

剑桥政治思想史原著系列（影印本）

CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

# 英国宪法

## *The English Constitution*

Bagehot

白芝浩

Edited by

PAUL SMITH

中国政法大学出版社

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## BAGEHOT

### *The English Constitution*

Walter Bagehot's anatomy of the English constitution is a classic of English political writing. In this new *Cambridge Texts* edition it appears for the first time in its original (1867) book version, with Bagehot's original conclusion, and the substantial introduction written for the second edition of 1872. Paul Smith's introduction places Bagehot's views in the context of contemporary events and prevalent views of the working of the constitution, indicating their relation to his developing ideas on the anthropological and sociological springs of authority. He assesses the accuracy of Bagehot's account of parliamentary government in operation, and the way in which Bagehot exemplifies the difficulties faced by British liberalism in coming to terms with the approach of democracy. All the usual student-friendly features of the *Cambridge Texts* series are present, including a select bibliography and brief biographies of key figures, and annotation which explains some of Bagehot's more arcane contemporary allusions.

PAUL SMITH was formerly Professor of Modern History at the University of Southampton. He is the author of *Disraeli: A Brief Life* (1996) and has edited *Government and the Armed Forces in Britain 1856–1990* (1996) and *The Self-Fashioning of Disraeli 1818–1851* (1998, with C. B. Richmond).

# 剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

本丛书已出版著作的书目，请查阅书末。

# CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

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## Editor's introduction

### The context of *The English Constitution*

When Walter Bagehot's examination of the bases and mechanisms of British government began to appear in 1865, he was approaching the peak of his career. Not quite forty years old, but already firmly established in the editorial chair of *The Economist*, he was a recognised authority on financial questions, well known among the leaders of the Liberal party, and looking for an opportunity to enter Parliament. It was natural for him, as a member of the group which established the *Fortnightly Review*, to assist the launch of the new Liberal journal with his pen. His first article on the English constitution appeared in the first issue of the *Fortnightly Review* in May 1865, followed by eight further instalments, concluding in January 1867. The subject could hardly have been more topical. The 1860s was a period of intensive constitutional discussion. Standard works on the constitution, like those of Brougham, Grey, and Russell, went into new editions and were joined by fresh studies such as John Stuart Mill's *Representative Government*. Alongside the desire to exhibit the peculiar qualities of the institutions which were held responsible for the growth of Britain's political stability and economic prosperity there ran a current of anxiety about their capacity to meet three looming tests: accommodating the development of society at home; equipping the country to compete successfully with rising powers abroad; and providing a workable model for other countries, especially Britain's colonies.

However calm the domestic political scene appeared at the height of Palmerston's ascendancy, it was obvious that change was on the horizon. Palmerston, at eighty, could not retain the premiership much longer, and

his departure would open the way for more enterprising Liberals, like Gladstone, who, in the debate on Baines's franchise bill in May 1864, had revived the issue of parliamentary reform by advocating an extension of the vote to working men in terms which were widely, though wrongly, interpreted as signifying support for manhood suffrage. Barely a month before the publication of Bagehot's first article, General Lee's surrender at Appomattox signalled the triumph in the American Civil War of the Union cause, which advanced Liberal opinion in Britain equated with democratic and popular institutions as against the 'aristocratic' South. British institutions, by contrast, seemed to some to be functioning less effectively. The capacity of parliamentary government to maintain the country's prestige on the international scene had been called into question by the failure in 1864 to render to the Danes the support they had been led to expect in their dispute with the German powers over Schleswig-Holstein. Those who felt that this episode was a national humiliation inclined to see Queen Victoria's German sympathies as part of the explanation. The Queen's virtual withdrawal from public ceremonies since the death of her husband, Prince Albert, in 1861, undermined the symbolic value of the monarchy, her poor relations with her ministers its practical political usefulness, her eldest son's fast living its custody of family values. Rumours of her insanity were joined by whispers about her fondness for her Scottish servant, John Brown. Bagehot's articles began to appear about the time jokes concerning 'Mrs Brown' started to circulate in London.

