

ENGLISH GOVERNMENT AND POLITICS

BY

FREDERIC AUSTIN OGG, PH.D., LL.D.

PROFESSOR OF POLITICAL SCIENCE IN THE UNIVERSITY OF WISCONSIN

New York

THE MACMILLAN COMPANY

1929

COPYRIGHT, 1929.

By THE MACMILLAN COMPANY.

Set up and electrotyped. Published September, 1929

All rights reserved, including the right of reproduction in whole or in part in any form.

SET UP AND ELECTROTYPED BY J. J. LITTLE & IVES
PRINTED IN THE UNITED STATES OF AMERICA

ENGLISH GOVERNMENT AND POLITICS

BY THE SAME AUTHOR

THE OPENING OF THE MISSISSIPPI

SOCIAL PROGRESS IN CONTEMPORARY EUROPE

THE GOVERNMENTS OF EUROPE

NATIONAL GOVERNMENTS AND THE WORLD WAR
(with *Charles A. Beard*)

ECONOMIC DEVELOPMENT OF MODERN EUROPE
(with *Walter R. Sharp*)

TO MY STUDENTS IN
"POLITICAL SCIENCE 250"
UNIVERSITY OF WISCONSIN

PREFACE

There is a tendency nowadays in the study of government to stress functional rather than historical or descriptive approach; and much is to be said for it. The new method or emphasis, however, cannot serve us so well that it will cease to be useful to fasten the gaze upon a single governmental system and endeavor to comprehend it as a great unit or chapter in the sum total of man's political experience and achievement—particularly if the system be one not only of large inherent interest but also of world-wide influence and renown. The English system is undoubtedly such a one; and it is the purpose of this book to give an account of that system on lines which will render it not only a reservoir of data on principles and processes but a living reality as a going concern. Of function, much is said; of institutions, considerably more. It is hoped that the two have been kept in clear and true relation; likewise that the most pregnant opportunities have not been overlooked to suggest, even if not always to treat at length, interesting and meaningful comparisons with governments of other lands, especially the United States.

A new book on English government is perhaps justified by the remarkable changes in mechanism, function, and method which recent years have witnessed, and particularly by the fluidity of political arrangements in Britain today and the probability of further significant experiments and reconstructions in times immediately ahead. "This island," averred Charles Dickens' egregious Mr. Podsnap, "is blessed, Sir, by Providence, to the direct exclusion of such other countries as there may happen to be." It is doubtful whether even Mr. Podsnap would have been capable of such complacency had he been a contemporary of Stanley Baldwin and Ramsay MacDonald. Certainly the Britain of our time is none too sure about its monopoly of Providential favor, whether in the domain of

sea-power, of trade, or even of law and government. Vast political problems have been met and solved in the past hundred years. But their places have been taken by others, even more challenging and baffling. Often thought of as a peculiarly "finished" and static governmental system, the English is, in point of fact, dynamic and shifting—ever feeling its way, by its own cautious methods to be sure, along new lanes into uncharted areas. The chapters that follow will have failed in their purpose if they do not create the picture of a great, expanding, living political organism whose interest for the world flows quite as much from the novel things that it is about to do as from those which it has already done. We ought, as Burke long ago remarked, "to understand it according to our measure," even if we do not admit the force of the statesman-philosopher's further injunction "to venerate where we are not able presently to comprehend."

FREDERIC A. OGG.

UNIVERSITY OF WISCONSIN,
April, 1929.

