but the convictions and beliefs, or even prejudices, upon which the members of any given society habitually act. These are the basic things by which a society holds together. Beliefs may be the result of conscious, deliberate and rational thought and argument. For the most part they are more likely to be the result of inherited experience, teaching and tradition. There will always be a mixture of prejudice and reason, of philosophic, economic and sociological experiment and investigation on the one hand and folklore and old wives tales on the other. There will always be a cautious element which desires to hold on firmly to inherited or conventional thought which has proved its practical utility. There will always be questioning spirits attracted by and looking out for novelty. Were it not so society would become stagnant and decadent. On the other hand no society can safely indulge the soaring ambitions of its questioning spirits unless it feels sure enough of itself to be able to contain the new without fatal damage to the old. A society can only feel secure in this sense if there is in fact a strong enough body of accepted doctrine. No law can be effective for long unless it is in line with this accepted doctrine.

The nature and colour of this doctrine will in the last resort depend upon man's outlook on life. What sort of a world is he living in? What is his own true nature? How is his own nature related to the world

around him? Every man has his own answers to these questions. They may be articulate or inarticulate, rational or prejudiced, intuitive or intellectual, true or false, conscious or unconscious. The answers are to be found not necessarily in what he says but in what he does. It is the habitual reactions of the ordinary man to the ordinary relationships of human life which ultimately form the bonds of society and the public opinion with which the law must remain in accord.

There seem to be times in human history when the state of man's knowledge requires that he should re-examine all the questions to which I have been referring. Such a re-examination will only take place under the spur of necessity, for original thought is always painful, laborious and exacting. The process is never completed in the course of one generation; it may require many. In the process there may come a prolonged period of uncertainty and there may even be violent conflict as society, its institutions and its laws adapt themselves to man's new attitude to life.

Such a period was undoubtedly the sixteenth and seventeenth centuries. It is hard for us today to realise the enormous change required of man in his outlook on life by the discovery that the earth was a sphere, a satellite of the sun, and that even the sun was not the centre of the universe but only one and perhaps not one of the most important constituent elements in it. This total overthrow of the beliefs on which mankind had acted for many centuries involved also the overthrow of medieval conceptions, not only in science and cosmogony but also in the world of theology and ecclesiastical organisation, and the organisation of

government and the state. Authority, whether of Pope or Monarch, was thrown out with the beliefs received from Authority and something new had to be found to take its place. The substitute man found was his own reason and conscience, tempered perhaps for many by the authority of the Bible as interpreted by themselves. The world of the seventeenth century was not the same world as that of the fifteenth century and new categories of thought, new ways of living, new institutions in Church and State had to be found to fit it, and to express its content. New ways in art, in theology, in natural science and the governance of Church and State are not separate things but all are expressions of a deep change in man's outlook on life. Galileo's telescope is not altogether unconnected with the execution of Charles I. It is by no means accidental too, that the resettlement of the British Constitution after 1688 was nearly contemporaneous with the foundation of the Royal Society, the physical discoveries of Newton, the speculations of political philosophers such as John Locke and the beginnings of that technological growth which man's new freedom of thought and experiment opened up to the world. The sixteenth and seventeenth centuries were periods of great violence in thought, in society and in the world. They gave birth to a new outlook on life which in the last hundred and fifty years has so changed in degree the nature of man's life on earth as perhaps even to have brought about a revolution in kind. The modern world of science and technology is as much the child of the age of reason as the medieval structure of Church and State was the child of the age of faith.

I think you will agree too that the law reforms of the nineteenth century were also children of the age of reason and examples of the questioning restless experimental attitude to life which it engendered. The work of Dicey, *Law and Public Opinion in England During the Nineteenth Century* (to which we shall refer later) is an exposition of the application of reason to law and legal institutions and of their adaptation to changing public opinion as that opinion adapted itself to the new world which grew up out of the ferments of the sixteenth and seventeenth centuries. It is not for nothing that Englishmen thought of the 1688 settlement as the "Glorious Revolution." It closed the door on the period of violence and disruption which followed on the destruction of the medieval synthesis. It ushered in the age of reason which reached its apotheosis in the nineteenth century. I do not think it is extravagant to look upon the law reforms in the nineteenth century as "new law for a new world." It was a new world and it did need new law, and the blessed belief in the supremacy of reason provided a human motive which made law reform both possible and safe. Moreover the spur of necessity was there also. Eighteenth-century legal institutions could not contain the infinitely more complicated human and other relationships which grew out of the Industrial Revolution and the increasing complexity of world affairs which advancing technology brought with it.

In the eighteenth century law reform would have been possible. The motive of reason was there. But men were too near to the disturbances of the seventeenth century to feel that it was safe. 1688, the Glorious

Revolution, the British Constitution, were bulwarks against a recent and violent past and even men such as Burke, with his vivid sense of society as a continuous growth through past and present into the future, dared not contemplate any change which might endanger or undermine the bulwarks. The spur of necessity was not there. Technology had not yet changed the nature of Society. Where the spur existed, change took place. One cannot forget Lord Mansfield and the incorporation of the law merchant into the common law to meet the needs of the new mercantile class whose influence was growing with the growth in importance of trade.

It may be that the end of the nineteenth century marks a real change in the process of development which was so characteristic of the working out of the intellectual revolution of the sixteenth and seventeenth centuries. If so, we should expect to find ourselves in a state of uncertainty. It may be that the presuppositions of Victorian society will become as irrelevant to us as the medieval synthesis was to the man of 1688. Perhaps we are in for a period of change and unrest of which the present ferment is only the beginning and of which the end will not be seen for generations to come—possibly in the form of some kind of world society or at least some supranational society or societies. I think I perceive in our situation today signs of the elements to which I have been referring. If so, the immediate task of law reformers is a very difficult one. If in fact we are in an age of deep transition in our thought, our outlook on life, and our expectations for the future, we are faced in acute form with the problem of how to accommodate change within a settled

system. Are we face to face with another new world? If so, do we know enough about it safely to adapt our laws accordingly? How far can we go? Should we mark time until man has settled into his new world? If these questions are real questions, it is not surprising that we should be in a state of ferment. A new world would certainly require new law. I have ventured to put a question mark into the title of these lectures and I have to confess that the question mark is the greater part of my subject.

From this attempt to explain and perhaps justify my title I turn to my approach to the subject. As I look back on the growing list of Hamlyn Lecturers I am impressed with the weight of legal, historical and sociological knowledge that has been brought to bear upon the subjects discussed. My approach must inevitably be different from that of previous lecturers, if only for the obvious reason that I lack the knowledge, scholarship and expertise which they have so evidently displayed. My life has been passed in dealing day by day with the practical necessities of life. I have spent my days in the practice of the law and business, with occasional divagations under the stress of war or the pressure of public events into the Royal Navy, the Civil Service and other forms of public service. I have been fortunate in having been called upon to see life from a number of different points of view; points of view sufficiently various to stimulate me to think about their relationships with each other and the world at large. On the other hand the pressure of daily events has made it impossible for me to pursue any sustained course of study in any particular subject. My approach

therefore must be a non-specialist approach. It is the approach of an ordinary man of affairs who has also tried to keep his eye lifting for the major issues of life.

If I am right in thinking that the apotheosis of the age of reason may possibly be found in the latter part of the nineteenth century and that something has happened since which has created uncertainty into which it is necessary to inquire; if we are in truth entering on a new world, then as good a dividing line as can be found as between the old and the new might be said to be the beginning of the twentieth century. As my own life began a year earlier than this, my span of life coincides with the development so far of the new world.

I hope therefore that I shall not be counted an egotist if I take the date of my own birth as a dividing line between what may look like the death of the old world and the birth of the new. If it should turn out to be so on examination, it is pure coincidence.

I am aware, of course, that to take any date as marking a transition from the old to the new is artificial. The process of change is continuous, and its gradation is imperceptible from moment to moment;

“The sun’s rim dips, the stars rush out,
At one stride comes the dark.”

That is how it appeared to the Ancient Mariner but it was the hallucination of a fevered mind. In sober truth the process is not so sudden and obvious. The sun sinks, the light fades, the twilight comes, and then it is dark. But, nonetheless, looking back one can say that an hour ago it was day and now it is night: one can identify the moment of change within narrow limits

of time. I do not suggest that the year 1900 marked a change from day to night. I am not so pessimistic as that. But I am enough of a sceptic to wonder whether it was a change from night to day. It looks to me as though we are living in the twilight (whether of dusk or dawn), a time which, as sailors and motor-drivers know, can be more confusing than full daylight or complete darkness. Can it be truly said that the old lights by which men lived and steered their course have gone down and that the new ones are not yet fully discernible or familiar? Have the former beliefs which held society together dissolved without new ones taking their place? Is there today a common body of accepted belief which the law can accept as a standard? It seems to me that in judging the need for law reform these are questions which must be asked, and if possible answered.

I therefore invite you to look at the world as it was before 1900 and the world as it is today and to make certain comparisons. With your permission, I will begin with certain obvious things. They do not go to the root of the matter but they are important, both in life and for the law.

There is first the growth in the means of communication. When I was born there was scarcely a motor-car upon the roads and travel had not become a habit. The population was static and people lived their lives mainly in small and settled communities. Marconi had not made his first transatlantic wireless communication. A worldwide cable system existed, but many parts of the world were outside its scope and on the whole news travelled slowly. I used, as a small boy, to watch

balloons with excitement but aeroplanes didn't exist. It was sensible for my parents to say "I would no sooner do that than fly." Radio broadcasting and television, which bring events all over the world almost immediately into the home, had not been thought of.

Electricity supplies for lighting had been available in a limited way for a few years. But it was not until about 1900 that it was technically and economically practicable to transmit electricity over long distances, or use it to supply power. Now, of course, it is available everywhere at practically uniform prices and for all purposes. In consequence industry is not anchored now to the coal-fields, it can obtain its power anywhere, and it is the proximity of the markets and availability of labour which are the decisive factors in locating industry.

The combined effect of these changes with many others has been so to alter the environment of our people as to affect their outlook on life as well as their way of living. Certainly these changes have given rise to quantities of new law. For the motor-car there is a great body of statute law and there are many decisions of the courts interpreting the statutes and extending and applying the principles of common law. There is the statutory system of licensing of the various types of road vehicles. High Court judges spend much of their time trying actions arising out of motor accidents.

Systems of telecommunications have necessitated whole new codes. The ether (or whatever it is that carries wireless waves), does not afford unlimited channels or wavelengths, and there is much competition, national and international, for the use of them.

Statutory regulation which includes the enforcement of international conventions (for the Heaviside Layer knows nothing of national frontiers) is essential if the ether is to be effectively used at all. Air transport, again a largely international affair, has necessitated new conventions and codes. Electricity supply has its own body of law and the mobility of industry and population made possible by the combined facilities of electricity and road transport has necessitated the whole system of town and country planning.

One must not underestimate the weight of all this new law and the burden it throws on the administration of justice and the legal profession. One must accept also that some of it does touch on deep social questions. Motor traffic raises moral problems about my duty to my neighbour. The limitation of channels in the ether forces upon the community a choice as to what sort of broadcasting, and by what sort of broadcasters, shall be preferred. Were the ether as free as air, or as generally available as paper and ink, there would be no more need or justification for control of broadcasting by radio or television than there is for control of books, magazines or newspapers.

Town and country planning obviously forces moral and social questions upon the community. There is a choice as to location of industry which affects the lives and happiness of many individuals. There is choice between rural and urban life which can never be a matter of pure economics. There arise acute questions between public and private interests, my needs as a member of the community and my rights as an individual.

While, therefore, one must admit that some of this new law touches in places on deeper matters, this contact is only marginal. The new law is mostly just regulatory, a collection of by-laws like those of a municipal park which lay down the rules which must of necessity be observed if an amenity is to be put to advantageous public use without degenerating into a nuisance or a danger.

If one takes each subject separately, this conception may be adequate and harmless. But one can no longer do that. Taken with the vast system of law that has grown up with the philanthropic activities of the Welfare State this mass of new law has to be considered as a whole. It subjects people to a system of regulation which would have been inconceivable to my parents when they were first married. When one considers also the state's modern habit of intervening to control the economy of the country, utilising approaches and methods unknown before and involving the assumption by government of yet more powers of regulation, one must realise that a system of administrative law has grown up bit by bit without our paying much heed to the nature and effects of the process.

We need to remember that as technological change advances, more and more of this kind of regulation must be needed. All this, I suggest, requires serious consideration of our system and methods of government both legislative and administrative, and to this we must refer before we are done.

And yet, for all its importance, this body of law, except in the limited way I have mentioned, is a by-path from my main theme. It is as obvious as are the

changes that have brought it about. There is much more of it than there was in the nineteenth century because there have been so many more technological developments since 1900 than there were before. But in principle and in kind this legislation is at one with the old legislation relating to turnpikes, canals and railways. It is the child of the age of reason, an inevitable consequence of the intellectual revolution of the sixteenth century. In essence its only novelty is that its great mass should force us to look closely at the machinery of government.

I do not apologise for reminding you of such obvious matters as those to which I have so far been referring. I feel bound to proceed to some extent by a process of elimination and it is perhaps a relief, at this early stage, to have isolated and categorised a great mass of technological change and the great mass of new law which goes with it. These are not essential parts of the new world or the new law I had in mind when I chose the title of these lectures.

I turn now to another great change which no one surveying the span of my own lifetime could possibly fail to take into account, and which I believe has had and will continue to have its influence on an Englishman's view of himself.

It is impossible for a civilised man to regard himself only as an individual. Part of his personality is his own, part is his inheritance as a citizen of his country, and one cannot separate the two parts. I can with an effort think of myself as a man and form a view of myself as a man. But it is an Englishman thinking and it is an Englishman's view that I form.

