

THE GOVERNMENTS OF EUROPE

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To
the best of all my teachers,—the
undergraduate students
in Harvard College

"I am tempted to believe that what we call necessary institutions of government are nothing more than institutions to which we have grown accustomed, and that in matters of political framework the field of possibilities is much more extensive than men living in their various countries are ready to imagine."

Alexis de Tocqueville.

PREFACE

The interest of America in the governments of Europe has been considerably stimulated by the events of the past dozen years. Washington said in his Farewell Address that "Europe has a set of primary interests to which we have none, or a very remote, relation"; but that statement has now ceased to be true. Today our relations with the old continent have become everything but remote. Our newspapers prove it by the amount of space which they devote to the sinuosities of European politics. A budget speech in the House of Commons gets into the headlines nowadays, and is no longer relegated to a pert paragraph on one of the inner pages. The election of a German president or the fall of a French ministry sends its echoes into the stock market of New York and the wheat pit at Chicago. We are slowly learning to think internationally—and it is about time.

For this reason it would seem desirable that Americans should know something about the various European governments, how they are organized, what sort of political machinery they use, and wherein their governmental methods differ from those of the United States. It is more than desirable: it is essential to the intelligent reading of the daily news from overseas. For without some knowledge of what a government is, it is impossible to understand what a government does. The aim of this book, therefore, is to describe in a general way and in simple language the antecedents, organization, and processes of government in the chief European countries, more particularly in Great Britain, France, Germany, and Italy, but with some attention to Switzerland, Russia, and the succession states as well.

The subject is a big one, with all sorts of ramifications, and I have made no attempt to deal with it in an exhaustive way. My aim has merely been to provide, for the general reader and the college student, a pen-picture of these governments in broad outline, in silhouette as it were. I have tried to show how they came to assume their present forms, what principles they rest upon, what agencies they use for the making of laws, the

execution of public policy and the administration of justice, what influence is exerted upon them by political parties, and what outstanding problems they are now trying to solve. Surely a big enough task for any man's book! Obviously it has been imperative that outstanding features be given the right of way, and that details be either relegated to the footnotes or omitted altogether. At the close of each chapter, however, there is a short list of accessible books to which the reader may refer if he desires to study the details of governmental practice in the various countries.

I have a good many obligations to place on record. Mr. I. G. Gibbon, O.B.E., of the British Ministry of Health, and Mr. Maurice L. Gywer, C.B., of the Inner Temple, barrister-at-law, late Fellow of All Souls College, Oxford, were good enough to read the manuscript of the chapters on Great Britain and to give me helpful suggestions on every one of them. I sincerely appreciate and gratefully acknowledge the assistance which these two highly competent scholars have accorded me in my attempt to describe the world's most remarkable government in its present-day operations. To my colleagues, Professors Henry A. Yeomans, Arthur N. Holcombe, George La Piana, and Dr. Raymond L. Buell, as well as to Professors John A. Fairlie of the University of Illinois, Edward M. Sait of the University of California, Malbone W. Graham of the same institution (Southern Branch), F. A. Golder of Leland Stanford University, and Dr. Jacques H. Pillionnel of Geneva, Switzerland, on all of whom I have inflicted portions of the manuscript or proofsheets, I am indebted for many suggestions of great value. They have steered me from numerous errors, a service for which my readers should be no less grateful than I am. As for the errors that remain, I can only remind the critical that "Who faulteth not, liveth not; who mendeth faults is commended."

WILLIAM BENNETT MUNRO.

June 5, 1925.

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THE GOVERNMENTS OF EUROPE

CHAPTER I

THE NATURE OF THE BRITISH CONSTITUTION

En Angleterre la constitution . . . elle n'existe pas!—*Alexis de Tocqueville*.

The art of free government has been the greatest contribution of the Anglo-Norman race to the civilization of the world. Civilized man drew his religious inspiration from the East, his alphabet from Egypt, his algebra from the Moors, his art and literature mainly from Greece, and his laws from Rome. But his political organization he owes mostly to English conceptions, and constitutional systems all over the world are studded with words and phrases which can be explained only by reference to the theory and practice of English government.¹ It is true, of course, that representative government has sprung from the soil in other countries, but it has usually withered and died. The British constitution is the mother of constitutions; the British parliament is the mother of parliaments. No matter by what name the legislative bodies of other countries may be known, Congress or Chamber, Reichstag or Rigsdag, Storting or Sobranje, they all bear the impress of their maternity. It is hardly an exaggeration to say, therefore, that the democratization of the entire civilized world, largely through the influence of Anglo-Norman leadership, is the most conspicuous fact in the whole realm of political science. Not to know and appreciate this fact is to miss the first clue to an understanding of the science of government.

