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# THE BRITISH CONSTITUTION

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# ENGLISH INSTITUTIONS

General Editor

LORD STAMP

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To  
L. S. E.

## GENERAL EDITOR'S PREFACE

There were many writers upon the British Constitution before Walter Bagehot, but they were mostly lawyers and detached observers of structure, whereas he, with his daily contacts with Ministers and Government Departments, saw motive and method from within. He was sensitive to the differences between theory and practice, and the regularity with which outmoded practice became newly accepted theory. He gave the subject at once the actuality of the finest journalism and yet brought it for the first time under the scientific discipline of analysis and established causation. He fitted it too to be an item in an academic curriculum. Fortunately for us, he did not wait, like Courtney, to reach his seventies before garnering the fruit of a long experience of government from within, but his forty years of age were ripe with accumulated impressions. Books on this subject then came out at long intervals and each in turn was absorbed as the authority for its decade. To-day they pour from the press, mostly by professional and professorial observers of government from more or less detached angles, most of them excellent in their own field, and each contriving, owing to the greater width and richness of the subject-matter, to present novel aspects and original comment. Bagehot spoke of the main difficulty of his task as involved in the fact that the object "is in constant change, a 'living' thing", which must be seized for a static picture at some point of time. Courtney, also, said the unique characteristic of our constitution is that it is subject to constant and continuous growth and change. "It is a living organism, absorbing new facts and transforming itself." But modern writers do not dwell much on this difficulty

of movement—it is taken for granted and circumvented by the issue of books at much more frequent intervals. They do, however, insist more and more on the search for the true dominants of action, and with a kind of political psycho-analysis try to discover the real springs of change.

One need not be surprised that foreigners find this subject baffling. But one of the best informed and most penetrating studies of our constitution that has come from a foreigner also emphasises not so much rapidity of change, as this deceptive appearance of form. Karl Heinz Abshagen—for ten years resident in England, and a correspondent of German newspapers—in his *King, Lords and Gentlemen* (1938), says that “a satisfactory account of the peculiar play of the forces which, behind the façade of parliamentary forms, actually determine the course of British policy, would have to be written by one of the men who are themselves an element in these operative forces”. But he suggests that many of the men playing an important part may be actors in either principal or lesser roles without dreaming that they are playing any part at all—“they exercise their power unwittingly and so with a complete lack of self-consciousness”. This may be an over-emphasis, but it serves to show the change in the objective. To-day the writer is tempted to disbelieve every outward form and to say “That is only how it is *supposed* to work: this is how it *appears* to work and, therefore, there must be some other way in which it actually *does* work”, and he thus aims at a subjective penetration of the whole subject. The reader tends to get into the same frame of mind—in fact, an American friend declared he judged the merits of a book on British Government according to its power to give “the low-down on the high-spots”.

Formerly, the difficulty was to extract the permanent from the transient, or to convey a sense of orderly

growth in a fixed description. This evidently does not impress Abshagen who, on the contrary, associates our democratic constitution more with the notion of permanence. He says that British democracy is the only Governmental system in Europe that has passed through the tempests of the last forty years with no fundamental modification. It is a reality not so much because of careful observance of democratic forms and parliamentary usage, as because of the great *potential* influence of public opinion in every decision of major importance. And most modern writers, though not thinking of relative permanence, strike the same note. It is the ultimate sovereignty of public opinion which is the keystone to the Constitution.

But how public opinion is formed or developed and which parts of the formal constitution influence it, and how it is made articulate, are subjects of much greater complexity, with room for illustrations of all kinds. Mr Keynes once described (*A Revision of the Treaty* 1922, p. 4) the two opinions of to-day—"not as in former ages, the true and the false, but the outside and the inside". Then he found there were really *two* outside opinions—"that which is expressed in the newspapers and that which the mass of ordinary men privately suspect to be true". It is no part of a study of the British Constitution to develop the social psychology of the formation of opinion. But the parallel development of readiness to act, somewhere inside this machine, is of the heart of the subject. When opinion has been gradually "becoming ripe", who in this complicated constitutional society gets or gives the final shove that puts new policy into the programme? It may be a violent correspondence in *The Times* affects Ministers directly; a pertinacious series of questions in the House; a conversation between Sir Warren Fisher and Sir Horace Wilson deciding to "put it up" to the Chancellor; the



report of a Royal Commission; or the word of one of the Prime Minister's personal friends. For each Prime Minister has had his little group of intimates, sometimes hardly known to the public, or officials acting out of school, who have had great influence on the moment and manner of "pulling the trigger", and even on policy itself. The Weirs, Colwyns, Beaverbrooks, Tom Jones's, Wilsons, pass unseen through the pages of power. But the pursuit of these personalia is only the gossip of the subject, and not the subject itself.