This is inescapable. However open-minded I may be, however willing I may be to respect and understand the thoughts and ways of other peoples, I form my judgments as an Englishman.

“ A body of England, breathing English air
Washed by the rivers, blest by suns of home.”

An Englishman, therefore, cannot think of what he stands for and his position in the world without at the same time thinking of what his country stands for and its position in the world.

To the ordinary Englishman of the eighties, this presented no problem. There was a happy coincidence of outlook, even though it is quite astonishing to realise how quickly this attitude had grown up. He was strong and free and his country was strong and free. Moreover, that strength and freedom were to be used to carry out a civilising mission everywhere. If revolutionaries in their own benighted countries got into trouble, they could always find a home here. What possible harm could come to this free, strong and secure country if a Karl Marx should spend his time in the British Museum scribbling incomprehensible nonsense? Your late nineteenth-century Englishman was sure of himself, his country and its mission in the world.

“ For he might have been a Russian
A French or Turk or Prussian
Or perhaps Italian
For in spite of all temptations
To belong to other nations
He is an Englishman.”

What raised a laugh then was the idea that there could be any temptation to be anything but an Englishman. Today we still laugh but the laugh is that anyone could be so conceited and provincial.

But let us not be too supercilious about W. S. Gilbert's Englishman. He had a great deal to be proud of and he had a sense of mission. These two things are wonderful supports for a man's self-esteem and it is no wonder that his morale was high. It may have toppled over into self-satisfaction or the Philistinism that so aroused the anger and contempt of Matthew Arnold, but it was a positive force and the world would have been much poorer without it.

After all, it was in England that the intellectual revolution of the sixteenth and seventeenth centuries reached its finest point in the life and work of Newton, a world figure of the highest possible stature. I am not thinking only of the mathematical and physical discoveries he actually made, some of which have needed drastic revision in the light of later discoveries. I am thinking of his dazzling success in establishing the validity of the scientific method. I have already mentioned that this was revolutionary in that it rejected the traditional appeal to authority and relied instead on the processes of pure thought with the resulting theories being tested in order to find whether they worked out in practice. The intoxicating success of the new method gave rise to two phenomena. The first was a tremendous mental optimism, the belief that if only enough people would work hard enough at it the scientific method would ultimately tell us the whole truth about the universe. The second was that the discovery that

the application of the scientific method to practical problems could give mankind an undreamt of control over the physical conditions of life. The first has been the mainspring of the whole effort of scientific discovery not only in the realm of physical things but in political economy, biology, sociology and psychology. The second is the basis of our whole attitude to technology, which is our modern ugly word for applied science.

These two phenomena have made the modern world what it is and the change first took place in England. It is habitual today to dwell on the miseries of the Industrial Revolution and they were very real. But, looked at in perspective, that Revolution brought with it enormous benefits to the human race, better food, housing, amenities and health; a wide access to the things of the mind with the leisure and the absence of fatigue necessary to enjoy them; primary and secondary education; the emancipation of women; and the spread of political power.

Most of these things, and the beginnings of all of them, Englishmen had by the mid-nineteenth century. The Great Exhibition of 1851 symbolised them. Most of the rest of the world did not have them. The Englishman was perfectly entitled to see himself as the leader of a growing world civilisation.

Moreover, he had another legitimate source of pride. Not only had Englishmen been the leaders in the change from intellectual authority to science and technology, they had also been uniquely successful in establishing politically a form of government which was capable of holding society together throughout the period of revolutionary change in thought, technology and ways of life.

This was not done without violence, but the Civil War of Charles I was really quite a minor disturbance compared with what was going on abroad. The balance of forces established by the Glorious Revolution of 1688 and developed through the eighteenth and nineteenth centuries by peaceful parliamentary methods has really proved to be one of the greatest factors in the history of the world.

Is it surprising, therefore, that Victorian man assumed that he had a mission to share with the world his two great discoveries—technology and parliamentary government? And given the economic system which had been so successful at home, can one really blame him for feeling that it was natural to make a good profit out of these exports of technology and political experience? In fact, as usually happens, idealism and self-interest went hand in hand. There is some basis for the phrase “colonial exploitation,” but the fact is that there are many millions of people in the world who are better fed, housed, educated and more healthy than they ever could have been but for the self-interest which introduced to them modern technology. Cries today for aid to under-developed countries are not evidence of neglect in the past. They are demands for an acceleration of what was being done during their days of so-called bondage.

The idealism, too, was very much there. Late Victorian man had every right to be proud of his political export. The work of the Indian Civil Service and the Colonial Service have been of untold value to the world. The work of these services I believe to be perhaps the nearest thing to altruistic government the

world has ever seen and it has scant justice done to it today. The governors may have seemed superior, condescending, remote and full of racial pride. But they wore out their lives in the interests of the ordinary native, establishing honest, uncorrupt, disinterested institutions for little pay, but with a great sense of public service.

They have to some degree succeeded in instilling into their native trainees and successors some of their austere virtues and practices. If their traditions can be carried on, there lies the only hope of the ordinary native for generations to come of enjoying the protection of a disinterested government.

I suppose that Queen Victoria's two jubilees, the second of which took place only shortly before my birth, marked the height of England's glory and possibly the height of the Englishman's self-satisfaction.

We must not overlook, too, the spiritual drive behind England's achievement. The Englishman set out to civilise large parts of the world and to him civilisation meant mainly three things, all of which were manifestations of his outlook. They were British technology and trade, British parliamentary government and British evangelical Christianity. In a word, Englishmen had a faith in themselves, a faith in their way of life and a faith in their mission to the world.

This has largely collapsed. Others have caught up and surpassed us in technology. Parliamentary government has not proved to be a universal panacea. Sociological studies of primitive peoples have persuaded many that Western civilisation is not the only road that civilisation can travel. The "noble savage" myth

has had an unexpected twentieth-century revival. The decay of the traditional form and presentation of religion has undermined unquestioning confidence in missionary methods. It is not only that Englishmen have lost technological supremacy, colonial rule and world political power. The loss goes deeper; it is a loss of faith, a scepticism about himself and his place in the world, a disorientation which gives rise to a feeling almost of vertigo, the giddiness amounting sometimes to momentary panic that comes when some familiar supporting dimension is found to be not there. No doubt it was this phenomenon Mr. Dean Acheson had in mind when he suggested that we had lost an Empire and had not found a role. There has therefore entered into the Englishman's mind an unwonted sense of uncertainty.

There are other factors, too, that have served to create or deepen this sense of uncertainty. I have already mentioned the fact that others have caught up and in some respects surpassed us in technology. This has led to enormous changes in our industrial and commercial situation. The Industrial Revolution took place in this country and for very many years this country was the undisputed leader in the business affairs of the world. So much was this the case that it seemed safe to repeal the Corn Laws relying on an industrial supremacy which would make it possible to obtain from abroad a large proportion of the foodstuffs necessary for the growing population and almost all the raw materials needed for industrial advance. The Englishman of the 1880s regarded this state of affairs as his natural birthright. He regarded free trade not merely

as a fiscal policy but almost as a matter of religion. It was only the industrialisation of Germany, the United States and other countries, a process built up behind protective tariffs, which led to the Tariff Reform campaign, the most acute phases of which I can myself just remember. The Englishman's faith in industrial supremacy seems to have been as much shattered as his faith in his world mission. Instead of an unselfconscious assumption of his leadership, the Englishman of today seems to be almost neurotically occupied in a process of self-analysis, sometimes one might think of self-condemnation, when he contemplates his desperate need to compete in the markets of the world for the business which will enable him to earn nearly all his raw materials and much of his food. He seems to be committed to an unending struggle for efficiency, the need to get every ounce of result out of any given effort, financial, physical or intellectual. In this field, too, his confidence has been shaken, his faith in himself assailed and an uncertainty of mind and outlook created.

I have spoken up to this point of the uncertainties flowing from the Englishman's changed position in the world as compared with other nations and countries. But I suggest that there are other and deeper uncertainties, uncertainties as to man's place in life.

I have referred to the intellectual revolution of the sixteenth and seventeenth centuries—a revolution which resulted in the rejection of authority as the source of truth and the substitution of the process of pure thought, checked and tested by experiment, which is the scientific method. I have referred to the triumphant success of that method in the realm of physics and its derivative

effect in the world of technology. But these successes seem to have emboldened man to apply the scientific method in fields other than those of physical science. If the scientific method had proved to be such a success in the world of physics and technology, might it not prove also to be an equal success in other spheres? During the past 150 years or so attempts have been made so to extend the application of the scientific method with consequences which, I suggest, have deeply affected the outlook not only of the Englishman of today but of all educated people of whatever nation.

In the realm of political economy one must not overlook the figure of John Locke. In the field of pure economics one must not overlook Adam Smith and Malthus, both late-eighteenth-century figures, but for our purpose the first figure one must particularly mention is Jeremy Bentham. Since his work began to be accepted, it has been impossible to regard the work of law reform in the way in which it was regarded before him. Of course the law had been changing from time to time to meet practical demands, but the principal means of change was the essentially empirical method of development through judicial decision. The name of Lord Mansfield, whose work I have already mentioned, will be for ever so remembered. But the process of law reform by judicial decision has certain limitations which are of its essence and to which we shall have occasion to refer later. It was the great contribution of Jeremy Bentham that he deliberately substituted for this empirical method the method of scientifically applying one's mind to the whole body of law as it affects the

community and choosing as its means of reform legislation rather than judicial decision. It is no accident but an essential fact of our legal history that the Statute Book really began to swell with the work of the Utilitarians. No convention was too sacred, no prejudice too rooted and no nook or cranny of the law too dark to be challenged and illuminated by the light of human reason. Just as the common law had postulated the reasonable man and equity the conscientious man, so the Utilitarians postulated the reasonable and conscientious legislator. They expected him to work not by authority or tradition, but to cast the cold light of reason upon every problem and with true Newtonian scientific enthusiasm to test the results of his work by the standard of workability. It is easy to riddle the conception of "the greatest good of the greatest number" with all kinds of philosophical objections. But Bentham would be satisfied, I believe, with the thought that John Doe and Richard Roe are dead, that the old legal fictions have disappeared; that actions stand or fall by the substance of the case rather than the technicalities of pleading; that the county court has made poor men's debts recoverable and that the courts have been reorganised into the Supreme Court of Judicature in which all the ancient jurisdictions of law and equity have been merged. He would be satisfied, I believe, to find that his scientific approach in the world of jurisprudence had proved as workable as Newton's system in the realm of physics. Surely too he would be a little surprised to find that with the advance of knowledge his work needs amendment, as would Newton to find that his work needs amendment

in the light of Einstein and the nuclear physicists. But I think that both Bentham and Newton would also have taken comfort in the fact that in spite of these subsequent happenings their ideas and work are still valid for ordinary day-to-day practice. Both too would be, I am sure, horrified at the thought that anything but reason should be either the test of their work or the basis of any advance upon it. As we shall see, the Englishman of today has to face a situation in which this supremacy of reason is under challenge, and authority under suspicion. By authority, I do not mean the sort of authority from which the thinkers of the sixteenth and seventeenth centuries broke away. I mean the sort of authority which necessarily flows from a belief in reason. The scientific method of reason tested by experiment assumes that the process will result in the accumulation of a body of truth and that those who have devoted their lives to a study of truth will know more about it and understand it better than those who have not studied it. The ordinary Englishman today seems to be persuaded that the scientists are in possession of such a body of truth. If not, how can technology work as well as it does?

But in other fields of life, the very existence of this kind of authority is questioned. Even in the realm of physical science discovery has been so bewilderingly fast and the branches of science have become so bewilderingly diversified that while mankind may marvel at the technological results of it all, there is an enormous ignorance as to what the scientific method in essence is and of what it implies. The mere fact that man is impressed by the success of applied science in

filling material needs does not mean that he accepts the authority of reason or is disposed to believe that anyone is entitled to respect simply because he knows more.

Can it be that the questioning spirit engendered by the scientific approach is undermining the very reliance on reason and the authority of reason which is the mainspring of scientific work? If so, poor Bentham must be turning in his grave, and other thinkers, whose work we shall consider in the next lecture, must be suffering from a similar unease.

II

IN the last lecture we had begun to consider the work of men who have tried to apply the scientific method to fields of thought outside physical science. We chose to mention first Jeremy Bentham and his followers of the Utilitarian school.

The second name that springs to mind is that of Charles Darwin. The principle of evolution has had a catastrophic effect on man's outlook on the world. Prior to his work, man had a clear and somewhat flattering view of himself. It was based largely upon the first Chapter of Genesis. First of all came the creation of the earth, the seas and the skies. Then came birds, beasts and fishes, and finally, crowning the whole work, came Man, fully fledged, with all his human attributes, the lord of all creation. Some learned Divines believed that these actual events all taking place within the course of a week could be accurately dated, and that the date was quite recent. Man's picture of himself was that of a Divine Creation, with the sum of things animate and inanimate designed for his benefit. I referred to the "principle of evolution." When I was a boy it was called the "theory of evolution," but it is now accepted as a principle not only by scholars; but by the man in the street. What he thinks of it all is hard to say, but two things are clear. One

is that we know that our race is only one of many species which have been developing and changing over an immense period of time and which are still evolving in their reaction to their environments. Man himself is not necessarily a fixed quantity. He may develop unknown powers and capabilities, or he may destroy himself. Moreover, he is capable of changing his environment, and therefore influencing his own development. But if man is largely the creature of his environment, is reason to be relied upon as the operative force in his life, or is his progress determined inexorably by his circumstances? Two thoughts, mutually contradictory, have been lurking in our consciousness since Darwin's work became generally accepted. The first is—is mankind governed by reason at all? The other is—should not man use his reason to change his environment, and thereby control his own destiny?