CONTENTS

CHAPTER	PAGE
I. THE ORIGINS OF ENGLISH POLITICAL INSTITUTIONS	I
II. CONSTITUTIONAL DEVELOPMENT	29
III. THE CONSTITUTION AND THE GOVERNMENT TODAY	59
IV. THE CROWN AND ITS POWERS	82
V. KINGSHIP AND WHY IT SURVIVES	98
VI. PRIVY COUNCIL, MINISTRY, AND CABINET	118
VII. THE CABINET AT WORK	143
VIII. EXECUTIVE DEPARTMENTS AND OFFICES	161
IX. OTHER DEPARTMENTS—SOME GENERAL PROBLEMS AND TENDENCIES	188
X. THE PERMANENT CIVIL SERVICE	206
XI. CIVIL SERVICE METHODS AND PROBLEMS	221
XII. THE HOUSE OF COMMONS—CONSTITUENCIES AND VOTERS	240
XIII. PARLIAMENTARY ELECTIONS	278
XIV. THE HOUSE OF LORDS	314
XV. SECOND CHAMBER REFORM, 1909-1929	333
XVI. PARLIAMENTARY MACHINERY AND PAGEANTRY	363
XVII. PARLIAMENT AT WORK: LAW-MAKING	396
XVIII. PARLIAMENT AT WORK: FINANCE	428
XIX. PARLIAMENTARY TENDENCIES AND PROBLEMS	448
XX. THE DEVELOPMENT OF POLITICAL PARTIES	478
XXI. PARTIES AND ELECTIONS SINCE 1918	499
XXII. PARTY STRUCTURE	530
XXIII. PARTY PRINCIPLES AND POLICIES	552
XXIV. PARTY ORGANIZATION	569
XXV. THE SYSTEM OF ENGLISH LAW	595

CHAPTER	PAGE
XXVI. THE COURTS AND THE ADMINISTRATION OF JUSTICE .	609
XXVII. LOCAL GOVERNMENT AND ADMINISTRATION — THE COUNTY	632
XXVIII. MUNICIPAL GOVERNMENT	663
XXIX. THE UNITED KINGDOM — IRELAND TO 1914	681
XXX. THE IRISH FREE STATE	703
XXXI. SOME ASPECTS OF IMPERIAL AFFAIRS	745
INDEX	773

ENGLISH GOVERNMENT AND POLITICS

CHAPTER I

THE ORIGINS OF ENGLISH POLITICAL INSTITUTIONS

IT is not necessary to tax the resources of the English language as did Fortescue in the fifteenth century and Blackstone and Burke in the eighteenth¹ to establish the fact that the political institutions of England, and of modern Britain, have played an exceptionally important rôle in the making of our twentieth-century civilization. This would be true if their influence had been confined to those portions of the world which have been peopled principally from Britain and where English is the mother tongue; for these alone embrace more than a sixth of the total land area of the globe and include, besides Britain herself, the United States, Canada, Australia, New Zealand, and considerable parts of Africa. In almost equally extensive lands, however, which are not ethnically or culturally English, but in which British political power has been planted, the marks of English constitutional and political experience are plainly to be seen; while in long lists of countries not English at all—from France and Germany and Belgium to Japan and China at one end of the earth and Chile and Peru at another—the effects of this same experience, while not always definitely measurable, meet the observer at every turn.² The Hebrews did not create all religion, nor the Greeks all philosophy or art, nor the Romans all law, nor the English all principles and

¹ Sir John Fortescue, *De Laudibus Legum Angliæ*; Sir William Blackstone, *Commentaries on the Laws of England*; Edmund Burke, *Reflections on the French Revolution*.

² "The English constitution has made the circuit of the globe and become the common possession of civilized man." G. B. Adams, *The Origin of the English Constitution* (enlarged ed., New Haven, 1920), I.

forms of government. In each of these fields the world has been enriched by weighty contributions from widely scattered and largely unrelated sources. England, however, looms as prominently in the political realm as Greece in the domain of thought or Rome in that of law; and no one can progress far toward an understanding of the government under which he lives without knowing its English antecedents or connections. Particularly is this true of the American, whose government as it stands today does indeed offer plenty of contrasts with the English, but is none the less deeply rooted in English experience and tradition. In the words of the late Professor Adams, "the history of the formation of the British constitution is a part of our history. . . . The creation and establishment of our judicial institutions and common law, of the supremacy of law over government, of our representative system, of the popular control of taxation, of the responsibility of ministers of government to the legislature, and finally of the principle, fundamental to all else, of the sovereignty of the people, were the work of our English ancestors."³

Not only do the political institutions of the United States rest back upon those of England; the institutions and usages of the "tight little island," as we view them today, are the products of long centuries of development. Doubtless it is true that there have been so many changes, even since the eighteenth century, that a Pitt or a Burke, wandering about Whitehall and Westminster today, would feel himself almost a stranger. What he would encounter would, however, be strongly reminiscent of the past; much would be essentially as it was when he first walked the earth. A main characteristic of English constitutional and political experience has been its long and relatively unbroken sweep through the ages.