Bagehot's impulse to write about British government was, however, not derived simply – perhaps not even primarily – from immediate preoccupations. *The English Constitution* bears the marks of the fascination with the psychological and sociological foundations of political institutions that would receive more explicit expression in *Physics and Politics*, which began to appear in the *Fortnightly Review* in November 1867 and was published in book form, with a new concluding chapter, in 1872. Friendly from his schooldays with the ethnologist James Cowles Prichard, Bagehot found his interest fired by the implications for human societies of the evolutionary theories of Darwin and A. R. Wallace, by the efforts of Herbert Spencer to assimilate politics to the broad cultural history made possible by new currents of anthropological and sociological investigation, by Sir Henry Maine's exploration of the emergence of stable polities in *Ancient Law*, and by new works appearing as *The English Constitution* was being written – Lubbock's *Prehistoric Times* and Tylor's *Researches Into the*



*Early History of Mankind* in 1865, with their ideas about custom and the nature of primitive societies; or Huxley's *Elementary Physiology* in 1866, with its suggestions about the transmission of acquired characteristics. In *Physics and Politics*, sub-titled 'thoughts on the application of the principles of "Natural Selection" and "Inheritance" to political society', Bagehot – stimulated, following Henry Buckle, by the vision of 'a science of history . . . a science to teach the laws of tendencies – created by the mind, and transmitted by the body – which act upon and incline the will of man from age to age' – set out his notions about the formation of national character and institutions, and the processes of evolutionary selection by which societies acquired authority and order, until they were capable of making the transition from the 'age of status' to the 'age of choice', in which government by discussion broke down the tyranny of custom. It was in this perspective of slow progress in mutual association and the capacity to organise common force for common ends that Bagehot saw the growth of the English constitution and analysed the conditions of its successful operation.

The purpose of *The English Constitution* was to lay bare the workings of British government, to consider the specific characteristics of the British people which made it possible, and to assert its merits against 'its great competitor, which seems likely, unless care be taken, to outstrip it in the progress of the world' (p. 12), the presidential system of the United States. All these matters bore on the question of whether other peoples could successfully copy it, a problem of especial interest to Britain's principal colonies, then in the first decades of responsible government. (Significantly, the most detailed accounts of British parliamentary institutions to appear in 1867, the year of Canadian federation, came not from Bagehot but, respectively, from the librarian of the Legislative Assembly of Canada, Alphaeus Todd, who used Bagehot's articles, and the professor of history and political economy in the University of Melbourne, W. E. Hearn.) Bagehot was following an idea of the evolution of political institutions in conformity with the spirit of a people which tended easily to idealisation of the form which they had at any given moment assumed, and he alleged a popular contentment with British arrangements which he evidently shared. Yet he did not think the machinery of government was beyond amendment, and if he began his articles in a period of apparent flat political calm, that, he suggested in *The Economist* of 25 March and 28 October 1865, was a good time to contemplate improvements. The British constitution was 'no magical entity,

but a rational contrivance . . . good only because it is conducive to certain ends', which might be improved by 'looking steadily and shaping it carefully towards those ends'. There was no reason why 'our law, polity, and administration' should not be made to 'work like a scientific machine, precise in detail, as well as effective in broad results'. A taste for smoothly functioning mechanisms and an admiration of science were characteristic of Bagehot.

As his series on the constitution progressed, from May 1865 to January 1867, questions not only of adjustment to machinery but of more fundamental change were thrust into prominence. Palmerston's death in October 1865 opened the way for the new Russell ministry to introduce a parliamentary reform bill in March 1866. Whig-Liberal dissentients, voting with the Conservatives, wrecked the measure in June and brought the government down; but the Hyde Park riots of 22-23 July and a string of provincial mass meetings built up a head of popular pressure for reform, and in the Queen's speech of 5 February 1867 Derby's minority Conservative ministry undertook to tackle the question. In August, its measure became law, in its final form greatly extending working-class participation in the electorate by instituting male household suffrage in borough constituencies. Though Bagehot was strongly hostile to anything tending towards democracy, he had made his name in 1859 (when an earlier reform bill had been under discussion) with an article including a scheme for extending the franchise to working men in the larger boroughs, and had reiterated the plan in an article in *The Economist* of 24 December 1864, which he now summarised in his final article and reproduced as an appendix to the book version of *The English Constitution*.