It is not possible to doubt that one by-product of the acceptance of the principle of evolution has been the abandonment of the traditional form in which the Christian religion was formerly presented. There are few informed Christians today who could accept the traditional pre-Darwinian presentation. In consequence, another authority has been toppled, by which I mean the authority of the Bible in its literal form, which was the Reformation's alternative to the authority of the Church. Is it possible to doubt that here we have yet another element of uncertainty, and in this instance an uncertainty, not merely about the Englishman's position in the world, but a deeply rooted uncertainty about

mankind's position in the whole nature of things? Scepticism has displaced security.

The next thinker we must notice who has sought to apply the scientific method to non-physical things is Karl Marx. Just as the history of mankind through the ages has never looked the same since Darwin as it did before, so the outlook of man on society has never been the same since Marx. Three things seem to me to have obscured the true importance of Marx. The first is the, to me, extreme unreadability of his writing. The second is the fact that he is mainly thought of as the apostle of revolution and the dictatorship of the proletariat. The third is the quite extraordinary failure of his prophecies. As to the first of these things, I suppose that his unreadability is mainly important because in consequence few people have read what he actually wrote. As to the second, it is a mistake to think of Marx as the apostle of revolution. He was a prophet, not an apostle. As to the third, Marx prophesied that revolution and the dictatorship of the proletariat must inevitably come as the apotheosis of industrialism and capitalism. In fact, such a revolution has not come in any highly industrialised society, but Marxian revolutions, or revolutions using the name of Marx (which are not the same thing), have come in countries at a very early stage of industrial development. Even in those countries, the revolution has not followed the course predicted by Marx. There is no known instance of his predicted "withering away" of government, followed by pure communism. Why, then, in spite of these conspicuous failures, must one nevertheless regard Marx as one of those who, like Darwin,

changed the climate of thought? The answer is that his analysis of society was original. He deliberately and confessedly set out to apply to society the same methods that Newton had applied to physics. Indeed, he expressly regarded himself as the Newton of sociology. He believed that by collecting the facts and applying reason, he could establish a body of truth about the way society is created and behaves and must inevitably develop, as demonstrably objective as Newton's Laws of Gravitation. He chose to work in London because in his time, as he himself stated, there was a wealth of statistical and factual information available in this country which was incomparably fuller and better than anything available elsewhere. And so his life was largely passed in the British Museum, reading Blue Books, trade returns, industrial statistics and the history of the Industrial Revolution. One must therefore draw a clear distinction between his real scientific work and his unfulfilled prophecies of the future. His scientific work established certain things, which must, I think, be taken as largely true. The central thesis is that not only man's way of earning a living but to a large extent his outlook on life, his education, his thoughts, his habits, even his studies, will be determined or at least greatly influenced by the state of technology at any given time. This was new and original thought, and again it involved a break with authority. Marx denied that beliefs treasured by authority were for that reason true. He denied too that it is ideas and beliefs which shape and mould the technology of the time, but vice versa. A worker in an eighteenth-century cottage industry, Marx taught, was a different kind of man

from a factory worker living in an industrial slum in the early nineteenth century. He would think differently, feel differently, know different things and have a completely different outlook on life. The reason was that the conditions under which he earned his living were the result of the technology of the time. Had Marx lived today, no doubt he would be pointing out that the industrial worker, a beneficiary of the Welfare State and working in a hygienic factory on the Great West Road is a different kind of man from a textile operative working in Lancashire in 1820. His contribution to the change in the climate of thought and its effect upon the thinking of the modern Englishman has been very considerable. Changes in technology are now recognised as being formative of human character and outlook, and changes in technology must be planned with them in mind. It is easy to see the essential conflict here between the traditional religious view and the Marxist view. One says, "Change man and he will transform the conditions of life," the other says, "Change the conditions of life and you will change man." One view is that the important things of life spring from the individual; the other is that you must change circumstances which can only be done by the state, whose interests as the formative influence must come first. I know I have stated the conflict in oversimplified terms. But I do so in order to see his real challenge and the continuation of his influence in spite of the fact that his prophecies failed to come true. What he failed to see was that industrial processes and the accumulation of capital could or would go hand in hand with a growing concern for human welfare. He

predicted, looking at things in the middle of the nineteenth century, that under a capitalist system the rich would go on getting richer and the poor would go on getting poorer until the poor were driven to revolt. He did not foresee and could not predict the manner in which the growth of social democracy would counteract these tendencies. Nor, perhaps, with his Teutonic mind and his nose buried in his Blue Books, did he take sufficient account of the Englishman's distrust of theory and his gift of solving practical problems. Nor perhaps was he at all aware of the deep roots of the common law with its profound reliance upon reason, responsibility and neighbourliness in the handling of human affairs. I can think of some acute contemporary foreign minds who also miss this essential factor, even when they write under anglicised names.

While the political ideas of Marx seem to have taken less root in this country than they have in other countries, so that the ideas of English socialists derive much more from radical liberalism than they do from Marx, his dialectical materialism has had a serious effect on the climate of thought. Would the Utilitarians have been so confident in their reliance upon reason if they had thought it possible that ideas, character and even the supposed dictates of reason itself were products to a large extent of the technological conditions which govern a man's way of earning a living? To put it at the lowest, Marx has added yet another element of uncertainty in the Englishman's outlook on life. One must also note in passing that whereas the principle of evolution may be incompatible with the traditional form in which the Christian religion has been

presented, dialectical materialism can find no place for religion at all.

The last of those to whom I wish to refer, who have applied the scientific method to non-physical matters, is Sigmund Freud. Here we need not concern ourselves with the particular theories, such as the Oedipus complex, which he advanced as explanations of the way in which human behaviour is motivated. Indeed the psycho-analytic school deriving from Freud has split into so many differing groups that it is virtually impossible for a layman to ascertain whether today there is any one recognised body of established doctrine. So violent have been the disagreements and splits that a lay reader of the history of the psycho-analytic movement is tempted to write off many of Freud's immediate disciples as neurotics in urgent need of treatment themselves. But such a verdict would be unfair and would serve only to obscure the pervasive influence of Freud and his work. It would be unwise for an amateur such as myself to attempt to give even the barest summary of Freud's doctrines. The point which for my purpose is of importance is the new approach to human behaviour which Freud's application of the scientific method to the working of the human mind has introduced into people's consciousness. To put it at the lowest, he has introduced grave doubts into traditional views on human behaviour. What can be more subversive than the idea that our most cherished virtues and our most shameful vices may not be deliberate choices of our conscious minds, but no more than the incursions of impulses embedded in

our subconscious minds? Where are we if in turn the contents of our subconscious minds are found to be determined by traumatic experiences, possibly in infancy, for which we cannot possibly be held responsible? If sin is no more than an internal disorder, and if the dictates of reason are no more than psychological states parading themselves in a presentable and respectable form, what is man? I do not think one can deny that the general effect of Freud's work has been to introduce yet another deep element of uncertainty into our minds. It seems to me to be deeper than the effect of the principle of evolution or of dialectical materialism because it calls in question the whole basis and nature of human reason. Is it symptomatic that Sartre, for a novel depicting men and women tossed about and torn by the dictates of their psychological states and technological surroundings in a world of confusion and turmoil, chose as an (I suppose) ironical title—*L'Age de Raison?*

There is one other strand of thought which, though less definite in its impact upon public opinion than those we have been cursorily reviewing, seems to me to be very pervasive. I refer to the investigations into the nature of matter by the mathematical physicists. When I was born, it was known that the structure of matter was quite complicated. Nonetheless, there was something solid and dependable about it. It was believed that the ultimate structure of matter involved atoms which arrange themselves into molecules which in their own various patterns, form chemical substances. But the atoms themselves were something as solid and

dependable as billiard balls! The work of the mathematical physicists has yielded the most startling results and is from day to day yielding even more startling results in the investigation of the component elements of the atom. I recall attending a lecture by Rutherford in which he demonstrated the splitting of the atom, and his saying that it was a wholly scientific affair which would have no practical consequences to mankind. How right he was as a scientist, and how wrong as a prophet. Nuclear energy has put into man's hands the power to change the world for good or ill, and the responsibility of choosing the uses to which it should be put. The evil uses have overshadowed and continue to overshadow the outlook of the present generation. What sort of a world is it when the human race has the power to destroy itself? Here is a stupendous uncertainty in life, an enormous question-mark overhanging the world. But I am not thinking primarily of the enormous opportunities and appalling dangers which technology applying the discoveries of the mathematical physicists has presented to us. I am wondering whether the essential view of the nature of matter, formed by the mathematical physicists, may not have destroyed the comfortable solidity to which I have referred. If mass and energy are interchangeable terms, if there is an element of indeterminacy at the heart of things, is not everything in a state of flux? Is there such a thing as an absolute?

I have briefly and most inadequately reviewed what appear to me to be some of the main movements of thought which have affected people and, in consequence, public opinion, in my lifetime, and are affecting it today,

and I have chosen those which seem to me to go to the root of things. For this reason I have passed by the enormous social changes which have taken place, and the brutal and shattering effects of two World Wars, in both of which I have served. The only comment I wish to make on these wars is that they have revealed undercurrents of unreason and savagery and horror which make it easy to believe that unreason rather than reason is the dominant element in human affairs, and in consequence make it easier for man to accept subversive conceptions of life. Indeed, there are moments when the comfortable outlook of the late Victorians is as remote from my consciousness today as is the outlook of medieval man, and yet in my life span I have had to pass from the one to the other.

For it is to be noticed that the real impact of the ideas we have been considering has been in my lifetime. It is true that Darwin was writing in the middle of the nineteenth century and that his ideas were stirring the intellectual world and giving rise to religious controversy before I was born, but it is in my lifetime that evolution has become part of the generally accepted outlook on life. Marx was also writing at about the same time as Darwin but it was the Bolshevik revolution in Russia which really brought home to the ordinary Englishman what Marxism could mean. When I was born Freud's was practically an unknown name in this country. I do not think that his ideas had much effect here before 1914. It was in my early manhood, after 1918, that the full weight of his ideas really began to be felt. The real effect of the work of the mathematical physicists on the public mind may be said to date from

Hiroshima. I doubt whether any generation has previously been called upon to assimilate so much revolutionary thought issuing in revolutionary technology as it has been the lot of my generation to absorb. I do not know whether, when the intellectual and moral history of my own time comes ultimately to be seen in perspective, this will prove to be true, but I cannot resist the feeling that the world I am living in today is not the same world as that into which I was born.

That, both intellectually and technologically was an old world, and I am living in a new world. The new world is full of uncertainties, doubts and insecurity. The old world was optimistic, full of ideas of progress. The new world has experienced hideous violence, so much so that the basic presuppositions of the old world are called in question.

I believe it would be possible to trace some of the influences to which I am referring in their application to politics, society, literature and the graphic arts. We must concentrate on public opinion as it affects law making.

So far, we have been considering movements of thought which may have affected the content of people's mental outlook. But there is another matter to be considered. It is the question of whose minds need to be taken into account in considering what constitutes public opinion. At all times, presumably, in human history there has been what may be termed an intellectual élite whose thoughts and feelings gradually filter through to and affect the outlook of a larger class. That is certainly true today. With the spread of education, it seems to me that this intellectual élite is growing in

numbers and also changing in quality as a greater and greater proportion of it grows up with a scientific background rather than with the traditional classical, historical and literary background. It is these people who are the leaders, whose ideas will ultimately have an important effect on public opinion. Changes in the quality of thinking in this élite are evidently of great importance. But of equal importance is the size and quality of the general class whose outlook, influenced no doubt by the thought of the leaders, is crucial in the effective formation of public opinion.

In my own lifetime there has been an enormous change in the size and importance of the latter class. If one thinks back to the beginning of the eighteenth century, and continues thinking forward towards the end of the nineteenth century, it is obvious that it was only the relatively small educated intellectual class who counted in the formation of public opinion. It was from that class that Ministers and members of both Houses of Parliament were mainly drawn, and it was they for the most part who controlled the political parties and, with them, the sources of power. It is for this reason that serious works and even newspapers adopted much the same tone and methods of argument throughout these two centuries. There are doubtless differences of diction and style between earlier and later writers but as one reads the work of, shall we say, John Locke, the authors of the American Declaration of Independence, the Federal Papers, the books and speeches of Burke, the arguments of Brougham on the Reform Bill, the writings of John Stuart Mill and, to come to the end of the period, Matthew Arnold, one

cannot but be struck by the similarity of the approach and method. It was evidently inconceivable to these writers that they could or should be addressing themselves to any but an educated élite, or that any class other than this educated élite needed to be considered in the formation of public opinion. It is true, of course, that during this period new social classes entered into this opinion-forming class, but they were not accepted as members of it until they had proved their ability to think and feel in an educated way. During the seventeenth century this class was composed almost entirely of the aristocracy and landed gentry. The object of the Reform Bill was to admit to the sources of power the new middle class of manufacturers and industrialists who had grown up with the Industrial Revolution. But they were admitted not because they were middle class but because they were deemed to have become worthy members of an intellectual and responsible ruling class. The great mass of the people were disregarded as members of the public opinion-forming body. Even propagandists of the idea of democracy, such as John Stuart Mill, did not contemplate the admission to power of any but members of the educated class. The reformers drew a clear distinction between the mob, which was to be disregarded, and the people who were to be given power. "The People" meant the new middle class. These words of Brougham addressed to the House of Lords on October 7, 1831, are characteristic—"If there is a mob," he says, "there is the people also. I speak now of the middle classes—of those hundreds of thousands of respectable persons—the most numerous and by far the most wealthy order

in the community; for if all your Lordships' castles, manors, rights of warren and rights of chase, with all your broad acres were brought to hammer, and sold at fifty years' purchase, the price would fly up and kick the beam when counterpoised by the vast and solid riches of those middle classes, who are also the genuine depositories of sober, rational, intelligent and honest English feeling.