The mother
of all con-
stitutions.

In the history of mankind only two races have made notable and permanent contributions to the art of governing great popu-

¹ A. F. Pollard, *The Evolution of Parliament* (London, 1920), p. 3.

The Roman and English contributions compared.

lations—the Romans and the English. Ancient Rome elaborated a scheme of government and a system of law which for centuries exercised a profound influence in all regions of the old world, and even yet this influence has been by no means obliterated. But Rome's political evolution carried her from a popular government to an absolute one, from a republic based upon the doctrine of popular sovereignty to an imperial absolutism. Therein it ran counter to the current of progress. The development of political institutions in England went in precisely the opposite direction. [England began as an absolutism and evolved into an imperial democracy.] Her political institutions, by reason of their harmony with the needs of an advancing civilization, have been far more closely and more widely copied than were those of Rome.

A striking example of political evolution.

Nor is it merely because of this world-wide influence that the constitution of Great Britain ought to be studied,—and studied before that of any other country. It is the oldest among the existing constitutions of the world. With the exception of the dozen years in which Oliver Cromwell quitted his farming and served as President of the English Republic under the title of Protector of the Commonwealth, its general contour has undergone no drastic change for at least five centuries. Nowhere else has the world witnessed a political evolution so prolonged and so relatively free from great civil commotion. There have been revolutions in England, not all of them bloodless, but they merely cleared the obstructions out of the channel. They did not deflect the main current of political progress. The new dispensation began where the old left off. After each upheaval the process of constitutional evolution was speeded up. So, while it is possible to mark out epochs or stages in the development of the British constitution, this is done by noting differences after long periods rather than by coming upon sudden transformations at definite times.¹

The chief reasons for the early development of popular government in England.

Three reasons account for this remarkable smoothness with which the course of British constitutional development has been run. The first is to be found in the geographical isolation of Britain from the mainland of Europe. Nothing but a narrow strip of channel separates England from the continent, but these

¹ George Burton Adams, *The Origins of the English Constitution* (New Haven, 1920), p. 43.

twenty miles of water have afforded a measure of defense which no other great country of Western Europe has enjoyed.¹ During many centuries this protection obviated the need for a large standing army and thus withheld from the British monarchs the one weapon with which they might have crushed popular liberties as did the Bourbons in France and the Hapsburgs in Spain. The English kings claimed a right to maintain a standing army, but they never succeeded in making good this claim, and the Bill of Rights eventually disposed of it by an express declaration that "the maintenance of a standing army in time of peace without the consent of parliament is contrary to law." England's insular position is by far the most important clue to a proper understanding of her constitutional history. Shakspeare was not unmindful of this fact when he apostrophized his native island as

1. Geo-
graphical
isolation.

"This precious stone set in a silver sea,
Which serves it in the office of a wall,
Or as a moat defensive to a house
Against the envy of less happier lands."

In the second place the undisturbed political evolution of England has been due to the genius of her people. The fusion of racial strains—Celt, Saxon, Norman and Dane,—gave to the British islands a breed of men in whom the ardor for free political institutions was strong. So strong did it prove to be, in fact, that it ultimately became the root of Britain's difficulties with her own colonies. The people of the British isles, and their descendants wherever scattered, have in all ages been impatient of improvised, uncertain, or dictatorial authority; on the other hand they have had at all times an innate respect for political authority based upon their own consent.

2. Racial
genius.

And something, finally, must be attributed to the happy accident that no rigid constitutional framework was devised in the earlier stages of British history to hold the course of political development in check. The Briton has never had much use for political abstractions. He has been openly averse to a system of government based upon fixed principles and involving

3. Consti-
tutional
flexibility.

¹The only other European country which has had a relatively uninterrupted political development, akin to that of England, is Switzerland. Here also a partial explanation is to be found in the natural facilities for defense against armed invasion.

the application of exact rules. For this reason the British constitution has never been permitted to assume a stereotyped form. It has remained unsystematized, uncoded, and to a degree indefinite.

What "the constitution" means to an American.

