

**STUDIES IN
CONSTITUTIONAL
LAW: FRANCE-ENGLAND-
UNITED STATES**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649114832

Studies in constitutional law: France-England-United States by Emile Boutmy

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Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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STUDIES IN
CONSTITUTIONAL LAW

FRANCE—ENGLAND—UNITED STATES

BY

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London

MACMILLAN AND CO.

AND NEW YORK

1891

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INTRODUCTION

MONSIEUR BOUTMY'S *Études de Droit Constitutionnel* has reached a second edition in his own country. It has both in England and America been recognized by all persons interested in the comparative study of institutions as a brilliant and original essay on the essential differences between English and French constitutionalism.

In introducing the book in an English form to readers unable to enjoy the French original, I can confidently recommend it to the attention of students. The work was originally composed for Frenchmen; hence the author occasionally insists upon features in the English Constitution which to Englishmen may appear to be too well known to require notice or explanation. But the fact that the essay is written by a foreigner for foreigners, though it may seem at first sight to limit the utility of the book for English students, is in reality one of its great recommendations. We all forget to note matters with which we are familiar. Hence the best

descriptions of a country's institutions have been often, not to say generally, composed by foreign observers. A stranger who has carefully studied the policy of a nation which is not his own seizes the broad outline of its political system more easily than can a native. If he overlooks or mistakes a few details, he obtains a better general view of the whole constitutional fabric than can a man who looks at the institutions of his country from the inside. Monsieur Boutmy is no exception to this rule. He has indeed mastered all that can be learnt from the best English historians such as Freeman or Stubbs; writing before the appearance of Mr. Bryce's exhaustive monograph on the American Commonwealth, he displays a more intimate knowledge of the American Constitution and of American politics than is generally possessed by well-educated Englishmen. But his claim to attention does not depend upon erudition. The aim of his book is to criticize and explain the constitutional ideas which govern the action of the English people in the light thrown upon them by a comparison with the ideas which have guided the constitution makers of France. It is this comparison which constitutes the true value of Monsieur Boutmy's work. An Englishman learns from it no new facts about the institutions of his country, but he is taught to look at familiar facts from a new point of view.

Monsieur Boutmy further, with great ingenuity, carries over to America, so to speak, the contrast between English and French ideas of government. He shows that, marked as are the contrasts between the English Monarchy and the American Republic, the institutions of the English people on both sides the Atlantic are in essence though not in form the same, and that they stand in marked contrast with the institutions of France. All the characteristics, he suggests, which distinguish the Constitution of England from every one of the constitutions of France reappear, though in a curiously changed shape, in America. In the United States, as in England, custom has the authority of law. The constitutional history of the United States is as obviously as the constitutional history of England the record of an attempt to close political contests by means of treaties. The development of American no less than of English political institutions has been the result of a long conflict between powers which existed prior to the Constitution. The crown, the nobility, and the commons existed long before the English Constitution had even a name. The States, Monsieur Boutmy insists, created the American nation; it was certainly not the American people which created the States.

Of the translation I have said little. Anyone who can read French should study the works of a writer

so lucid and brilliant as Monsieur Boutmy in the author's own language. The object of the translator has been not to render the French original sentence by sentence, and still less word for word, but to give, as far as possible, the meaning, the effect, and the spirit of each of Monsieur Boutmy's pages.

An Appendix to the second edition of the *Études de Droit Constitutionnel* contains replies to some of Monsieur Boutmy's critics. This Appendix is omitted in the translation. The criticisms being for the most part unknown in England, the answers thereto have, it is conceived, little interest for English students.

For the few notes, enclosed in brackets and marked (D), I am myself solely responsible.

A. V. DICEY.

OXFORD. MAY, 1891.

PREFACE

OF the three following essays two have been published separately, the one in 1878, the other in 1884. In the first I have attempted to make a critical survey of the English Constitution, combined with as complete a classification as possible, of its sources. I trust that I have not omitted anything essential. I do not examine into the institutions themselves, nor do I attempt to describe them; such a subject cannot be dealt with in a hundred pages. I am satisfied, first, to distinguish the different parts of the political compact; next, to note the special characteristics of each according to its origin, and lastly, to define the general spirit of the Constitution in which these parts are merged.

The second essay, *à propos* of a question of method, opens a number of vistas and, so to say, side-views of the Constitution of the United States. These views are tolerably numerous; they throw light over a considerable surface, so that the reader can form a fairly complete picture of the whole Constitution. A good