Those who know Dr Jennings's *Cabinet Government* know that he can be a worthy representative of the older ideals of solid and permanent description. Here, as he says himself, he is writing about the British Constitution 'primarily in relation to existing conditions'. In thus securing a vivid actuality for his treatment, Dr Jennings would be the first to admit that he is running certain risks. Some of the numerous illustrations from events hot from the oven, concerning which we have no more than journalistic knowledge of causes and intentions, may, in the course of time not far ahead, take on a different complexion as knowledge grows and the background settles. But Dr Jennings's book is not a textbook for examinees; it is a work intended for wider circles, and current assessments of still throbbing events, combined with the constitutional changes they seem to portend, are not only provocative, but, coming from so shrewd and experienced a judge, are provisionally most instructive.

So devastating a social upheaval as this war involves must mean considerable constitutional developments too, and a survey of the latest position as from which they must take place is a public service.

STAMP

## PREFACE

The last words of this book were written during an air raid warning, and the drone in the distance indicated the approach of enemy aircraft. The circumstance drew my attention for the first time to the fact that for three months I had continued to write about the British Constitution in complete disregard of almost daily prophecies from over the water that the next week was to see its overthrow. The exercise was no bravado on my part; it was, I suppose, the normal reaction of a constitutional lawyer who has perforce to think in centuries rather than in weeks, and for whom, therefore, immediate threats fall into a historical perspective. He has, so to speak, heard them so often in the past that he unconsciously discounts them in the present. The effects of the war are nevertheless evident in the book. Some of the examples which seemed most convenient were drawn from present experience; sometimes an immediate controversy, such as that over secret sessions, compelled an ancient principle to be more emphatically stated; and it appeared desirable to include a special chapter on war-time government.

The British Constitution is always topical, and no apology is necessary for writing about it primarily in relation to existing conditions. Perhaps, however, an apology is required for writing about it at all. So many good books have been written on the subject in recent years that an addition to their number may appear otiose. My first line of defence is that I was asked to write. My real justification is, however, that for some years I have been conducting a systematic survey of British political institutions. The survey is by no means completed, and if there had been no war I should have

refrained from writing a small book until it was. The outbreak of war made it impossible to continue certain studies on which I was engaged, though some tentative conclusions appear in the first two chapters of this book. The rest is founded upon large-scale studies which have already been published by the Cambridge University Press. I have not tried to summarise those books. It appeared to me that the reader would prefer a discussion of problems to a statement of practice, and I hope that, if he needs further information, he will look up the relevant portions of *Cabinet Government* and *Parliament*. Not all the difficulties of the British Constitution have been discussed, because I have kept to those which seemed at once most controversial and most important. Nor have I sought to make a sustained defence of democratic principles and of the liberties upon which they are based, because it did not appear that they required defence. The aim has been to give the ordinary citizen a readable and detached (though not, of course, impartial) introduction to the problems of the governmental system in which he plays so large a part, and at the same time to describe for the benefit of our friends overseas the one remaining democratic system (other than Eire) in western Europe.

On the day on which the manuscript was completed I learned that my connection with the London School of Economics and Political Science was about to be suspended. It is therefore fitting that I should express to my colleagues my gratitude for what I have learned from them during my eleven years' association with the School. Once more, also, I owe a deep obligation to Mr A. D. Hargreaves, of the University of Birmingham, who on this occasion has relieved me of the necessity of seeing the book through the press.

W. I. J.

6 September 1940

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# GOVERNMENT BY THE PEOPLE

## § 1. *We, the People*

In one of the least prudent of his speeches, Joseph Chamberlain used a phrase which has become historic. He was defending proposals made by the Unionist Government but opposed by the Liberals for the making of additional grants to members of the Royal Family. That in itself was enough to anger the Liberals, for Joseph Chamberlain the Unionist was now supporting what Joseph Chamberlain the Radical had opposed in almost republican speeches. Stung by Opposition taunts, he jeered at "honourable members who profess on all occasions to speak for the People with a capital P". He went on to say: "These honourable members tell us it is a shameful thing to fawn upon a monarch. So it is; but it is a more shameful thing to truckle to a multitude." Truckle to a multitude? The Liberal party was not likely to forget that phrase and there must have been hundreds of platforms from which Liberal speakers for the next decade reminded "the People with a capital P" what Joseph Chamberlain thought of them.