The primary purpose of this book is to describe the English system of government as it is today, i.e., as a "going concern." To describe, however, means also to explain, which in turn entails taking account of how political forms and practices came to be as we find them. Historical antecedents not only furnish the clue to much that otherwise would be inexplicable,

³ G. B. Adams, *Outline Sketch of English Constitutional History* (New Haven, 1918), 4-5.

but, in the case of England at all events, often come close to supplying the whole explanation. No apology is required, therefore, for prefacing our study with an outline of the process by which the English constitution came into being and, in the long course of time, took on its present form.

Anglo-Saxon Institutions

To begin at the beginning, one must turn his eyes all the way back to the primitive Britain of the Celts, the Romans, and the Saxons. He will not need to concern himself much with the Celtic tribes which Cæsar, at his famous crossing of the Channel in 54 B.C., found in sole possession of Britain and its sister island on the west; because they contributed nothing of which we are aware to the political system of today. Nor did the Romans, who almost a century later carved out a province in the south and center, leave anything behind them on their final withdrawal in 407 A.D. which affected political institutions of later times.⁴ The earliest period to which the making of the modern British constitution can be traced is, rather, that which begins with the invasions and settlements of the Angles and Saxons, at the middle of the fifth century, and after, and terminates with the Norman Conquest in 1066. This Anglo-Saxon epoch, covering some six hundred years, counted for considerably less in the making of the political system of later days than was once supposed. Nevertheless, it contributed one institution which, even now a conspicuous feature of the political landscape, was for centuries the most prominent of all, i.e., kingship;⁵ and, besides, it covered the country with a network of areas of local government which survive in part to this day.

Kingship, it is interesting to notice, arose among the Angles

⁴ Roman influences re-entered the country indirectly in the Middle Ages through the study of the Roman law. But the effects upon political institutions, as distinguished from legal principles, were negligible.

⁵ Kingship was, indeed, the great central institution around which the English constitution grew up. Not only that, but the monarchy has been, from first to last, the most deeply rooted and continuous part of the constitution and the whole course of constitutional history a progressive adaptation of the concepts and actualities of the monarchy to altered needs and conditions. As will appear, the crown—no longer, of course, the king in person—is still in a very real sense “the government.”

and Saxons after their settlement in the new home, and not before; at their coming, the leaders were only *principes*, or chieftains. Monarchy in Britain is therefore an indigenous institution, not an importation. Many chieftains of victorious war bands attained the regal dignity, and, as every student of English history knows, eventually the scattered little dominions gravitated together into the seven kingdoms comprising the "Heptarchy"—East Anglia, Mercia, Northumberland, Kent, Sussex, Essex, and Wessex. One by one, these were absorbed into larger areas, until at length, in the ninth century, Wessex emerged supreme and the entire occupied portion of the country was brought under the sway of a single sovereign.

This "sway" was not, however, very impressive, especially when the king did not happen to be a man of wisdom and vigor. In the first place, the monarch occupied the throne, not by strict hereditary right, but by election. The people who chose him belonged to the *witenagemot*, or "council of wise men," and while they commonly showed preference for members of a given family, they did not hesitate to pass over an eldest son if they considered him incompetent or otherwise undesirable. In the second place, the king, although a lawgiver, issued his "dooms" only with the concurrence of the *witan*; and they were few and simple, rarely extending beyond the fixing of penalties for offenses to which his red-blooded subjects were specially prone, i.e., breaches of the peace. In the third place, the king was limited in his acts by a steadily growing body of "customs of the people." The king was regarded as supreme judge, and all crimes and misdemeanors came to be looked upon as offenses against him. Here again, however, his actual powers were slight, for with the routine administration of justice locally he had little or nothing to do. In fact, he had scant control over local affairs of any kind. He presided over the assemblies or synods of the church. But the main thing expected of him was that he should lead his people bravely and effectively in time of war. Originally, kingship was only a sort of permanent war-chieftainship; and although it became a good deal more than that before the end of the Saxon period, it was far from absolute in the hands of even so redoubtable a monarch as Cnut.