“By the people, I repeat, I mean the middle classes, the wealth and intelligence of the country, the glory of the British name.” And he went on to say: “Grave, intelligent, rational, fond of thinking for themselves, they consider a subject long before they make up their minds on it; and the opinions they are thus slow to form they are not swift to abandon.”

It is to be noted also that this ruling class to which the reformers had admitted the new middle classes was substantially a masculine society. It is true of course that there were some outstanding women writers and thinkers. It is also true that women have always had an enormous influence behind the scenes. But they had no political power, and for the most part intellectual argument was addressed by men to men.

It seems to me that this state of affairs persisted nearly up to the end of the nineteenth century. The second half of the century was marked by two developments of the utmost importance, but their impact did not, for our purposes, make itself felt until the nineteenth century was nearly out.

The first of these developments is the gradual widening of the parliamentary franchise. This took place by gradual stages, but I have to remind myself

vigorously that at the date of my birth the parliamentary franchise, and therefore the source of political power, was still in the hands of a minority of the male population, and that women were still excluded from it altogether. My father was a Liberal of the non-conformist radical school, but I can well remember in my early boyhood his horror at the thought that anyone should have a vote who did not also have, as he termed it, "a stake in the country." It never occurred to him that my mother, who ruled the roost at home, need have any say in ruling the country; nor did she particularly want it.

The second of these developments is that of state education. It dates only from about 1870, when school boards were set up for primary education, or as it was then called, "elementary" education. The driving force then was the need for more clerks and the object of Foster's Education Act was to provide schools in which children of the working classes might be instructed in the three "Rs"—Reading, Writing and Arithmetic. I use the term "instructed" because the idea of "education" to be provided by the state had not been conceived. State-provided secondary "education" began only in my own lifetime and I well remember the contempt with which we children from our extremely lowly eminence looked down on the "rough boys" at the Board school! State provision for or aid in university education has come within the memory of all of us here tonight. The drive for state-provided or state-aided secondary education and university education has come mainly from the need for more and more administrators and technologists. But that

drive has been enormously reinforced by the thirst of many of the working classes for knowledge for its own sake as a means to a fuller life. The drive has also been powerfully reinforced by the growing conviction of working class people that they must become educated if they are to be admitted with the upper and middle classes into the governing élite.

Both these processes towards universal suffrage and universal education are now nearly complete. There is universal manhood and womanhood franchise, there is universal primary and secondary education and rapidly growing opportunities for higher education. One result is the blurring of the class distinctions which were so vivid in my own boyhood, a process which will probably be carried much further during the second half of this century.

For our purpose however, the importance of these developments lies in the fact that the public opinion-forming body which receives, and to some extent assimilates the ideas of the intellectual classes is now the entire body of the population every one of whom has some form of education and has equal political power with every other.

It is not surprising therefore that the methods of communication with this public opinion-forming mass have changed out of all recognition during my lifetime.

The first manifestation of this change was the growth of the popular newspaper and magazine addressed to a literate but uneducated mass. These newspapers and magazines contained and still contain a mixture of entertainment, information and instruction, which familiarise the mass in some degree with

the ideas germinating and growing in the minds of the intelligentsia. At a higher level and at a later date when secondary education was beginning to have its effect, there came a new type of periodical, or the transformation of an older type, designed to communicate ideas to large proportions of the masses. Large-scale advertising is a product of my own time. I will not weary you by reminding you of how all these processes have been accelerated and intensified by the advent of sound broadcasting and television. Can one imagine how Locke would write for this readership? How Burke would look or sound on television? How Bentham or Washington or Jefferson or Alexander Hamilton would write in a popular newspaper? One perhaps can just imagine Matthew Arnold on the Third Programme.

The result of all these developments seems to me to be that the circulation of ideas has developed as fast as the circulation of money. In these two processes much the same thing seems to happen. Coins get rubbed down as they pass from pocket to pocket. Ideas get rubbed down as they filter through to the mass. They often lodge in the ordinary man's or woman's mind in somewhat garbled form. How many people at the time when the principle of evolution was being popularised got into their heads the idea that Darwin taught that men were descended from monkeys? How many people today believe in a vague sort of way that Marx spent his time in hatching plots against Western civilisation? How many people today have got it into their heads that Freud taught that it was dangerous to suppress any of one's impulses, and that if you did you got something bad called a complex?

I have dwelt at length, though in many respects far too summarily, with what appear to me to be profound changes in the nature and scope of public opinion during my own lifetime because, in my belief, law reformers must take these changes into account if their work is to be fruitful and durable. This is all the more necessary because those responsible for initiating and carrying into effect law reform have, by reason of age and standing in the community, to be those who have been nurtured and brought up in the pre-twentieth century tradition. It is for them a necessary but difficult effort to detach themselves from their traditional point of view, and to assess both the extent to which their old principles still hold good and the extent to which they need modification to meet the needs of the world of today. One's difficulties are not diminished by the fact that the process of change has gone on continuously over a short period of years at an ever-accelerating pace, or by the fact that the state of things at the beginning of the process is so different from the state of things at the end. To have passed in one lifetime from what I think can properly be termed "an old world" into what can properly be termed "a new world" is a strain. To assess the quality of the differences demands a considerable intellectual and imaginative effort. The fact that I have felt the need myself to make this effort is my only justification for giving these lectures.

How then do we view the public opinion characteristic of this new world? It seems to me that the difficulties facing reformers are immeasurably increased by the fact that for the most part any answers given to

this question must be negative, or at best uncertain. It is far easier to say today what public opinion does not believe in than to say what it does believe in. The string of negatives and uncertainties is formidable. First there is disbelief in and disrespect for all forms of authority, and discipline. For the vast mass of the population the authority of the Church no longer exists. The authority of the Bible, which was a major factor in social and political life, certainly in the nineteenth century has largely disappeared. The authority of class has gone altogether. The authority of conventional morals, not only in sex but in other matters, has largely disappeared. Every man and woman must judge for himself and herself by the light of unaided nature. The authority of employer over employee is challenged on every hand. There is not much respect for politics. Even the Prime Minister must try to be "with it." To echo the thought of Lord Radcliffe in his address to the Annual Conference of the Law Society in October last, one is forced to inquire whether the Englishman has not become fundamentally ungovernable.

Hand in hand with this disbelief in authority, there has come into being a profound scepticism about the nature of man, the processes of his mind and the validity of the dictates of his conscience.

The list of positives, I fear, is shorter than the list of negatives, but it is to me impressive. First, I do not believe that the ordinary Englishman has ceased to respect the authority of the law. He may be less respectful of Parliament, but I do not notice any diminution in his respect for the courts. He may be critical, he may be less prepared to take superior wisdom on trust,

but belief in the authority of the law and the supremacy of the courts seems to me to be undiminished. Secondly, he has a vast respect for science and scientific achievement. Whether this is based upon understanding of the scientific process and method, or whether it is due to the dazzling success of technology based on science is another matter. Although he may not be able to believe any longer in "what the Church tells us," he seems quite prepared to believe almost blindly in "what science tells us." Thirdly, he has enormous faith in the ability of mankind to extend and develop to an unlimited degree the growth of material satisfactions and comforts. Fourthly, he has a growing belief in the ability and need of man to control and mould his physical environment. Fifthly he seems to have a growing awareness of the mutual dependence of all countries and the need to promote the development of under-developed countries, a belief which might well become a substitute for his former belief in the Imperial Mission. Sixthly, there is still a great respect for and indeed a substantial practising of what may be called the old Christian virtues, so long as they are not demonstrably contrary to the teachings of science.

I am trying to keep out of these lectures any personal judgment of values, but I must say at this point, having painted what may superficially seem to be a pessimistic picture of the state of public opinion, and lest I should be misunderstood, that I am not pessimistic about the future. As I grow older, I find within myself an increasing admiration and respect for the way in which the younger generation is facing its problems and opportunities. In particular I find it

admirable that they should be so eagerly willing to experiment with new and intoxicating ideas, in the meantime holding fast to much of the inherited tradition. They seem to me to have taken to heart the rock-climber's favourite text from the Bible—"Prove all things; hold fast to that which is good."

If I am right, this state of opinion seems to me to be a natural reflection of the processes of thought through which my generation has passed. It has been an age of analysis and criticism, a toppling of some old ideas, and a questioning of others. Some old certainties have been destroyed, and others undermined. There has not been time for new ideas to be sorted out by the process of time into what is tenable and what is untenable and so become a new tradition. Perhaps we await the great synthesiser? Who can deny the attractiveness of the work of Pierre Teilhard de Chardin, whether or not one accepts it or even understands it? Who can doubt that its attractiveness lies in his heroic attempt to form a synthesis of the principle of evolution and the traditional tenets of the Catholic Church?

We have now reached a point in our argument at which it would appear that the task of the law reformer may be divided into certain recognisable categories. First, he must devise solutions to practical problems which will meet the practical needs of the day, and not be too far out of accord with the prevalent state of public opinion. Secondly, he must try to determine what survivals of an earlier tradition are so far out of accord with public opinion as to need modification. Thirdly, he must be prepared to examine all legal institutions and their procedures in the light of efficiency.

Fourthly, he must be prepared to determine the points at which public opinion, while questioning the presuppositions of tradition is not sufficiently formed to justify the substitution of new law for old.

In approaching each of these four categories, the reformer must bear in mind that society is a continuing thing, and that the new must be presented, and genuinely presented, as a continuation of the old adapted to changed conditions—but not so as to make a violent break with the old. Men's minds move at different paces and any active law reformer must be prepared to ward off two opposite challenges—one that he is going too fast, and the other that he is going too slowly. He must also bear in mind that law reform is partly a reflection of public opinion and partly an attempt to educate it. The task of holding a balance between the function of leading and the function of following is always a delicate thing.

Up to this point I have been trying to make some analysis of public opinion, which is the chief aspect of what the law reformer must keep in mind. If this analysis is confused, it is partly owing to my own inadequate knowledge, but mainly I think because on many important issues, public opinion really is confused. If I am right, however, also in thinking that the law reformer must always also have regard to existing tradition, it is necessary now to try to examine how it came into being, how it has developed, and the nature of its presuppositions. To do this at all adequately, would be tantamount to writing a history of the English law, which I am unqualified to attempt. So far as the common law and equity are concerned, the story goes

back well into the depths of the Middle Ages. For our purpose, fortunately it is not necessary to go back so far. So far as legislation is concerned, it is the nineteenth century which was formative of the tradition of law reform.

In this respect, most fortunately, our work is enormously simplified for us by the late Professor Dicey in his book *Law and Public Opinion in England in the Nineteenth Century*. We are indebted to Professor Dicey for many things. We here owe him special gratitude for two. First, that he should have written his book at all, and secondly that he should have chosen to give his lectures at Harvard (on which the book was based) in 1898, the year before my own life began. For our purpose he could not possibly have chosen a better date. In this book, which was first published in 1905, he established for all time the relationship between public opinion and law reform, and traced its course through the nineteenth century. The second edition was published in 1914, together with a long introduction which amounts in some respects to a revision of the original work. In the next lecture, with Dicey's indispensable aid, we will look at tradition.

III

At the close of the last lecture, we said that in this, the third lecture, we would look at the tradition of law reform with the indispensable aid of Dicey. We referred to his classic work *Law and Public Opinion in England in the Nineteenth Century*.

For our present purpose it is not necessary to look back further than the beginning of the nineteenth century. It was during that century that the tradition of law reform became established and was developed. Prior to that time there was no tradition of law reform.

Dicey divides the period into three sections, each of which had its own characteristic currents of opinion. The first, Dicey terms "the period of old Toryism, or legislative quiescence," which covers the years approximately from 1800 to 1830. The second was the period "of Benthamism, or individualism," which covers the years 1825 to 1870. The third was the "period of collectivism," beginning in 1865 and covering the rest of the century.

The prevailing trend of opinion at the beginning of the century was one of what Dicey calls "Blackstonian optimism," reinforced as the years went on by the reaction associated with the name of Eldon. Blackstone himself was, of course, a product of the eighteenth century. He was born in 1723, his *Commentaries* were published between 1765 and 1769, and he died in 1780.

His work is a paean of praise of the fruits of the Glorious Revolution. So much wonderful order had been achieved out of chaos by that settlement that it seemed to be the main duty of patriotic Englishmen to preserve and protect and not to innovate. There had been plenty of innovation prior to 1688. The Revolutionary Settlement was indeed regarded as a settlement for all time. To undermine or question it was to risk a return to conditions of chaos so vividly remembered, if not by living men at least by their fathers. It was an article of faith that England had achieved a constitution and a body of law consistent with the greatness of England and the liberty and freedom of Englishmen. Dicey quotes from the *Commentaries* the following passage as being typical of Blackstone's optimism:

“Of a constitution, so wisely contrived, so strongly raised, and so highly finished, it is hard to speak with that praise, which is justly and severely its due:—the thorough and attentive contemplation of it will furnish its best panegyric. It hath been the endeavour of these commentaries, however the execution may have succeeded, to examine its solid foundations, to mark out its extensive plan, to explain the use and distribution of its parts and from the harmonious concurrence of those several parts, to demonstrate the elegant proportion of the whole. We have taken occasion to admire at every turn the noble monuments of ancient simplicity, and the more curious refinements of modern art. Nor have its faults been concealed from view; for faults it has, lest we should be tempted to think it of more than human structure; defects chiefly arising from

the decays of time, or the rage of unskilful improvements in later ages. To sustain, to repair, to beautify this noble pile, is a charge intrusted principally to the nobility, and such gentlemen of the kingdom as are delegated by their country to parliament. The protection of THE LIBERTY OF BRITAIN is a duty which they owe to themselves, who enjoy it; to their ancestors, who transmitted it down; and to their posterity, who will claim at their hands this, the best birthright, and the noblest inheritance of mankind."