In doing so they were falsifying his character. Chamberlain more than any Unionist statesman of the late nineteenth century except perhaps Lord Randolph Churchill recognised the need to bow to public opinion—

to truckle to the multitude. He had come into national politics at the head of a popular movement in Birmingham; he had inspired the "unauthorised programme" of 1884 because he believed that the people wanted something more positive than the Liberal leaders were offering them; later on, he restrained Lord Milner's ardour for war against the Transvaal until he was sure that the larger section of public opinion had been convinced of the inevitability of a conflict; and one of the reasons for his raising the banner of "tariff reform" after 1900 was his belief that the Unionists, who had snatched a majority in the "khaki election", would be heavily defeated next time if they did not capture the electors' imagination. That he proved to be wrong in his choice of remedy does not prove that his diagnosis was faulty.

In this respect Chamberlain was more in tune with the spirit of the Constitution after 1884 than any of the leaders of the Liberal party, not excepting Gladstone. He was far more the democratic politician than the retiring and unapproachable Lord Salisbury, who led the Unionist coalition from Hatfield House. He realised that the Constitution had become democratic, and that the public opinion with which ministers were concerned was now represented not by the gossip of the clubs of Pall Mall and St James's Street but by the opinions of skilled workers in the factories of Birmingham and the mines of South Wales. Essentially the task of a politician was to persuade the "People with a capital P" to give him and his policies their support.

The most obvious reason for the change was the progressive extension of the franchise. People who have the vote have to be persuaded. It must be remembered, however, that the process of persuasion can be intelligent only if the people are intelligent. If they are so ignorant of political problems that they can be stampeded by slogans or specious promises or allegations of unknown

terrors, or if they do not see that acquiescence in bribery and corruption is to take part in a conspiracy to establish tyranny, a wide franchise is merely an invitation to corrupt demagoguery. It would be easy to produce examples from other countries, and readers of *Mein Kampf* will be aware that the technique of the Nazi party, before Hitler obtained power, was based on the assumption that people were sheep who could be driven anywhere by lies and corruption. In Great Britain, this problem has never attained considerable proportions because the franchise in fact lagged behind political education, and the difficulty has been that whole sections of the population capable of taking part in democratic government have until recently been excluded from it. There have been recent examples of attempts to produce a mass stampede; but direct bribery and corruption have been abolished simply because it is too costly and difficult to corrupt a wide and intelligent electorate.

It is not too much to say that, in Great Britain, government by opinion, or "truckling to a multitude", arose because of the extension of political education rather than because of the extension of the franchise. A vocal opinion can mould policy even where it cannot be expressed on the hustings or in the ballot box. For instance, nothing could be more unrepresentative than the so-called representative system in Scotland between the Union in 1707 and the first Reform Act in 1832. The Scottish members of the House of Commons were chosen by corrupt oligarchies, usually under the control of the King. Accordingly, the Government had the forty-five Scottish members in its pocket. Since the Government was chosen on account of conditions in the House of Commons, where the English element was dominant, it might be assumed that in the eighteenth century the inevitable consequence of the Scottish franchise (laid down, be it noted, by the Scottish Parliament before its



demise) was a permanent injustice to Scotland. The contrary was the case because, though the Scottish members were always "King's friends", they were also Scots. The price of their continued allegiance was justice to Scotland. It was not they, however, who determined what was justice to Scotland, but the vocal opinion of Scotland: and this was very wide, because the Presbyterian system in the Kirk had taught large numbers of the Scottish people to argue about and take part in the consideration of public questions, and generally the educational system (under the influence of the Kirk) was far better in Scotland than in England (where the Church was antagonistic to education and was itself a close oligarchy). The Scottish artisan, for instance, had influence on British policy in relation to Scotland long before the English artisan had any influence on British policy in relation to England.

Nevertheless, there were signs even in England towards the end of the century that a wider political education was developing. Pitt won his election in 1784 not merely because all the electioneering resources of the Crown were placed at his disposal (including the forty-five Scottish seats), but also because the spectacle of the great Chatham's son defying a parliamentary majority appealed to the middle classes, enfranchised and unenfranchised alike. Wilberforce deliberately appealed to the "conscience" of the unenfranchised middle classes in order to force the abolition of the slave trade through a Parliament where the West India interest was strong. The Whigs were induced to adopt reform in 1830 simply because there was a vocal public opinion which demanded it. Cobden and Bright, in their attack on the Corn Laws, went even further. They appealed to the working classes, who were still not enfranchised but who were beginning to have opinions of their own, with the result that, at the moment of famine, a majority for