

## Book Review

### THE ENGLISH CONSTITUTION\*

by Walter Bagehot

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1 Walter Bagehot observed in 1867 what every student of the English constitution has since been told, that the English constitution is unique in it not having a written document from which one might learn about its scope and features. Bagehot's book went beyond describing what that unwritten constitution was, and more importantly, analysed what made it unique apart from its invisibility. He compared the English constitution with other major constitutions, such as that of the US and France. His analysis on these was short, precise and illuminating. He described the flexibility of a cabinet constitution, such as the English constitution, to respond swiftly to national emergencies when the "people can choose a ruler for the occasion", and cited the example of the Crimea crisis when the entire cabinet, able as it was, was replaced. He said of the US constitution:<sup>1</sup>

But under a presidential government you can do nothing of the kind. The American government calls itself a government of the supreme people; but at a quick crisis, the time when a sovereign power is most needed, you cannot *find* the supreme people. You have got a Congress elected for one fixed period, going out perhaps by fixed instalments, which cannot be accelerated or retarded – you have a President chosen for a fixed period, and immovable during that period: all arrangements are for *stated* times. There is no *elastic* element, everything is rigid, specified, dated. Come what may, you can quicken nothing and retard nothing. [emphasis in original]

2 Bagehot thought that the success of the English model lay in the existence of the monarchy and the aristocracy, and more importantly, the reverence the people had for them. He believed that although the monarchy and the aristocracy had yielded much of their former power, the nation, marinated in the customs and the conventions of the English way of life, ensured that England was the only place in which the English model could function efficiently, or at all; whereas it had been copied, with varying degrees of failure, by many nations. He further explained that the "mystic reverence" for those two institutions cannot readily be

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\* Oxford World Classics, 2009.

1 Walter Bagehot, *The English Constitution* (Oxford World Classics, 2009) at p 23.

replicated: “You might as well adopt a father as make a monarchy.” His optimism in the efficacy of the English constitution was obvious in his comparison of it with the French and US models. His description of the system of monarchy and parliament and their role in the English constitution was vivid and imaginative.

3 Bagehot stoutly defended the monarchy, though referring to the Queen (Victoria), ironically, as “a retired widow” and her son and heir as “an unemployed youth”; he saw the monarch as a clear and indispensable symbol – a ruler the nation can imagine, a reference to the French when asked whether they preferred to be governed by Napoleon or the assembly, replied that they preferred one man they can imagine as opposed to the many they cannot. It was not just any monarchy that would work for the English; Bagehot believed that when “a monarch can bless, it is best that he should not be touched. It should be evident that he does no wrong. He should not be brought too closely to real measurement. He should be aloof and solitary”.<sup>2</sup> A constitutional sovereign has only three rights – “the right to be consulted, the right to encourage, and the right to warn”. A wise monarch, Bagehot suggested, would not have wanted more.

4 Bagehot saw a similar usefulness in the House of Lords but recognised that it was no longer a house of “directors” but had become a house of “temporary rejectors and palpable alterers”. It remained a barometer of public sentiment – “so long as many old leaves linger on November trees, you know that there is little frost and no wind; just so while the House of Lords retains much power, you may know that there is no desperate discontent in the country”.<sup>3</sup> As an overseer of the mistakes of the age and to see what that age overlooked, the House of Lords would have fulfilled the invaluable role of legislative critic. Bagehot, however, questioned whether that house was such a critic: “Being a set of eldest sons picked out by chance and history, it cannot be very wise.” His criticism of the House’s judicial function has proven prescient in the light of the Reform Act of 2005. He wrote: “The supreme court of the English people ought to be a great conspicuous tribunal, ought to rule all other courts, ought to have no competitor, ought to bring our law into unity, ought not to be hidden beneath the robes of a legislative assembly.”<sup>4</sup>

5 The House of Commons and the Cabinet are the true rulers. “The whole of English politics is the action and reaction between Ministry and the Parliament. The appointee strives to guide, and the appointors surge under the guidance.” While its main function is to

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2 Walter Bagehot, *The English Constitution* (Oxford World Classics, 2009) at p 45.

3 Walter Bagehot, *The English Constitution* (Oxford World Classics, 2009) at p 83.

4 Walter Bagehot, *The English Constitution* (Oxford World Classics, 2009) at p 96.

govern, Bagehot expounded other important functions of the House of Commons, namely, to express the mind of the people; a teaching function (“teaching us what we do not know”); an informing function (“making us hear what we otherwise should not hear”); and lastly, a legislative function. All in, he concluded that the “greatest defect of the House of Commons is that it has no leisure”.<sup>5</sup>

6 One of the finest chapters in the book is the chapter on “Checks and balances”. Here his illuminating account of the English system is contrasted against the cumbersome and awkward system adopted by the US, who, Bagehot thought, believed that they (the Americans) had copied the English when in fact they had created a contrast. The English system best enables the singleness and unity that are acknowledged to be eminent values in a political system. Without the lumbering process of a federal government, the English constitution was “framed on the principle of choosing a single sovereign authority, and making it good”. It has the virtue of minimising selfishness and caprice inherent in the party spirit of a parliamentary system of government.

7 Professor Miles Taylor declared in his introduction to this edition of Bagehot that: “Walter Bagehot’s *The English Constitution* (1867) was not the first word on the subject written in the 1860s. Nor has it proved the last, or even the most enduring. But it remains the best.”<sup>6</sup> Bagehot’s main rival, A V Dicey’s *Introduction to the Study of the Law of the Constitution*, first published in 1885, remains in print. The test of endurance is not over, but Bagehot’s insight and the quality of his prose are matchless.

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5 Walter Bagehot, *The English Constitution* (Oxford World Classics, 2009) at p 86.

6 Walter Bagehot, *The English Constitution* (Oxford World Classics, 2009) at p vii.