More distant events crowded in as well. The rise of Prussia's power, signalled by her victory over Austria at Königgrätz in July 1866, together with apprehension about the designs of the French Emperor, Napoleon III, who in May had made public his dislike of the European settlement of 1815, stimulated renewed concern about Britain's apparent lack of influence in continental affairs and about the efficacy of her military and administrative arrangements compared with those of Prussia and France. This helps to explain the content of Bagehot's seventh article, published in October 1866, 'On Changes of Ministry'. Ostensibly prompted by the exit of the Russell and the advent of the Derby administration in June-July 1866, it turns into a critique of British administration as built up by the accretions of centuries, with the Prussian and French systems looming in the background, 'new machines, made in civilised times to do

their appropriate work' (p. 144). Its interpolation is in part responsible for the awkward positioning of part VIII, 'Its Supposed Checks and Balances', which is really a continuation of parts III–IV on the monarchy, dealing with the powers and duties of a monarch at the break-up of an administration. Bagehot maintained that he could not consider the crown's powers of dissolving Parliament and creating peers until he had discussed the House of Lords and the House of Commons, but in any case 'Checks and Balances' is separated from the parts on the Lords and the Commons by the discussion of changes of ministry. The imperfect arrangement of *The English Constitution* thus owed something to the press of events, as well as to the fact that Bagehot could not find the time to revise the work for book publication. Never designed as an academic treatise, it became more and more a tract for the times.

### The peculiar constitution of the English

With its immediate juxtaposition of 'living reality' and 'paper description', 'life' and 'books', 'rough practice' and 'literary theory', the first paragraph of *The English Constitution* buttonholes the reader with the promise of hoary misconceptions to be exploded and inner workings to be laid bare. To satisfy the appetite thus whetted, Bagehot does two things. At the most fundamental level, he offers an analysis of *why* the constitution works successfully, based on a view of political psychology according to which the authority that the ruling organs of the state – the 'efficient' parts of the constitution – employ is generated by the instinctive deference of the population to the 'dignified' parts, principally the monarchy, and, more generally, to the '*theatrical show* of society' (pp. 5, 30). Hence 'the few rule by their hold, not over the reason of the multitude, but over their imaginations, and their habits; over their fancies as to distant things they do not know at all, over their customs as to near things which they know very well' (p. 33). Second, Bagehot presents a description of *how* the machinery of the English, or British, constitution really works (he habitually uses 'English' and 'British' interchangeably). He dismisses what he represents as prevalent views of the separation of powers (legislative, executive, and judicial) or the balance of powers (crown, Lords, and Commons), in order to reveal what he calls the 'efficient secret' of the constitution, 'the close union, the nearly complete fusion of the executive and legislative powers', which are brought into conjunction in the cabinet, the 'hyphen' which joins, the 'buckle' which fastens them together

(pp. 8–9, 10). The cabinet is defined as ‘a committee of the legislative body selected to be the executive body’ (p. 9), and it is cabinet government which forms the defining structural feature of the English constitution and the major point of contrast with the constitution of the USA.