Dicey adds his own comment.

"These words sum up the whole spirit of the Commentaries; they express the sentiment not of an individual but of an era." In support of this view, he quotes not only Blackstone himself, but Burke and Paley and Oliver Goldsmith. It is difficult for us to realise the large justification Blackstone had for his optimism. This period which Blackstone described so idyllically is for us the period of the debtors' prisons; the horrors of the early Industrial Revolution; the involutions and convolutions of the Court of Chancery; of legal fictions; of savage criminal laws; of the corruption of Parliament and of Government; of the intolerance of the Roman Catholics, Jews and dissenters; of the decay of municipal organisations and of the archaic parliamentary franchise.

And yet, during this long period of quiescence, forces had been built up in the public mind which constituted a trend of quite a different character. This trend is sometimes called the humanitarian revival, which was as much a reaction against the optimistic quiescence of the end of the eighteenth century as the romanticism of poets such as Byron, Keats and Shelley

was against the classicism of Pope and Johnson. Much of this new movement seems to have stemmed from the Methodist movement of the mid-eighteenth century and the subsequent great revival of evangelical fervour in the Church of England. Wilberforce, the person perhaps most closely associated with the anti-slavery campaign was 41 in 1800; Zachary Macaulay 32, Simeon 41, Hannah More 55 and Elizabeth Fry 20. The crusade against cruelty which characterised these years seems to have been about an even blend of philosophic philanthropy on the one hand, and religious compassion for suffering on the other. During all this period too, Bentham was doing the major part of his work. One may ask how it was that the explosion of reform did not come earlier. There are three reasons. The first is the genuine admiration which existed for the achievements of the eighteenth century. The second is the fact that during the greater part of the period England was locked in the struggle, first with revolutionary France and secondly with Napoleon—a struggle which monopolised the efforts of the nation as much as the two World Wars of my lifetime have monopolised its efforts. The third is the horror and terror inspired by Jacobinism as the militant international subversiveness of the French revolutionaries was termed. Any form of liberalism was as liable to be called Jacobinism in England during the first quarter of the nineteenth century as any form of liberalism tended to be labelled “communist” in the United States during the forties and fifties of the twentieth century. It is a great tragedy of our country that the enormous and rapid social

changes arising out of the Industrial Revolution coincided with this period of strain. In the result, working-class movements which should, and in a later generation could, have been dealt with by the utilitarians in a spirit of calm reason, looked like revolutionary movements calling for suppression. The resulting hostility between the working classes and the governing classes has set a political tone which still cannot be disregarded today. For example, the origins of trade union legislation lie in Acts of Parliament such as the Combination Acts, which were as much dictated by the fear of revolutionary violence as by individualistic doctrines of *laissez-faire*. Once the inhibiting factor of the fear of Jacobinism had passed away, the flood-gates were open to Benthamite reform. But the other factor, the belief in individualism and *laissez-faire* remained potent throughout the Utilitarian period and coloured the legislation associated with it. In the eyes of the Benthamites, the greatest happiness of the greatest number required mainly the removal of restraints on individual freedom, the abolition of status and the substitution of freedom of contract. For Bentham, the happiness of the greatest number meant the combination of an honest and industrious life, with the enjoyment of modest wealth and material comfort. It was essentially a middle-class ideal. Its virtue was a bourgeois virtue, and as such came to be castigated as it still is today, by Marx and his revolutionary followers.

But it would be a mistake to suppose that individualism was the necessary end of the Utilitarians' attitude, or that it was of the essence of their approach.

The essence of Bentham's approach was that legislation is a science, that the growth of law should not be just haphazard, but should be based upon the creation of conditions of life conducive to happiness. At one period happiness may be conceived in terms mainly of individual freedom. At other times it may be considered that certain elements of compulsion and restriction are necessary if the happiness of all classes is to be considered and not merely the security and comfort of one class or another. Whether individualism or collectivism is uppermost in men's minds at any given moment of time, the difference is one of method rather than of principle. The principle Bentham and his followers established permanently. The method changes from time to time.

The individualistic elements amongst the Utilitarians may however be seen in retrospect to have been a necessary step. If one believes that every person is in the main and as a general rule the best judge of his own happiness, then it follows that in the main the aim of legislation should be to remove restrictions on the free action of individuals which are not necessary to secure the like freedom of others. This is of course the theme of John Stuart Mill's essay "On Liberty." This conception seems to have been necessary in order to break away from the authoritarian views of the eighteenth century. A necessary corollary in the political field was the reform of the franchise, so that as far as possible every man should count for one, and no man for more than one.

By 1825 Englishmen had come to feel that the institutions of the country required thorough-going

amendment. But they wanted something essentially pragmatic or empirical, something quite different from the rhetoric and theory of the French revolutionaries. Bentham showed the way by which this could be achieved. As Dicey puts it: "The English public then came to perceive that Benthamism meant nothing more than the attempt to realise by means of effective legislation the political and social ideals set before himself by every intelligent merchant, tradesman or artisan. The architect who proposes to repair an existing edifice intends to keep it standing: he cannot long be confused with the visionary projector who proposes to pull down an ancient mansion and erect in its stead a new building of unknown design."

The consequences of the general acceptance of this attitude are clear enough to see. Each manifestation is not necessarily connected with another, but they have a common source. The Reform Act of 1832, the Municipal Reform Act of 1836, the wholesale reform of the criminal law, the liberation of the slaves, the protection of children, the prohibition of cruelty to animals, all these are part of the story. Then came the whole series of statutes whose general aim and intention was to secure freedom of contract. One might notice the repeal of the laws regarding forestalling and regrating, and usury, the repeal of the Navigation Acts and the establishment of civil divorce. Then there is a whole series of Acts dealing with property, and in particular promoting freedom in dealing with property. Where else will one find such a series of acts as the Prescription Act, 1832, the Inheritance Act, 1833, the Fines and Recoveries Act,

1833, the Wills Act, 1837, the Copyhold Act, 1841, the Inclosure Acts ending with the general Inclosure Act of 1845, and at a somewhat later date, the Settled Land Acts? Then there are the numerous attempts to modernise the Poor Law. In the matter of legal procedure we find the setting up of the county courts, the Evidence Acts, the Common Law Procedure Acts and ultimately the Judicature Act of 1873. It is not too much to say that in a period of some thirty years, say one generation, the law had been changed from a body of institutions, suitable to a static society, to one more in accord with the growing and developing society arising out of the Industrial Revolution, the growth of free trade, and of international commerce.

I do not propose to trace here the development during these years of the law of trade unions, but there is one aspect of it to which I must draw attention. The history of trade union law seems to me to show a certain ambivalence in the application of liberal ideas. Sometimes one aspect of the matter has been uppermost, and at other times another. If one accepts that freedom of contract is socially a desirable thing, one is bound *prima facie* to take the view that any combination, whether of employers or employees, which restricts the individual freedom of an employer or employee to make his own bargain is a bad thing. On the whole this view prevailed for the most part amongst the Utilitarians. On the other hand what is one to say if it be demonstrated that the bargaining position of an individual workman is so weak unless he has the support of fellow-workmen, that to force him to act in isolation is in effect to deprive him of his freedom of contract? If

this view be taken, it is at least arguable that to permit combinations which make collective bargaining effective whatever restrictions may in the process have to be imposed upon the freedom of action of the individual workman is, in effect, an extension of rather than a restriction upon freedom of contract. This latter view seems to have been in the ascendant since the middle of the nineteenth century. Whether in these days of full employment the balance should be changed is no doubt one of the matters which will be considered by the Royal Commission on Trade Unions and Trade Associations. By about the year 1860 the Benthamite revolution, making individualism its main objective had run its course, and so we enter upon Dicey's third period, the period of collectivism as he calls it.

Even during the course of Benthamite legislation, it was not everyone who accepted without qualification the conception of *laissez-faire*. As we have already seen, the humanitarian movement was equally composed of philosophic individualism on the one hand and philanthropy, or the desire to relieve suffering on the other. On the whole, it may be said that as it was that the Whigs, or, as they were becoming known, the Liberals, were Benthamites, wedded to individualism, so it was the Tories who became mainly identified with the philanthropic movement. This bond of sympathy between Tory philanthropists and the working classes is something which has never quite disappeared. It was strengthened also by movements within the Church. Whereas the evangelical revival, associated with the names of Simeon, Wilberforce and others added impetus

to the movement towards individualism, so the counter-revolution within the Church of England, known as the tractarian or High Church movement, added impetus to the philanthropic alliance of Tory and working classes. Authoritarianism, whether in Church or State, has never in this country been necessarily opposed to the progress of the working class. And so we find, even during the full flood of Benthamite advance, the beginnings of the Factory Act legislation, designed to protect the poor and helpless against the rich and powerful. Indeed the growth of collectivism, to which Dicey attaches so much importance, is quite as much the result of Tory paternalism as of democratic socialism. Many factors have combined to bring about the change. To some of them we have already referred. To these must be added the growing belief of the working classes that their salvation lay in trade unionism, and the gradual acceptance of this belief, particularly by Tory politicians. Then must be noted the enormous growth in the size of industrial units, and the subsequent growth of joint stock companies, or companies incorporated by Act of Parliament, such as the railway companies. Above all must we recall that the development of *laissez-faire* demonstrably showed that it did not necessarily lead to the greatest happiness of the working classes, who were then, as always, the largest element of the population. It became increasingly evident that while the scientific approach of Benthamite legislation might persist, its actual content might have to move far away from pure individualism. There are many examples during the period of individualism of the growing belief that there

are many things which the state can do for an individual much better than he can do for himself. The Truck Acts, the Workmen's Compensation Acts, the Agricultural Holdings Acts, the Food and Drugs Acts—all these involve some restriction of freedom of action in the belief that on balance individual advantages outweigh this loss. But, as Dicey points out, the collective attitude does not stop at protecting individuals. It also seeks to advance their interests by evening out the advantages or disadvantages inherent as between class and class and occupation and occupation. The whole story of state-provided education belongs to this branch of the subject.

This growth of the collective attitude up to the end of the nineteenth century may seem somewhat rudimentary to us. In Dicey's introduction to the second edition, to which I have already referred, he brings the story up to 1912, partly in relation to the Liberal Government of 1906-14. He foresees a vast extension of collective legislation and action, as to the wisdom or advantage of which he shakes an old man's head.

I cannot help feeling that Dicey failed fully to grasp how closely the collective attitude is bound up with the growing size and complexity of the modern community with its complicated industrial and financial structure. He did not wholly miss the point as his references to the growth of the company show. But nowhere does he go to the root of the matter as does a great American lawyer writing in 1912. In that year Elihu Root in his presidential address to the New York Bar Association used the following words:

“The real difficulty appears to be that the new

conditions incident to the extraordinary industrial development of the last half-century are continuously and progressively demanding the readjustment of the relations between great bodies of men and the establishment of new legal rights and obligations not contemplated when existing laws were passed or existing limitations upon the powers of government were prescribed in our constitution. In place of the old individual independence of life in which every intelligent and healthy citizen was competent to take care of himself and his family, we have come to a high degree of interdependence in which the greater part of our people have to rely for all the necessities of life upon the systemised co-operation of a vast number of other men working through complicated industrial and commercial machinery. Instead of the completeness of individual effort working out its own results in obtaining food and clothing and shelter, we have specialisation and division of labour which leaves each individual unable to apply his industry and intelligence except in co-operation with a great number of others whose activity conjoined to his is necessary to produce any useful result. Instead of the give-and-take of free individual contract, the tremendous power of organisation has combined great aggregations of capital in enormous industrial establishments working through vast agencies of commerce and employing great masses of men in movements of production and transportation and trade, so great in the mass that each individual concerned in them is quite helpless by himself. The relations between the employer and the employed, between the owners of aggregated capital and the units of organised labour, between the small

producer, the small trader, the consumer, and the great transporting and manufacturing and distributing agencies, all present new questions for the solution of which the old reliance upon the free action of individual wills appears quite inadequate. And in many directions the intervention of that organised control which we call government seems necessary to produce the same result of justice and right conduct which obtained through the action of individuals before the new conditions arose."

These words were spoken of American conditions, but they seem to me to be a classic statement of the inevitable growth of state action and state intervention in face of the consequences of the Industrial Revolution and to be applicable in principle to our own country no less than to the United States of America.

I have attempted a very short and inadequate summary of the three phases of nineteenth century experiences. They constitute the tradition of law reform in England. Clearly the reformer today must bear in mind that tradition, for it is still very much alive. Is not the Englishman still intensely an individualist? Is he not also a humanist with a streak of paternalism in him? Is he not still a rather good-humoured person who would like to see as many as possible of his fellow citizens as happy as possible? And yet, as we follow Dicey and his thought, there seem to be numerous features in our scene which were missing from his. The growth of collectivism has built up into what we call the Welfare State. To administer it in the supposed interests of individual citizens, there has been built up a bureaucracy such as Dicey, even in 1912, could

not have imagined. This bureaucracy is all-pervasive and complicated. In pursuance of its benevolent purpose it has so often to restrict and prohibit that the ordinary citizen seems to need, not only guidance through its intricacies if he is to realise its advantages, but also protection against its abuses. We have a huge administrative system. I wonder, if Dicey had lived to see it, whether he would have retained his horror of *droit administratif*? Can it be that we are merely hiding our heads in the sand if we fail to see that all this administration needs a body of administrative law, and perhaps an "ombudsman" for the protection of the citizen?