The American student who walked into a great London library some years ago and amused the attendants by asking for "a copy of the British constitution," was doing a perfectly natural thing from his own point of view. He knew that in his own country there was such a constitution; as a schoolboy he had probably been required to memorize it. In every branch of public activity he had heard its provisions quoted as the last word, the supreme law of the land. To his way of thinking it was inevitable that a constitution should be a document, concise in form, orderly in arrangement, and definite in its terms,—in other words an organic statute upon which the government rests. But this mental picture is not accurate, even as respects his own country. The real constitution of the United States includes not only the document which the Fathers of the Republic framed in 1787, but all that has been read into this document by the courts and all that has been read out of it by Congress during the past hundred and thirty-odd years. When James Bryce asserted, thirty years ago, that the constitution of the United States is "so concise and so general in its terms that it can be read in twenty minutes," he did not mean to imply that anyone could obtain even the most rudimentary conception of American government in that length of time. By merely reading the American constitution one would learn nothing about state government, local government, party organization, and a dozen other features which are of the greatest importance in the American political system. To read the American constitution in its wider sense, would take not twenty minutes but a dozen years.

What "the constitution" means to an Englishman.

Great Britain has never had a constitutional convention like the one that met at Philadelphia in 1787. The British constitution is the product of continuous and almost imperceptible accretion. That is why a distinguished French publicist once declared that it did not exist at all. The British constitution is the result of a process in which charters, statutes, decisions, precedents, usages, and traditions have piled themselves one upon the other from age to age. It is, to use Sir William Anson's metaphor, a somewhat rambling structure, a house which many successive

owners have altered to suit their immediate wants or the fashion of the time. It bears the marks of many hands. Its provisions have never been codified and put into an orderly form, and probably never will be. The task would be virtually impossible, for not only do the usages and traditions cover a wide range, but many of them are not sufficiently definite to be set down in writing. They are continually in process of change, new customs replacing older ones. Precedents are being made almost daily, and these precedents solidify into "customs of the constitution." Some of these customs of the constitution are now so firmly entrenched that everyone accepts them as inviolable; others are by no means universally recognized, while others, again, are subjected to varying interpretations. It is a fixed and unquestioned usage of the British constitution, for example, that a ministry must resign when it loses the support of a majority in the House of Commons, but it is not a universally accepted usage that it must resign on any adverse vote. The writer who set out to explain just what constitutes "want of confidence" in a ministry would have a hard time doing it. Moreover, a codification of the British constitution, if finished today, would be out of date the day after tomorrow, for the whole thing is a growing organism which does not stand still even for a single hour. "The English," says a French critic, "have simply left the different parts of their constitution wherever the waves of history happen to have deposited them."

The difference in this respect between the British and American constitutions, however, has been greatly over-emphasized by reason of the tendency to use the same words in dissimilar senses. If we use the term constitution to include the entire body of written and unwritten rules by which the fundamentals of government are determined, then both Great Britain and the United States are alike in possessing something that answers this description. In both countries this aggregation of fundamental rules, whether written or unwritten, is constantly developing, broadening, changing. The constitution of the United States, including not only the original document but the vast mass of statutes, judicial decisions and usages which have grown up around it, is also a live, growing organism which never stands still for a single day. The founders of the American Republic did not encase a living heart in a marble urn. They did not

The difference has been over-emphasized.

place the twentieth century in bondage to the eighteenth. The American who spends twenty minutes in reading his national constitution may get a better idea of the fundamental rules which govern his country today than does the Englishman who spends as many hours in studying Magna Carta, the Bill of Rights, the Parliament Act, and the Irish Treaty; but neither American nor Englishman can in this way gain any comprehensive idea of the political institutions under which he lives. The student who desires to follow Machiavelli's advice and concern himself with the truth of things rather than with an imaginary view of them must go far beyond the formal documents in either case. An account of the real constitution in any country is like the photograph of an individual: no matter how good a likeness it may be today, it will not be a good likeness twenty or thirty years later. The general features of the individual, as of a government, may remain unaltered, but their expression, their relation, and their character will have perceptibly changed.

Is the English constitution "unwritten" as we are so often told?

Too much emphasis, again, has been placed upon the distinction between written and unwritten constitutions. Other countries, we are told, have written constitutions; Britain has an unwritten one. But this assertion, although it rather clumsily points to something in the way of a real distinction, is not altogether accurate. A substantial portion of the fundamental law by which Great Britain is governed has been put into writing. The relations between England and Scotland, for example, and between England and Ireland, the succession to the crown, the qualifications for voting, the organization and procedure of the courts,—all these and many other fundamentals of British government are on record in black and white.