Comparison between the English and American systems centres on the availability or otherwise of an effective sovereign power. ‘Hobbes told us long ago’, says Bagehot, in almost his only reference to the corpus of political theory, ‘and everybody now understands that there must be a supreme authority, a conclusive power in every state on every point somewhere. The idea of government involves it – when that idea is properly understood. But there are two classes of governments. In one the supreme determining power is upon all points the same; in the other, that ultimate power is different upon different points – now resides in one part of the constitution, and now in another’ (p. 150). The merit of the English constitution is that it belongs to the first class, whereas the American, based on the separation of powers (between the President and the Congress) thought to be the essence of the English, belongs to the second. From Bagehot’s notion of executive and legislative powers joined in the hands of a cabinet in practice chosen by, and dismissable by, the House of Commons, it follows that the Commons exercise the effective sovereign power. It is true that Bagehot sees ‘the nation’ as the ultimate sovereign (p. 96), but, in normal liberal fashion, he regards popular sovereignty as incapable of being exercised by the mass. ‘The principle of popular government’, he asserts, ‘is that the supreme power, the determining efficacy in matters political, resides in the people – not necessarily or commonly in the whole people, in the numerical majority, but in a *chosen* people, a picked and selected people.’ He envisages the majority as eager to delegate its power of choosing its ruler to ‘a certain select minority’, by which he appears to mean the body of parliamentary electors. In this analysis, the middle classes – ‘the ordinary majority of educated men – are in the present day the despotic power in England’ (pp. 19, 30). But his scheme requires a second stage of delegation of power, to the House of Commons: it is ‘the true sovereign’, appointing ‘the real executive’, and ‘when sure of the popular assent, and when freshly elected, it is absolute, – it can rule as it likes and decide as it likes’ (pp. 98, 154).

In comparison, the House of Lords and the monarchy have virtually no directing power. Regarded as pieces of machinery, they are neither essential nor very efficient. Unable since 1832 to withstand a determined Commons backed by a determined nation, the House of Lords would be

superfluous, were it not useful in repairing some of the deficiencies in the way the lower House does its work. Even for the functions they can perform, its members are poorly equipped: the hereditary principle does not produce a high level of ability or application to political or any other business, and the peers are too heavily dominated by the outlook and interests of wealthy landowners. Monarchy is a still worse case of the hereditary principle. Though the crown no longer in reality constitutes the executive or possesses a legislative veto, Bagehot recognises that it may still exercise functions of great political importance. A capable monarch may play a beneficial role in choosing a prime minister, when the choice is not predetermined by the settled preference of a majority party, and in operating the two devices which Bagehot presents as necessary to prevent the seizing up or the abuse of the machinery of government – the ‘safety-valve’, which allows the creation of peers to overcome intransigent resistance of the upper House to the lower, and the ‘regulator’, whereby the caprice, party prejudice, and corporate ‘selfishness’ that constitute the vices of the Commons as sovereign power may be checked by the dissolution of Parliament. Still more may such an individual exert a valuable influence by the judicious exercise of those ‘rights’ in relation to ministers which Bagehot defines as ‘the right to be consulted, the right to encourage, the right to warn’ (p. 60). Bagehot substantially underestimated the practical political influence of the monarchy, at least in the hands of someone like Queen Victoria, pertinacious in the defence of her prerogatives and, by the late 1860s, possessing greater political experience, and a more intimate acquaintance with European affairs especially, than almost any of her ministers. As *The English Constitution* was appearing, her desire to have the question settled was bearing on the Derby ministry’s decision on whether or not to tackle parliamentary reform. But Bagehot’s point was that the hereditary principle would rarely produce a figure of such calibre. History shows that ‘it is only during the period of the present reign that in England the duties of a constitutional sovereign have ever been well performed’ (p. 64). In general, the effective exercise of the vital powers of dissolution and creation of peers is likely to be better placed in the hands of the prime minister than in those of the monarch; and the dangers of the abuse of power by party and Parliament, against which, in principle, the crown may act as a safeguard, may be discounted where ‘the mind of the nation is steadily political, and where its control over its representatives is constant’ (pp. 162–3). Hereditary monarchy is thus not essential and may not be advantageous to parliamentary government, and the real structure

of the state is such that England is, in Bagehot's view, a 'disguised republic' (pp. 183 n.6, 185).