Another thing that strikes me as I read and reread my Dicey is the middle-class air of all nineteenth century law reform. It is a reflection of the transfer of political power from the aristocracy and the landed class to the middle classes, of which the Reform Act of 1832 was the symbol. Since Dicey wrote, political power has moved into the hands of the working classes. Here is a new factor of which account has to be taken.

But the most striking thing of all is the calm acceptance by Dicey of the view of man's nature and position as it traditionally stood before the intellectual revolution of the nineteenth and early twentieth centuries. There is no reference in the whole of the book, including the introduction to the second edition, to Marx. There is no reference to him in the index. There is, of course, no reference to Freud. If one looks up the name "Darwin" in the index, one finds oneself directed to a note to page 22, a note to page 130 and a note to page 457. The first of these notes draws attention to

the fact that Bentham and Paley formed nearly at the same time, but independently of one another, the Utilitarian system of morals, just as Darwin and Wallace, while each ignorant of the other's labours, thought out substantially the same theory as to the origin of species. This is an interesting observation, but throws little light upon the importance of Darwin's work. The note to page 130 draws attention to the fact that Bentham and Darwin each owed to inherited wealth the possibility of dedicating his whole life to its appropriate work. The note to page 457 draws attention to the fact that historical and scientific investigations may easily run into one another: an examination into the early history of civilisation on the one hand may throw light upon the Darwinian theory, and, on the other hand, Darwin's speculations may be looked upon as inquiries into the early history of all living beings, including man. I think it fair to say that the nineteenth and early twentieth century view of law reform and its underlying presuppositions are totally uninfluenced by any of those disturbing factors which we have noticed and which seem to have introduced so much uncertainty into the public mind.

While therefore the spirit of our tradition of law reform persists, there seem to be new factors that must also be taken into account. In the fourth and last lecture we shall look at some of these—particularly in the realm of legislation. But before we do that we ought to pause and consider the contributions which the judicial process can and does make to the reform and development of the law.

The judicial process includes two main functions.

The first consists of the interpretation of statutory provisions, whether in Acts of Parliament or in subsidiary legislation, such as statutory rules and orders. Judges never tire of saying that in this branch of their jurisdiction their business is one of pure interpretation and that it is not part of the judicial process to attempt to amend the law in accordance with any particular view the judge may form as to its justice or injustice, or as to the way in which it works in any particular case.

And yet, if I may say so with respect, the personal idiosyncrasies of judges do seem to me to play a part in the process of interpretation and indirectly to have some effect upon the development of the law. For example, is it not clear, as one reads the *Law Reports*, that one judge will on the whole tend to be sympathetic to the taxpayer and will look with a lenient, if not a benevolent, eye on measures he may take so to minimise within the limits of the existing law the impact of taxation upon his estate or income. Another judge will perhaps tend to the view that the taxpayer ought as a good citizen to pay his taxes cheerfully and not be too concerned with measures which would minimise the impact of taxation on his affairs. When one considers the complexity of revenue law and the inevitable ambiguity which often exists in the provisions of the various Finance Acts, it is difficult to resist the conclusion that the development of revenue law depends to some extent at least upon the general attitude of the particular judge who decides a particular case. Where the case is being heard by a court consisting of more than one judge, it is not uncommon to find a difference

of opinion on the Bench, and it sometimes seems that this difference of opinion is the result of a difference of outlook. No doubt the attitudes of judges, like the attitudes of other human beings, spring from their training, their upbringing, their background and their environment so that even in such a technical matter as the development of revenue law, it is impossible to exclude from one's mind the probability that a process of change is going on, and that that process is in some degree at least influenced by the outlook of particular judges.

It is not only in revenue law that this phenomenon may be observed. I have been fascinated by the discussion in the courts of what has become known as the *Ladies Directory* case. As we all know, a statute was passed which was intended to drive prostitution off the streets. One effect of this Act has been to concentrate the professional activity of prostitutes into private places. Does this Act cover the whole subject? Some judges seemed to think that it does, and that the object of the legislation is achieved if privacy be substituted for public conduct. Others took the view that this was not enough, and that although the statutes had not provided for the case, there was still an inherent jurisdiction in the court to prevent public mischief and that a person who published the names of prostitutes and the addresses where they could be found in private was guilty of a conspiracy to corrupt. There is considerable difference of opinion about this. Who can doubt that the choice of which side one shall come down on is to some extent affected by one's own particular outlook on life and in consequence one's particular views

as to the social consequences of the litigation in question? Is it not almost a matter of private opinion whether the desirability of restraining the activities of such persons as the publisher of the *Ladies Directory* outweighs the obvious risk of interference with private affairs? Is it not evident that some lawyers take one view and some another, and that our various interpretations of the common law are influenced by our general outlook?

Whether this be so or not, there is another way in which the courts in their interpretations of statutes do quite clearly, openly and intentionally promote the cause of law reform. Constantly judges are calling attention to defects and ambiguities in the drafting of legislation and the effects of that legislation in particular cases. Frequently judges draw the attention of legislators to the need for changes in these respects. One would expect that the new Law Commissioners will keep their eyes wide open for references of this kind in the *Law Reports*, and will find considerable material for their agenda in pronouncements of this kind that come from the Bench.

I think one may say, therefore, that even in the task of interpretation of legislation, the thoughts and feelings of the day do have their effect through the minds of the judges.

But it is in the other main branch of the judicial process that public opinion is more directly brought to bear on the development of the law. I refer of course to the development of the common law and equity. I do not need to remind you of the vast area of human relationships that are still governed by the common law

and equity and are only marginally affected by the provisions of legislation. It still remains true, does it not, that the governing factor in applying common law rules to some new set of circumstances is what is "reasonable"? It still remains true, does it not, that in applying the principles of equity to some new set of circumstances the real question is what ought this person "in conscience" to do? Of course, as a result of our system of precedents there has been built up over a great many years a large body of law which defines what is reasonable or what is conscientious in any particular case, and this body of law should be applied to the particular circumstances of the new case. But even when one has made all possible allowance for the codifying effect of precedent it still remains true, does it not, that there are innumerable new relationships constantly coming before the courts in which it is still necessary to consider whether the particular circumstances require this kind of reasonable behaviour, or that kind of conscientious behaviour?

So far as equity is concerned, one must also remember the wide measures of discretion which are given to the judges. The exercise of these discretions would not normally be interfered with by a superior court unless there is exceptional reason. One can think of the wide powers of the Chancery Court in the matter of revision of settlements, or of the treatment of wards. As one looks back over one's own lifetime is it not quite evident that the attitude of the judges to these matters has changed out of all recognition, and has changed in accordance with the changing views from time to time as to how these matters should be treated?

As I think for example of the approach of the Chancery judges fifty years ago to the marriage of wards of court compared with the approach judges have today, it seems to me self-evident that the public mind as to how late adolescents, whether boys or girls, should be expected to behave has changed and that that change has been reflected, responsibly reflected, in the attitude of judges exercising these discretions. One cannot fail to be impressed also by the way in which the exercise by divorce judges of their discretions has virtually altered the law of divorce. We shall need to look at this matter in some little detail later on, but once adultery on the part of a petitioner became a discretionary bar, and once the divorce judges had formed the policy which they follow today, of considering the best interests of the parties and the family rather than attempting to punish some guilty party, they have so altered the practice of divorce that the whole law and procedure needs consideration by the legislature. Is it possible to resist the conclusion that the gradual change in the policy of the judges of the Divorce Court is a direct reflection of changes in public opinion which have taken place during my lifetime?

The courts, I suggest, are quite obviously making new law all the time both by the adaptation of old rules to new problems and by the changing manner in which discretions are exercised. I hope I shall not be considered disrespectful if I suggest that in many cases the real attitude of the judge, whether it be conscious or unconscious, is a feeling that it would be intolerable to come to any decision other than the particular one he does come to unless he is forced to do so either by

some statutory provision or by some clear precedent which is binding on him. And in so many cases, even if a binding precedent is there, it is possible for the judge on the facts to distinguish the particular case he is trying from the precedent. There seems to me something essentially empirical in the development of both common law and equity. Judges are constantly doing their best to do justice to the parties in any particular case and on the facts of that particular case. It is the commentators and textbook writers for the most part who, subsequently looking at the whole series of decisions, tend to rationalise them and to produce a doctrine out of what is essentially a disconnected series of individual decisions.

On the whole, I suggest, the development and reform of the law by means of judicial decision brings to bear in a very direct and immediate form the changes in public opinion that have taken place, and are constantly taking place.

Judges are children of their time. They are children of their time for two reasons. The first is that they can only deal with the problems presented to them by litigants and those problems are necessarily contemporary problems. People do not go to law in order to provide a set of facts upon which the House of Lords may ultimately establish some principle. They certainly do not go to law in order to provide subjects for moots, or debates in students' societies. They go to law in order to resolve their particular difficulties in some particular case, and those difficulties are difficulties thrown up by the changing nature of society in its various aspects. So judges can only deal with the matters presented to

them by the parties, and the arguments presented to the court by each party will inevitably be greatly influenced by the current views on commerce, trade, industry or whatever particular aspect of society is involved in the particular case. In applying their minds to the solution of these problems, the judges will, as I have tried already to suggest, in considering what is reasonable or conscientious or in exercising any discretion, be influenced, consciously or unconsciously, by the state of public opinion. So the judicial process is a potent piece of machinery for legal reform. On the other hand, it does have its inevitable limitations.

I have already drawn attention to the fact that the courts can only deal with cases presented to them by litigants. There is no means whereby a judge can lay down the law in respect of any case other than that brought before him by the parties. Even then he may be limited in his approach by the form in which counsel have drawn the pleadings, or the particular points which counsel see fit to argue before him. These points will not, as a rule, be selected with an eye to obtaining some decision on a doubtful point of law, but will be selected, and ought to be selected, in the interests of the success of the client.

It will not be denied, I think, that in some instances the law takes a wrong turning or even enters a cul-de-sac. A decision is sometimes come to which does not commend itself to the general good sense of lawyers. Judges inevitably must make mistakes from time to time. But if a mistake is made and results in a precedent which is clear and unambiguous it becomes part of the law until such time as the decision is overruled.

There may be no appeal in the particular case in question. It may be that the aggrieved party cannot afford to pursue an appeal. It may be that the subject-matter is not worth the extra expense involved. If that is so, it is a matter of pure chance whether the same issue will come up in another case where the aggrieved party is prepared to appeal, and it is a matter of pure chance how many years will elapse before such an opportunity is presented to the courts. This is a most unsatisfactory position. It is unsatisfactory that there is no means of reviewing these decisions except as a result of the bringing of some later case. It is unsatisfactory for the court because sometimes it is faced with the dilemma of on the one hand accepting a decision which it believes to have been wrong, or on the other hand, overruling a decision upon which people may have been acting for years. There have been recent cases in which precedents of twenty years or more standing have been disturbed, but the court is always reluctant to upset an old decision. This is another inherent limitation upon the judicial process as a means of law reform, and I very much hope that the Law Commissioners will be on the look out for opportunities to take up cases of this kind so that they can be reconsidered at a much earlier date and in a much more just and convenient way.

IV

IN our previous three lectures we have been looking at the nature of some of the changes which have taken place in thought during my lifetime and considering how far they may require a departure from earlier presuppositions of law reform. We came to the conclusion at the end of Lecture II that the need for law reform may be divided into certain categories, and that each category requires a different method of approach, and indeed to some extent presents some difference of objective. We also noted that in order to be effective, law reform must proceed in such a way that there is no violent break with tradition. In England, at all events, law reform must always be presented as a continuance under contemporary conditions, of an earlier tradition. Nonetheless, we did notice that there have been such changes of thought and conditions that within some of our categories there is a strong *prima facie* case for law reform.

In this, the last of the four lectures, I suggest that we consider certain examples of subjects falling within each of our categories. It would be impossible, I think, to deal with all subjects, and there would probably be considerable difference of opinion as to which subjects, if any, should or should not be included.

I propose therefore to take one or more illustrations in each category, emphasising that they are no more

than illustrations. Let us recapitulate our four categories. They are as follows:

(a) The law reformer must devise solutions to practical problems which would meet the needs of the day and not be too far out of accord with the prevalent state of public opinion.

(b) He must try to determine what survivals of an earlier tradition are so out of accord with public opinion as to need modification.

(c) He must be prepared to examine all legal institutions and their procedures in the light of efficiency.

(d) He must be prepared to determine the points at which public opinion, while questioning the pre-suppositions of tradition, is not sufficiently formed to justify the substitution of new law for old.

The law reformer must also remember when dealing with each category the overriding necessity of maintaining unbroken the continuity of society and he must always also bear in mind the need to balance the leading of public opinion and the following of public opinion which is always a most delicate matter.

Let us look, therefore, in turn at each of our four categories. In each of them I take examples, and I repeat and emphasise that they are only examples, of matters which seem to me to need consideration. The first is the devising of solutions to practical problems which will meet the practical needs of the day.

In our first lecture we noticed the vast amount of legislation which has come into being as a result of the enormous changes in technology that have taken

place during my lifetime. We noticed the mass of legislation which has grown up out of road traffic and other developments, including the necessity for Town and Country Planning. We noticed that, although this mass of legislation does not go to the root of the great changes in public opinion to which we have referred, it does nevertheless have a great impact on the lives of ordinary citizens. I do not believe that anyone can be satisfied with the machinery of government which we now have for passing into law the necessary legislation or the administration of that law once it has come into being.