The elements in the British constitution.

1. The landmarks.

What, then, is the constitution of Great Britain? It consists, one may fairly say, of five elements, not all of which lend themselves to precise definition. First, there are certain charters, petitions, statutes and other great constitutional landmarks such as Magna Carta (1215), the Petition of Right (1628), the Bill of Rights (1689), the Act of Settlement (1701), the Act of Union (1707), the Great Reform Act (1832), the Parliament Act (1911), and the Government of Ireland Act (1922). But all of these put together cover a very small portion of the fabric of British constitutional law. Second, there is the great array of ordinary statutes which parliament has passed from time to time relating

2. Statutes.

to such things as the suffrage; the methods of election, the powers and duties of public officials, and the routine methods of government. In point of time these statutes range over many centuries.

3. Third, there are judicial decisions interpreting all the charters and statutes, explaining the scope and limitations of their various provisions. They correspond to the long line of decisions made by the courts on constitutional questions in the United States,—except that the line is longer and the cases not so numerous. 4. Fourth, it is often said that the common law is a part of the British constitution. By the common law is meant that body of legal rules which grew up in England, apart altogether from any action of parliament, and eventually gained recognition throughout the realm. Such securities for personal liberty as the British constitution affords to those who live under it were brought into being by the common law rather than by statute. 5. Certain legal traditions are embalmed in the common law, for example, the right to a jury trial in criminal cases, and these may fairly be said to form part of the British constitution in its broader sense. The common law, like statutory law, is continually in process of development by judicial decision. Finally, there are the usages which in England as in other countries have gradually hardened and now exert a compelling influence on various branches of the government. Usage plays a larger part in the workings of the British constitution than in the constitution of any other country because the British constitution is older and the usages have had more time to grow. A large part of the British governmental system, in fact, rests on usage and not upon laws or judicial decisions—including such vital things, for example, as the political functions of the crown and the responsibility of the ministers to the House of Commons.

3. Judicial decisions.

4. The common law.

5. Usage.

So what is the constitution of Great Britain? It is a composite of charters and statutes, of judicial decisions, of common law, of precedents and usages and traditions. It is not one document, but many. It is not derived from one source, but from several. It is not a completed thing, but a thing which is still in process of growth.

A definition of the British constitution.

Being in process of growth means that it can be changed, and the British constitution can be altered at any time by a simple

How it can be changed.

¹To this, however, there are some notable exceptions, for example the Habeas Corpus Act of 1679.

act of parliament. Over every provision of the constitution, howsoever derived, parliament is legally supreme. Parliament can alter any feature of British government at will. There is no charter or statute, however fundamental, that it cannot change, no judicial decision that it cannot set aside, no usage that it cannot terminate, and no rule of the common law that it cannot overturn. All governmental powers rest ultimately in the hands of parliament. It is desirable that every student of the British political system should firmly grasp this legal principle at the outset. The British parliament is as nearly sovereign as any mundane body can be. The only thing it cannot do is to bind its successors; it cannot interrupt or put an end to the process of constitutional change.

Constituent and lawmaking power are thus identified.

In Great Britain, accordingly, there is no legal difference between *constituent* authority and *lawmaking* authority such as exists in the United States. In the national government of the United States the lawmaking power rests with congress; but constituent power, that is, the power to amend the constitution, does not come within the scope of congressional authority. To amend the constitution of the United States is far more difficult than to amend a statute, as is shown by the fact that although congress passes several hundred laws at every session only seven constitutional amendments have been ratified during the past one hundred years. Parliament is supreme in both spheres; it is both the lawmaking and the constituent authority. Even the succession to the throne, as established by the Act of Settlement, can be changed by a simple statute if parliament desires to change it.

Can an act of parliament be unconstitutional?

There is a marked difference, therefore, between the concept of unconstitutionality in the two countries. When we say in the United States that some action of congress is "unconstitutional" we mean that it is contrary to the express or implied provisions of the national constitution and as such may be declared invalid by the courts. In that sense no act of parliament can be unconstitutional. When an Englishman speaks of any parliamentary action as unconstitutional, he means that it is opposed to the existing traditions of British government, a departure from long-standing practice, an objectionable innovation. If parliament, for example, were to pass a law permitting civilians to be tried by courtmartial in time of peace, he would undoubtedly cry out that such action was unconstitutional. Why? Because