Despite Bagehot's air of whisking away veils and the trenchancy of his language, there was nothing in this account of how the constitution worked to astonish anyone familiar with the existing literature on the subject. Though they might still be found in the pages of older writers like Lord Brougham, a third edition of whose *British Constitution* appeared in 1862, or even in newer ones, like Homersham Cox (*The Institutions of the English Government*, 1863), cruder notions of the separation and balancing of powers had long been out of fashion. It was obvious that the constitution could not and did not work without intermeshing of its components. Francis Jeffrey was one of the first to point out, in the *Edinburgh Review* in 1807 and 1809, the 'silent' change in the mode of operation of the constitution, as a result of which, he considered, the House of Commons, commingling among its members the influences of crown, peers and electors, had become the arena where the necessary balance was struck. In the Commons, he argued, 'as the great depository of the political power of the nation, and the virtual representative of the whole three estates, the chief virtue and force of the government is now habitually resident'. This doctrine was endorsed in his lectures on *The Dogmas of the Constitution* (1832) by the first professor of law at King's College, London, J. J. Park, a self-proclaimed disciple of the 'nascent school of *inductive politics*, or *observational political science*', who anticipated Bagehot's mission to dissipate popular 'delusion' about the constitution by exhibiting its 'real' structure. By the time Bagehot wrote, such views were commonplace. The major study by a political practitioner, Earl Grey's *Parliamentary Government Considered With Reference to Reform*, which received a new edition in 1864, and to which Bagehot's work presents many parallels, stressed the virtual union of executive and legislative powers in the hands of ministers responsible to Parliament, but especially to the House of Commons, where contests for supremacy were in the main conducted and decided.

That the course of constitutional evolution had made the House of Commons the effective sovereign was a familiar notion. David Hume's assertion, as far back as 1742 ('On the Independency of Parliament'), that the house 'absolutely commands all the other parts of the government', echoed in the teaching of Dugald Stewart at Edinburgh, was a starker version than most. The Benthamite jurist John Austin, in *A Plea For The Constitution* (1859), stressed the sovereignty of Parliament rather than

that of the Commons, whose part of sovereignty he regarded as delegated to them by the electoral body; but he nonetheless accepted that the lower House was more than a match for the monarch and the Lords when 'backed in its pretensions by the persistent opinion of the public'. Two years later, Mill, in *Representative Government*, pursuing the principle that in any constitution the ultimate controlling power must reside somewhere, concluded that the 'unwritten maxims of the Constitution – in other words, the positive political morality of the country', in requiring that the prime minister should always be 'virtually appointed' by the House of Commons, made that body 'the real sovereign of the State'. That the cabinet was the essential organ in co-ordinating the executive and legislative powers and guiding the Commons in the exercise of a sovereignty which could hardly be left to the unorganised divagations of a large assembly was equally a widely received idea – especially after Macaulay, in the fourth volume of his *History of England From the Accession of James the Second*, published in 1855, had explained how it had come into being after the Glorious Revolution as a necessary device to make 'parliamentary government' work, and had defined it as 'a committee of leading members of the two Houses', nominated by the crown, but consisting 'exclusively of statesmen whose opinions on the pressing questions of the time agree, in the main, with the opinions of the majority of the House of Commons'. Austin saw the cabinet as in one aspect the ministers of the crown, in another 'virtually a standing committee of the two Houses of Parliament', without which parliament would be incapable of 'corporate action'. The same notion appeared in the *Dialogue on the Best Form of Government* published in 1863 by Bagehot's friend, the Whig politician George Cornwall Lewis, himself a cabinet minister until his death in that year. The *Dialogue*, too, canvassed the proposition that England was really a republic. The dismissive view of the practical authority of the monarch was current enough for Trollope to caricature it in the mouth of the Radical MP, Bott, in *Can You Forgive Her?* (1864): "I mean to say that the Queen will send for any one that the House of Commons may direct her to call upon", said Mr Bott, who considered himself to have gauged the very depths of our glorious Constitution. "How hard it is to make any one understand that the Queen has really nothing to do with it . . . the power of governing this great nation does not rest with the throne. It is contained within the four walls of the House of Commons."