The complexity of modern life has forced upon Parliament the need to deal with a great variety of complicated, difficult and technical matters which require for their understanding a great deal of detailed knowledge and practical experience. For example, it is commonplace now that the Budget is not merely a statement of the annual accounts of the nation, but that it is, with the Finance Bills which follow, an instrument used deliberately to control the economic and social affairs of the nation. It may well be that the historian of the future will say that the main contribution of the late Lord Keynes to our national thought and practice has been to bring economics and finance directly into politics. It cannot seriously be argued that the present organisation of parliamentary procedure is conducive to a thorough, informed, calm and impartial investigation of the intentions and effects of a long and complicated Finance Bill. Can it seriously be supposed that it is a good thing that the Opposition should be completely cut off from the background information

needed for detailed examination and discussion of complicated measures introduced by the Government? Or that when in due turn the Opposition become the Government they should find themselves committed to policies and practices which they have not had any real means of examining in detail, either as to their actual provisions or as to their practical effects? I think public opinion is getting somewhat suspicious of a procedure under which party politics are brought in, not only on major matters of policy, but also on the detailed process of technical working out of policy. Is it conducive to the respect in which Parliament ought to be held that an important group of amendments to a Finance Bill should be accepted or rejected simply as a result of clever manipulation of the voting machinery in order that some particular party may have a propaganda victory?

What is true of a Finance Bill is true also I believe of other difficult and complicated measures which affect the rights, duties, responsibilities and interests of private individuals to an important degree. I do not believe that the public today feel that these affairs are given proper consideration in the light of the effects which they will have upon their lives and fortunes. I suggest that some overhaul of parliamentary procedure is urgently called for as a result of the change in our lives which the enormous advances in technology have brought about.

There is also the question of parliamentary time. Every Parliament finds itself with an overloaded programme of legislation and the legislation which is brought forward is frequently the type of legislation

which the Government of the day consider will have some electoral appeal. The action of the Opposition with regard to many of these measures is also governed by electoral considerations. In consequence there are many measures which cannot receive the attention of Parliament because time cannot be found for them. What this really means in practice is that many useful and necessary measures never come before Parliament at all simply because they are dull, uninteresting business with no particular political or electoral appeal. There are few Government Departments who have not in their pigeon-holes proposals for legislation which they know to be needed to remedy some injustice or to improve administration, and which they know they have no hope of persuading any Government to adopt and for which parliamentary time will not be found.

It seems to me that there are a great many measures of law reform which never reach Parliament, or if they do reach Parliament, reach it only after a long period of delay for this very reason. When the Law Commissioners have got into their stride, have had their programmes approved and have produced proposals for law reform, there is still the question of parliamentary time to be considered. Most of these measures will be regarded by the general public, however they may in truth be affected by them, as "Lawyers' Law." They will certainly have no particular electoral appeal. I would have thought that the chances under our present system of procedure that recommendations of the Law Commissioners will be considered by Parliament within a reasonable time are quite remote. It will be inevitable sooner or later that some simpler form of procedure

should be devised, perhaps something like the procedure which exists today in respect of the Statute Law Revision Committee, which will enable these matters to be properly and expeditiously considered by Parliament without their having to stand the chances of finding parliamentary time, which is such a difficulty under our present system. I would go so far as to say that unless Parliament finds some way of modernising its procedure so as to render it a responsible instrument for considering changes in the law, there is a real danger that respect for Parliament will diminish and fall to an even lower point than that to which it seems to me it has fallen today. No group of people managing their own small affairs would dream of trying to do so in the way in which Parliament seems to them to be considering the great affairs of state which touch their lives and interests so intimately today. It is no part of my purpose in these lectures to bring forward detailed suggestions as to what reforms should be introduced; I am trying only to indicate the categories within which reform seems to be needed, and the reasons why it is needed. Of course, in introducing any reform into parliamentary procedure, one must also bear in mind that one should not break with the traditional processes of our Constitution which inevitably and properly involve a clash of party interests. The clash of party and party is the life blood of our politics and nothing so far as I can see could ever take its place. But although one should and must preserve the continuity of tradition in this respect, I do seriously suggest that politics will become more and more divorced from the

ordinary life of the people unless parliamentary procedure is reformed, not only so as to enable Parliament to perform its functions properly, but also to demonstrate to the people that it is so doing.

What is true of the central government is also, I believe true of local government. Procedures are in force for reviewing the functions and organisation of local government. The government of Greater London has already been reorganised, and the work of the Local Government Commission is going on all over the country. The reorganisation of local government seems to me to be a particularly good illustration of the necessity of adapting our institutions to the present state of technology. It is also perhaps a striking example of the need to reconcile the necessity for change with the preservation of tradition. Local government is the oldest form of government that we know in this country. It existed before there was any fully organised central government at all. When Parliament was first summoned, the Lower House consisted of the Burgesses and the Knights of the Shire, who were representatives of pre-existing, self-governing communities. They had learnt the art of public life in those communities. It is impossible to read, for example, the books of Sir John Neale on Elizabethan Parliaments without realising that the formation of the practice and procedure of Parliamentary Government owes very much to the fact that the members of the House of Commons were people who had already learnt the art of self-government in their local communities. It is vital, in my belief, that this traditional element of local self-government should be maintained. Nobody who has had any experience

of local government could fail to be impressed with the immense amount of genuinely public-spirited work which is done voluntarily by private individuals in the local government field. The country would be infinitely poorer if the services of such people were not utilised in the government of local communities. To abolish them and in their place substitute some local representation of the central government would be to throw away a most valuable and vital thing in our national life. I very much hope that the traditional form of local government will be retained.

But on the other hand, one must realise that the functions of local government have changed out of all recognition during my own lifetime. When I was born, with the exception of certain limited powers which the London County Council had inherited from the Metropolitan Board of Works, housing was not a local government function. Town planning, let alone Town and Country Planning, did not exist. The health services in so far as they are today operated by local authorities were only embryonic. Education was not a local authority function when I was born, and one could give many other examples of the growth of local authority work. Many of the modern functions of local government can be performed efficiently by relatively small local authorities. Many of them cannot. To provide, for example, a full range of educational facilities requires a certain minimum size of population. To provide adequate, efficiently organised welfare services requires a different minimum size of population. It is therefore, quite essential, in my judgment, if local government is to survive, as I hope and believe it will,

that there should be a careful examination of the functions to be performed by local authorities and the proper size and scope of the local authorities by which they are to be performed. There must be a proper examination of the relation of means and ends. This is what, as I understand it, the Local Government Commission, handicapped by its extremely elaborate statutory procedure, is trying to do. Perhaps the most striking example of the need to adapt means to ends is in the realm of Town and Country Planning. I will not go into any detail about this. Many of you are familiar with the difficulties I have in mind. The appearance and nature of the High Street of a town clearly has to be a matter for the citizens to decide. But how can they come to adequate decisions unless they know what the size of their town is going to be permitted to be? Unless they know how it is going to be permitted to grow commercially, industrially, residentially or socially? And yet the particular town in question cannot decide these questions for itself, they must be decided by an authority with a wider view. Even that authority, whether it be the county council or some other authority, must also have regard to the policy of the central government in such matters as the redistribution of industry, the building up of backward areas and the restraint of areas that seem to be growing too rapidly. All these things have to be considered, they all have to be provided for, and yet nobody can seriously suggest that the present organisation of local government, and particularly the balance between central government and local government is satisfactory. It is unsatisfactory from the point of view

of the community, and it is unsatisfactory from the point of view of the individual whose rights and interests are affected. This is an urgent matter which is being forced upon our attention by changes in technology and the consequent changes in our social life.

When one considers this problem a little more deeply, one is forced to face the question whether some form of regional government is not necessary in this country, some form of regional government which will bring together the policies and needs of the central government and the policies and needs of the local planning authorities. Here again one is faced with the necessity of balancing the need on the one hand to maintain ancient traditions, and on the other to provide for the needs of the modern state. One has somehow or other to arrive at an organisation which will bring to the same point in the locality or the region the needs, desires and policies of central government, and the needs and aspirations of the local communities. This is an exceptionally difficult matter, both in principle and in practice, but it is one of the elements of law reform, the need for which stares one in the face when one considers the necessity of adapting our legal institutions to the conditions of life as they are today. I may say that I am optimistic about this matter because the traditional form of local government has proved its vitality and its power to adapt itself to changes in circumstances so often in the past that I feel sure that it will somehow or other prove its viability in the crisis which is now facing the whole local government world.

I pass now to our next category. I refer to the

need to determine what survivals of an earlier tradition are so out of accord with public opinion as to need modification. The example I shall take in this category is our divorce law. It seems to me that at the present time our divorce law is out of accord with public opinion. The reason, I believe, is that there has been no serious reconsideration of the tradition upon which it is at present based, and that there is no clear understanding of the nature of that tradition and the empirical changes which have been imposed upon it. In this matter I feel that we are greatly helped by the analysis Lord Devlin has made in his *The Enforcement of Morals*.

The law and practice of divorce today is, as we all know, based upon the principles of ecclesiastical law. Ecclesiastical law allowed an annulment, that is to say it was prepared to declare that a marriage was void *ab initio* by reason of defect of form, or want of consent or other reasons. It recognised also that a marriage may become voidable by reason of subsequent circumstances, such as non-consummation. It never recognised divorce as such in the modern sense of the term, which in effect is judicial separation coupled with the right to remarry. Only since the secular authority has concerned itself in divorce, which arose from the growing practice of Parliament in the eighteenth and nineteenth centuries of passing private Bills granting divorce as we know it, has dissolution as distinct from annulment become recognised. Our divorce law today therefore is grafted upon the ecclesiastical jurisdiction which granted divorce *a mensa et thoro*, in effect,

judicial separation, but did not contemplate dissolution. The basis of this distinction is the doctrine that, when a marriage is once valid, it is indissoluble, but carries with it a certain legal status which involves the spouses in certain legal rights and duties. It was always recognised that there may be certain conduct whether on the part of husband or wife, which would make it outrageous for the other party to be held liable to perform his or her matrimonial duties, in particular the duty of living together. One of these occasions was the commission of adultery by the wife, or adultery plus some other offence by the husband. It was recognised that in such a case it was unreasonable to expect the innocent party to continue living with the guilty party, but none of these things was relevant to the question whether the party should have the right to remarry. They were relevant to the adjustment of the rights and duties of the parties within a subsisting marriage, coupled of course with the necessary provision for looking after the children of the marriage. When matrimonial jurisdiction was transferred from the ecclesiastical courts to the civil courts, and the civil courts were given power to make a decree of dissolution, the basis of the jurisdiction of the ecclesiastical courts in the matter of judicial separation was copied and the same conduct on the part of the spouse which in the eyes of the ecclesiastical courts justified the other party in asking to be relieved from the obligations of marriage was made a ground not only for that relief, but also for the dissolution of the marriage, which gave to each party, whether innocent or guilty, the right to remarry.

The result is that proceedings for divorce today are in essence an application by an "innocent" party against a "guilty" party to be relieved from the marriage on the grounds of some matrimonial offence. These matrimonial offences quite obviously make it unreasonable that the parties should be required to live together, but it does not follow that these are the right grounds on which in any rational society the parties, whether innocent or guilty, should be given the right to remarry. A great deal of confusion of thought has crept into our practice through our failure to distinguish between these two different things. The result seems to me to be a great disparity between the state of our law and the state of public opinion.

I think it is quite untrue to say that public opinion has become extremely lax. It seems to me to be a fact that the ordinary man in the street fully accepts, if not on religious grounds, at least on social grounds, the Christian conception of marriage as the union of one man with one woman for life. It seems to me to be the ideal which nearly all young people wishing to get married have before them. We must remember that it is bad news that is news; good news is not news at all. To my mind the astonishing thing is not the number of divorces which take place, but the overwhelming number of married people who succeed in realising this ideal of a lifelong union and the family life which a lifelong union both produces and implies. But it does seem to me also that public opinion has reached a point, probably under the influence of psychology, where one must recognise that there are marriages which break down and cease to be marriages in anything but name. This

may be the fault of one party or the other, or it may be the fault of both parties, and in some instances it may be very hard to say that it is the fault of either party; it may be that there are some couples who ought never to have married. For temperamental or other reasons their marriage could never have been a success.

I think public opinion recognises that there should be some decent way of burying such marriages. Every solicitor must recall cases of this kind where one party or the other comes seeking advice as to whether there should be a divorce and if so how he or she should set about it. Every solicitor must be able to recall cases where the parties are quite horrified with the procedure and the underlying principles of the procedure today. The petitioner must be told that he or she must establish against the other party a matrimonial offence and that he or she must allege that the other party is the guilty party. It may be that one or other of the parties, or perhaps both of them wish to remarry. If one is advising the petitioner, one has to advise him or her that he or she must be discreet in behaviour until after the decree absolute. If he or she has been guilty of any misconduct, the court must be informed. But if, on the other hand, one is advising the respondent one should, in all honesty advise him or her that it does not at all matter how he or she behaves, in fact in a way the more blatant the misconduct from the point of view of evidence, the better! Both petitioner and respondent are liable to receive this advice with some disgust. The matter is all the more complicated because adultery is only a discretionary bar, and in exercising the discretion the judge will consider the interests of both parties and

not merely the interests of the innocent party. The petitioner must be advised that if a full disclosure is made, unless there is some exceptional misbehaviour, the discretion will be exercised in favour of the guilty petitioner. The result of all this is that at the present time we do not have divorce by consent, but we do have divorce by consent-cum-hypocrisy. It seems to me that public opinion today does not demand any looseness in the formation of marriage or in the dissolution of marriage, but it does demand that a dignified procedure be devised, whereby the failure of the marriage may be duly recorded. If the court is satisfied that it has really failed, there should be a declaration to that effect, provided proper provision is made for the children.