The *witenagemot* was an assembly of the most important

men of the kingdom, lay and ecclesiastical. It had no fixed membership, but consisted of such persons as the king chose to summon to the three or four meetings commonly held each year.⁶ There were no elected members, and the body had no representative character except in the general sense that it spoke for the interests and classes from which its members were drawn and, through them, for the nation. Of course the king was not exactly free in deciding who should be summoned. There were always people who could not possibly be left out; and, broadly, we may say that those present pretty regularly included the chief officers of the royal household, the *ealdormen* who represented the central government in the shires, bishops and other leading churchmen, sundry high officers of state, and the principal men who held land directly of the king. The functions of the witan were almost as ill-defined as its composition, and its actual power was likely to be inversely proportionate to that of the king at any given time. But it had a right to be consulted on all important affairs of both state and church; it gave its assent to the king's "dooms," or laws; it sat with the king as the supreme court of justice; it agreed to treaties and land grants, but had little to do with finance, since there was no national taxation in the modern sense. As has been stated, it elected the king. Similarly, it had power to depose him; and this is one of the reasons why kingship never became absolute in the Anglo-Saxon period. "It has been a marked and important feature of our constitutional history," an English scholar reminds us, "that the king has never, in theory, acted in matters of state without the counsel and consent of a body of advisers."⁷ As a prototype of the Great, or Common, Council of later times, and even, more remotely, of the present cabinet, the *witenagemot* is interesting and important. But we should not make the mistake of reading back into it the character of either a modern royal council or a parliament.

Aside from kingship, it was in the field of local government that the Anglo-Saxon period made its largest and most lasting

⁶ There was no national "capital," and these meetings were held from place to place around the country as convenience dictated.

⁷ W. R. Anson, *Law and Custom of the Constitution* (3rd ed., Oxford, 1907-11), II, Pt. i, 7.

contribution to the British political system of today. Practically the whole population lived in one-roomed, thatched cottages, grouped in little villages, each with a surrounding area of pasture, woodland, and plowed ground; and, naturally enough, every such *tunsceip*, or township, had its own bit of local government machinery, consisting as a rule of a *mote*, or town meeting, and a reeve and other elected officers. Some hamlets, favorably situated at meeting points of trade routes or adjacent to fortified posts, grew into *burghs*, or boroughs, enjoying large rights of self-government. London, for example, arose early in this way. The number of such places did not, however, exceed a hundred when the period ended. A group of townships formed a hundred (manifestly having some numerical significance, although nobody now knows precisely what it was); and a hundred had a *mote*, or court, of its own, together with a hundred-man, sometimes elected, sometimes appointed by a landowner who was lord of the region. Here, it is interesting to observe, the principle of representation made its appearance in a limited way; for to the sessions of the hundred court came the reeve, the parish priest, and four "best men" from each of the townships and boroughs within the hundred's bounds. As a rule, the hundred court met once a month and devoted its time to hearing and deciding cases at law—civil, criminal, and ecclesiastical.

Above the hundred was the shire. Not much is known about how the shires came into existence, but it is probable that most of them originated as areas occupied by small independent tribes. At all events, they ultimately appear as the largest judicial and administrative subdivisions of the united kingdom. The shire also had its *mote*, or court, which seems at one time to have consisted of all the freemen who cared to attend, although in later days it was actually made up—whatever the theory may have been—of the reeves and other representatives of the townships, together with the larger landowners and principal church officials. The body met twice a year and, like the hundred court, transacted judicial business chiefly, although sometimes with a trace of legislative, or even administrative, work. In earlier times the chief officer of the shire was the alderman, who presided over the shire court and constituted