Bagehot's description of the working of the constitution thus fitted into a well-established way of representing it, especially conformable to

the experience, understanding, and needs of the Whig-Liberal parliamentarians who had had the usufruct of it in government for all but about seven of the preceding thirty-five years. That did not mean that it was complete or necessarily correct. From the point of view of political scientists and constitutional lawyers, it is remarkable as much for what it leaves out as for what it puts in. Bagehot has virtually nothing to say about the role of the judicial power, the rule of law, the importance of a free press, or local government as a source of education in self-government and of resistance to bureaucratic centralisation, though all of them were important features of the constitution in the broadest sense. Since it was primarily the problem of government with which they had had to familiarise themselves since 1830, Whigs and Liberals of Bagehot's stamp looked at politics from a governmental standpoint. They were interested more in the location and efficient use of power than in restraints on government and in the protection of the liberties of the subject, which they did not see themselves as liable to infringe. For someone like Bagehot, the battle for the liberties of the subject was over, because a properly worked system of representative government of its very nature guaranteed them. A major problem of government was now that the English people, having freed themselves from executive tyranny by centuries of struggle, could not be weaned from dislike of the executive and could not regard it, though under popular control, as the beneficent agent of their own will. Bagehot found de Tocqueville's admiration of English local self-government as a bulwark against central oppression out-of-date: 'we need not care how much power is delegated to outlying bodies, and how much is kept for the central body. We have had the instruction municipalities could give us: we have been through all that. Now we are quite grown up, and can put away childish things' (p. 182). It is noteworthy that Bagehot was able to see at least this advantage in the extension of the franchise in 1867: that the 'now secure predominance of popular power' would facilitate the acceptance of strong executive government. 'The English state', he declared, 'is but another name for the English people, and to be afraid of it, is to be alarmed at ourselves.'

It is of a piece with this cast of mind that Bagehot's recommendation of cabinet government over the presidential government of the USA rests principally on its allegedly superior efficiency in the provision of effective executive authority. In particular, the cabinet, unlike the President, can ensure the passage of the legislation which government needs. All administration, Bagehot asserts, 'requires in a civilised age the constant support



and accompaniment of facilitating legislation'. In England, 'on a vital occasion, the cabinet can compel legislation by the threat of resignation, and the threat of dissolution; but neither of these can be used in a presidential state' (p. 13). A cabinet whose head can call on the royal power of dissolution (as well as the power to create peers, if it becomes necessary to coerce the House of Lords) is evidently in a strong position *vis-à-vis* the legislature. The more Bagehot's account of the cabinet is examined, the more apparent is his difficulty in marrying it, as a description of what is 'while it lasts and holds together, the most powerful body in the state' (p. 11), with his view of parliamentary government as embodying the sovereignty of the people (or the middle classes), exercised by delegation to a legislature of which the cabinet is only a 'committee'. He has to acknowledge the extreme oddity of a 'committee' which can dissolve its parent body – 'a power which no assembly would – unless for historical accidents, and after happy experience – have been persuaded to entrust to any committee' (p. 11). A certain unease about the whole scheme is betrayed in the opening paragraph of his second *Fortnightly Review* article (dropped in the book version), where he professes himself 'well aware . . . that this is but an approximate description of the English government – a delineation of what it *tends* to be, rather than of what it is'. In fact it is clear from what he says that the cabinet was not 'a committee of the legislative body selected to be the executive body'. It was chosen by the prime minister, who was invited to form a ministry by the monarch, and the prime minister usually possessed (and the monarch sometimes possessed) substantial latitude of choice. It was more like the executive power in commission than a committee of the legislature (of which it was however a part), and what Bagehot described as the 'action and reaction between the ministry and the Parliament' which constituted the 'whole life of English politics' (p. 95) was just that, the interplay of two powers rather than the product of their 'fusion'.

The executive had a better claim to be the stronger of the two than apologists for parliamentary government were willing to recognise. The chastening menace of its ability to dissolve Parliament and to create peers was not its only resource. Just as important were its function of initiating and managing parliamentary business (steadily facilitated by developments of Commons' procedure after 1832) and its leadership of the (usually) majority party in the Commons. Earl Grey's experience told him that 'parliamentary government is essentially a government by means of party, since the very condition of its existence is that the Ministers of