I think that public opinion will be prepared to consider rational means to this end, realising the difficulties of the problem. After all, there is no need for people to exercise their rights arising out of a divorce. If any party is bound, on religious grounds, to regard marriage as indissoluble, there is nothing to prevent him or her from exercising a self-denying ordinance against re-marriage, notwithstanding the fact that the other party may have exercised his or her legal right to dissolve the marriage. I think we have here a clear illustration of at least one branch of the law in which present practice and procedure and public opinion have got quite out of step.

We turn now to our third category, in which the operative word is "efficiency." There is a natural tendency on the part of lawyers to think that they themselves are the only people who can judge the efficiency of legal procedure, whether in proceedings in court or

in non-litigious matters. This may have been true in the past, but I do not believe that it is true today. Here one has to take account of the fact that the public-opinion-forming class has been very much widened in recent years. When I was an articled clerk, the ordinary man went to his lawyer on about three occasions during his life—the first was when he wanted to make a will on marriage, the second was when he wanted to buy a house, which frequently he did not do until a fairly advanced stage in his married life, and the third was when he came to prove his father's or mother's will and wind up the estate. A visit to the lawyer was therefore a rare and somewhat solemn event, and the person visiting his solicitor was disposed to think of the law as a majestic operation whose workings he would never dream of criticising. It will be noticed also that only a limited number of people ever had occasion to visit a lawyer at all.

That is not the same today either. Owing to the operation of the Legal Aid Scheme, far more people than ever before are brought into touch with the proceedings of the courts, and in consequence far more people have contact with lawyers. Nor is it true of non-litigious work. The ordinary man has far more occasion to visit a lawyer than he did in my young days. In fact, the need for the extension of the Legal Aid Scheme to cover advice as well as actual litigation is evidence of the need in our complicated life that people have to utilise the services of lawyers. There is another factor also to be taken into account. In the days of my articles, it was quite relatively rare for the ordinary man to buy a house when he married. There

were plenty of houses available to rent and that was the normal way of proceeding. For a variety of reasons which I shall not go into because they would take me into political controversy, there are very few houses other than council houses to let today, and the ordinary couple setting up house for the first time are forced to buy a house and to raise the necessary funds on mortgage. The result is that many thousands of people who years ago would not have come into contact with the complexities of our conveyancing system are brought into contact with them today. They are not prepared to treat the law with the reverence that their fathers did; they do not see any reason why the process of buying a house and raising money on it should be any more complicated than the process of buying a motor-car on hire-purchase. They are quite wrong in this respect but one must have regard to the fact that there exists today a large, important and informed body of public opinion, consisting of people who have had considerable experience in their dealings with the law, who are not prepared to take the old procedures and the old methods simply on trust. I do not think they are unreasonable, but they do wish to have the reasons for things explained to them; they are not prepared to accept them as a matter of faith. Many of these people have been educated, many of them hold positions in other professions or in business which require of them the exercise of a good deal of intelligence and responsibility. They are inclined to ask the question—"How would I get on in my business or my profession if I had to proceed in such a complicated, difficult and expensive way as these lawyers seem to think that they

have to follow?" These people will not accept without question the need for the extreme precision of definition and accuracy whether in conveyancing matters or pleadings in legal proceedings which the legal profession in both its branches takes for granted.

In this respect they are of course often wrong. There are many cases in court where the ultimate decision is facilitated, speeded up and is more reliable and sound than it would otherwise have been because the issues have been carefully sifted out by thoughtful pleading in the first instance, followed by the usual processes of interlocutory proceedings. Even in these cases I believe that the whole procedure ought to be kept constantly under review with a view to simplifying it as much as possible. But there is one class of case where it seems to me that the ordinary man is quite right in thinking that the procedure is altogether too elaborate. I refer to the type of case which occupies so much of the time of Her Majesty's judges, both in London and on Assize, that is to say the "running down" case, or the case arising out of road accidents. Here the ordinary man finds it impossible to believe that there need be long delay before the matter comes before a judge, or that there is any need to have an elaborate set of pleadings to clarify the issues. I know that there are some judges who themselves take this view. I have heard one very excellent judge, now deceased, say over and over again that the important thing in a running-down action is not elaboration of pleading, but to get all the witnesses before the court at the earliest possible moment and let the judge try to find out what really happened and act accordingly.

I was myself disappointed that the Evershed Commission did not go further than they did in the direction of simplification of litigation. Even in cases where full pleadings and interlocutory proceedings are necessary, I cannot help feeling that there is ample room for constant and close scrutiny.

I would like to say how much I welcome the initiative of the Law Society in putting forward a simplified form of conveyancing, particularly for the smaller type of house. I think it is imaginative of the Law Society to realise that there is this problem of the small house and to do what they can to promote simplicity of procedure. I am not saying anything at the present time on the merits of the Law Society's scheme, I am merely calling attention to the fact that the Law Society is showing its traditional wisdom in being beforehand in this branch of law reform.

Continuing under this head, I believe that both the Bar and the solicitors' branch of the profession must realise that the public are not prepared any longer to regard the organisation and education of the two branches of the profession as being the private concerns of the Bar or solicitors. They intend to make their own voice heard in such matters, and that voice is a questioning voice. It is no longer possible to proceed on the assumption that because the two branches of the legal profession organise themselves as they do today, they will be permitted to do so in future without the public having a substantial say in the matter. The public are coming round to the view that, while they are prepared to consider on merits the present organisation of the two branches of the profession, the onus is

upon the profession to justify its present division of function. The ordinary man is inclined to ask whether it is necessary to have two lawyers and very often three, a leader, a junior and a solicitor, in order to have his case properly presented in court. I myself believe that on merits an overwhelming case can be made out for the present system on the grounds of efficiency, expedition and cost. My point is that that case today has to be made out, and if either branch of the profession thinks it can act and deal with these matters entirely on its own it is courting trouble. Unless the legal profession is prepared to reform its own practices, procedure and education, then there is no doubt in my mind that the public will take the matter in hand and will do the reform themselves. It would not be as well done as it would be if the profession were to undertake the matter. It is this view, which I believe to be the realistic view, which I suppose lies behind the initiation of discussions which are taking place between the Bar and the Law Society under many of these heads. Impetus would, however, be given to these discussions if all the parties concerned were prepared to realise that the voice of the public is liable to be raised outside their windows if the deliberations are thought to be going on too long or producing too little result.

Within this category falls also the demand that quite apart from its substance, the law should be presented in a more comprehensible form. The Lord Chancellor in introducing the Law Commission Bill drew attention to the number of statutes extending over a long period of years to which reference must be made in order to ascertain the law on any particular point. While the

work of the Statute Law Revision Committee has had and continues to have beneficial results it is to be hoped that with the aid of the new Law Commission the process may be speeded up. Some people hope that the Law Commissioners may find it possible to reduce into statutory form some of the law which at the present time requires research into a considerable line of decided cases. I am myself somewhat sceptical about this line of approach. The successful statutory codification of legal precedents seems to have been a somewhat rare phenomenon. There have been successes in this field, of which the Sale of Goods Act and the Bills of Exchange Act are outstanding examples. Three conditions seem to be necessary for success. One, the case law must have reached a certain stage of finality. Two, the purport of the decided cases must be capable of statement in unambiguous and non-technical language. Three, draftsmen must be found capable of using easily and naturally such unambiguous and non-technical language. If you wish to know what I mean by "unambiguous and non-technical language," I would ask you to compare, say, the definition of a cheque in the Bills of Exchange Act with some of the provisions of a modern Finance Bill. I would emphasise too the requirement that the law should have reached a certain stage of finality. Where the law is still in the process of development, as for example the law of negligence, I believe it would be a great pity to substitute the mere interpretation of an Act of Parliament for the traditional common law process of development by the courts. The work of a codifier can so easily become that of an embalmer!

Let us now turn to our fourth category, under which we must consider points on which public opinion, while questioning the presuppositions of tradition, is not sufficiently formed to justify the substitution of new for old. Under this category fall a number of matters which are certainly exercising public opinion today, and about which there appears to me to be great uncertainty. I take first the basis of criminal responsibility, and in particular the question how far should the mental condition of the accused absolve him from responsibility. Here the law still rests upon the so-called M'Naghten rules. It is true that under the Homicide Act certain forms of mental aberration may constitute a defence, but only to the extent of reducing the charge from murder to manslaughter. That is not really an exception from the M'Naghten rules because it does not absolve the accused from responsibility for homicide, but only alters the degree. It has always seemed to me that this distinction is illogical in principle, and was part of the general and unsatisfactory compromise which the Homicide Act really was. I need not restate the M'Naghten rules, they are familiar enough. Put shortly, however, in order to establish the defence of insanity there must be disease of the mind and the consequences of that disease must be that the accused either did not know what he was doing, or if he did, did not know it was wrong. As absolutes, both of these conceptions are under challenge. There are some who believe, perhaps mainly under the influence of the Freudian school, that there is a wide range of mental aberration, ranging from normality at one end to downright insanity at the other and that the point at which a

person ceases to be perfectly responsible is reached some way before the point of downright insanity is reached. There does seem to me to be a long gradation between the man who deliberately and callously kills for the furtherance of some plan and the person at the other end of the scale whose delusions are such as to separate him altogether from reality. On the other hand, where should one draw the line between these two extremes and, in any individual case, how should one determine on which side of the line it should fall? Some would answer that the psychiatrist will be able to do this. Others would not be prepared in effect to substitute the verdict of the psychiatrist for that of a jury properly instructed by a judge. Moreover, as things stand today, it would seem likely that in doubtful or borderline cases, there would be a difference of opinion between one psychiatrist and another, and in the last resort, the jury would have to decide. Whether they would be helped by these medical disputations is doubtful. The other prong of the attack on the M'Naghten rules is directed against the conception of whether the disease of the mind is such that the accused did or did not know what he was doing or that he was doing wrong. Critics say that this leaves no room for the person whose mental aberration takes the form of an irresistible impulse, an aberration which may go back to some incident in infancy, for the consequences of which the accused cannot properly be held responsible. Here again I feel, as many other people do, that there is a great deal of force in the criticism, but here again the element of uncertainty must be great and in the present stage of psychological knowledge, perhaps public

opinion is right in refusing to accept the verdict of the psychiatrists. As things stand the only course must be to leave it to the Home Secretary to deal with such matters, after sentence, in the light of observation and experience. This is a process which will be greatly facilitated if and when the death penalty for all forms of homicide is abolished.

A similar state of uncertainty seems to have existed, and to some extent to persist, over the death penalty. There are those who believe it to be utterly wrong in all circumstances. Others recognise the right of the state to take life when a life has been taken, and that any distinction to be drawn between capital and non-capital murder must to some extent be a matter of expediency, as for example, the protection of the police in the performance of their duties. The Homicide Act represented a compromise. It has turned out to be so unsatisfactory as to affront the moral feelings of everyone. In consequence, the death penalty for murder will be abolished for an experimental period. In this respect I am inclined to think that Parliament is somewhat ahead of public opinion, but that the debates have had great effect upon public opinion. This has been to me a most interesting example both of the way in which public opinion affects the legislative process and of the way in which the legislative process affects public opinion.

Similar difficulties seem to arise when one comes to consider the right policy for sentencing convicted persons. Many people believe that society has a right to avenge offences and that the weight of the sentence

should correspond to the weight of society's disapprobation of the crime. Others believe that the sole object of sentencing should be to treat the criminal as a sick person requiring treatment. Still others take the view that the only matter of importance is to protect the public against the actions of that kind of person. The most dangerous people may be those who excite our sympathy. Fortunately, no legislative action seems to be needed in this matter. For most crimes the court has a wide measure of discretion as to the sentences to be imposed, and behind the courts there is the Home Secretary who can ultimately determine how much of the sentence shall be served in the light of the circumstances. Similar questions arise about the treatment of young offenders. It may be that not enough is known about the causes of juvenile delinquency. It is a problem which seems to affect all industrialised and urbanised societies. I expect that here again we shall proceed by a process of trial and error, and that the most recent proposals in this connection will be purely experimental.

The last instance I wish to mention relates to sexual offences. Public opinion disapproves of adultery, but does not think it should be made a crime. Public opinion disapproves of prostitution, but does not believe that prostitution of itself should be made a crime. Public opinion does not seem to think much about homosexual practices between females, and there does not seem to be any demand that it should be made a crime, which it is not. Public opinion, with some hesitation, has now come round to the view that homosexual practices between consenting adult males in private should not be a crime. All I think one can say is that

public opinion is much better prepared to consider such matters coolly and rationally now than has hitherto been the case.

In this lecture, I have been taking certain illustrations, which are far from being comprehensive, under each of our four categories. Even so, taken together, they do present a fairly formidable programme of law reform.

I should like to end on a reassuring note. I believe we must accept great uncertainties in matters which at one time seemed not to admit of argument. I think we must admit that the work of the writers and thinkers, to which I have referred, has had and continues to have an important effect upon public opinion. But at bottom, in spite of the changes, in spite of the circumstances to which my generation has been subjected, in spite of all the uncertainties, I cannot resist the impression that the ordinary man and woman whose thoughts collectively ultimately form public opinion, still remain on the whole the reasonable good-humoured, tolerant and responsible persons postulated by the common law, and the conscientious persons postulated by equity.