the local head of a real local government. But later he was drawn under closer royal control, being appointed by king and witan; and eventually he was quite eclipsed by the shire-reeve, or sheriff, who became the king's representative in a very special sense and as such had charge of the royal lands in the shire, collected the king's revenue, received the king's share of the fines imposed in the courts, and even took over the alderman's duties of presiding over the shire court and calling out and commanding the local militia. The alderman's office dropped out altogether after the Norman Conquest, but the office of sheriff went on developing in power and importance and, under greatly altered conditions, has survived to this day.⁸ The shire, as a rule, formed a diocese of the church, and accordingly the bishop was accustomed to attend the sessions of the court and take a prominent part, apparently presiding when ecclesiastical cases were up for adjudication.

The significance of this general scheme of local government and administration lies not so much in the modern survival of ancient jurisdictions like the shire (rechristened the county after the Conquest), or of ancient offices like the sheriff's, as in the formation of an ineradicable habit of local autonomy, which has ever been one of the most conspicuous characteristics of the British people. Centuries of relatively weak national government gave opportunity for local institutions to take root so firmly that no amount of centralizing pressure in Norman, Tudor, or other times could squeeze out the life and vigor of county, town, and village, as happened, for example, in Bourbon France. Furthermore, as a recent writer properly emphasizes, the governments of hundred and shire first called into play the principles of representation and so habituated the people to its workings that, when later the time was ripe, it could be made the basis of parliamentary organization on a national scale.⁹

⁸ See p. 243 below.

⁹ W. B. Munro, *The Governments of Europe* (New York, 1925), 17. For fuller accounts of Anglo-Saxon institutions, the reader may be referred to G. B. Adams, *Constitutional History of England* (New York, 1921), 5-49; A. B. White, *The Making of the English Constitution* (rev. ed., New York, 1925), 3-71; and H. Taylor, *Origins and Growth of the English Constitution* (new ed., Boston, 1900), II, Bk. I, Chaps. iii-v. A

Norman-Angevin Contributions

A new stage in the development of English political institutions was opened when, upon the death of Edward the Confessor in 1066, William of Normandy crossed over from his well-ordered duchy in the northwest of France and, defeating the Saxon claimant on the field of Senlac (or Hastings), assumed the royal title and launched a series of campaigns which in due time left him undisputed master of the country. The precise significance of this event and its aftermath has long been warmly debated by the ablest historians and legal scholars. By a somewhat curious turn, the Oxford professor who, some sixty years ago, wrote the fullest account of the Conquest that we possess attached less importance to the matter than do most authorities today.¹⁰ He was obsessed with the idea that Anglo-Saxon institutions survived the Conquest almost intact and that the English constitution of our own time rests back solidly upon those institutions—even, indeed, in its central principle of popular government, upon the ideas carried over by the Saxons from the German forests.¹¹ The contemporary historian Stubbs attached somewhat greater weight to the changes wrought by William and his successors, and to the feudal character of the Anglo-Norman period in general;¹² and in later days the permanence of the Saxon institutions has been more and more discounted, until some very good authorities have been led to declare, to all intents and purposes, that the history

classic treatment of the subject is W. Stubbs, *Constitutional History of England in its Origin and Development* (6th ed., Oxford, 1897), especially I, 74-182. J. Ramsay, *Foundations of England*, 2 vols. (London, 1898), is a mine of information. Political and institutional history is narrated fully in T. Hodgkin, *History of England to the Norman Conquest* (London, 1906), and C. W. C. Oman, *England Before the Norman Conquest* (London, 1910). C. Gross, *Sources and Literature of English History* (London, 1900), is an admirable bibliography.

¹⁰ E. A. Freeman, *The Norman Conquest*, 6 vols. (Oxford, 1867-69).

¹¹ He set forth this view with particular cogency in *The Growth of the English Constitution* (London, 1872, and numerous later editions). Professor Vinogradoff once applied to the doctrine the pregnant phrase "retrospective nationalism."

¹² In the work already mentioned. Emancipation from Freeman's notion of the uninterrupted survival of Saxon institutions began, indeed, with Stubbs, although, as is stated above, it was carried much farther by other and later writers.