

INTERPRETING THE CONSTITUTION

*Inaugural Lecture of the
Professor of Political Theory and Government
delivered at the College
on 1 December 1955*

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WITH THE REGISTRAR'S
COMPLIMENTS.

SINGLETON PARK,
SWANSEA.

PRINTED IN GREAT BRITAIN

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NOT everyone looks upon politics as a genuine academic pursuit, but the creation of a new chair in the subject is a reliable sign that doubts about its credentials are gradually being dispelled and that its authenticity is gaining wider recognition. My several months in Swansea have convinced me that it will find at this College fertile soil for steady growth and development. And for this the credit must largely go to the Principal and to Mr. Frank Stacey: to the Principal because he knows from his own experience and from the example of the late Lord Lindsay what a systematic training in politics can do for the young mind, and to Mr. Stacey for showing how the subject can be fruitfully allied with disciplines that differ from it substantially in both content and method.

The title of the chair I now occupy suggests a twofold division of political studies: political theory and political institutions. I have sometimes wondered if the choice of this title was intended to convey that distinction or, in view of the common saying that politics is a dirty game, designed to spare the first incumbent from having to describe himself officially as a professor of politics. However that may be, the distinction itself is familiar enough and is found at least as far back as Aristotle, for he took politics to be an inquiry into the nature of the good life and the ideal state as well as an empirical study of the kinds of constitution there are and how they work. My subject this evening does not fit neatly into either division, but it is related to the second. I propose to discuss a variety of interpretations of the British Constitution put forward in recent times.

I think we can best approach the matter by considering

first the sorts of disagreements that occur among authoritative writers on the constitution. If one wanted to be thorough and yet risk being thought facetious one could begin by asking whether we have a constitution at all and cite de Tocqueville's famous remark: 'In England the constitution does not in reality exist'—in favour of a sceptical view. But we do not argue about this any more. The kind of thing we do dispute is the nature of the royal prerogative to dissolve parliament. And this is an example that could be usefully elaborated. It is generally agreed nowadays that the monarch cannot dissolve parliament without advice; that, as it was put in the course of a well-known controversy in *The Times* in 1913, 'The Sovereign cannot act alone, and such an independent decision on his part would almost inevitably be equivalent to a dismissal of his Ministers.'¹ But although the Queen cannot dissolve on her own initiative, is she not entitled to refuse a dissolution to the Prime Minister? Sir Ivor Jennings thinks that although there has been no instance of a refusal in this country for over a hundred years a monarch 'who thought that the power was being put to serious abuse could refuse to allow a dissolution'. Harold Laski, on the other hand, argued that the revival of a prerogative power so long fallen into disuse would open the monarchy to the charge of discriminating between the parties, hence to grant a dissolution automatically was the only way to maintain the neutrality of the Crown—and this, he assumed, was a feature of the constitution everyone wished to preserve. Now the argument here, it will be noticed, is about what *is* or is *not* constitutional, and the constitutionality of any given action or procedure is a question on which opinions can reasonably differ. Other examples of this class would be the part played by George V

¹ Professor J. H. Morgan in a letter to *The Times*, 10 Sept. 1913 (reprinted by Sir Ivor Jennings in his *Cabinet Government*, Appendix IV).

in the formation of the National Government in 1931. Did he behave with strict constitutional propriety? And what *are* the proprieties in such circumstances? Or again, how far can a resigning minister reveal cabinet secrets in explaining his action before the House of Commons? Another type of question arises from the interpretation to be put upon specific constitutional developments. The dispute in this case is not about the constitutionality of some action or practice but about the significance or meaning of what are generally recognized as new trends in the system of government. Anyone who has read the Donoughmore Report, the works of Lord Hewart, and Professor Robson, will know that there is no agreed verdict on the way we should describe the growth of delegated legislation and administrative tribunals. Whereas some wish to describe delegated legislation as a desirable necessity for coping with the increased demands made on modern government there are others who regard it as 'a serious invasion of the sphere of Parliament by the Executive . . . [which] leads not only to widespread suspicion and distrust of the machinery of Government, but actually endangers our civic and personal liberties'.¹ Clearly in matters of this kind our interpretation of new constitutional trends is often bound up with our attitude to the institutions concerned and so this sort of question shades into that of appraising institutions, estimating their worth and making proposals for their reform should they be thought to need it. Controversy over the reform of the House of Lords or our system of local government, and discussion of the respective merits of our present electoral procedures and proportional representation; these are examples of our third category. Divisions here frequently coincide with party allegiance but not

¹ Report of the *Committee on Ministers' Powers* (Cmd. 4060, 1932), p. 53, summarizing the arguments of the critics of delegated legislation.

always: the support for, and opposition to, regionalism as a form of local government do not conform to the pattern of ideological attachment.

But my chief interest this evening is in what may be termed the general theory of the constitution or the attempt to view the constitution as a whole and reveal its real meaning or essence. There is a problem here, on the face of it at least, in so far as we are presented with various interpretations of the constitution, interpretations that seem to be quite at odds with each other. Nor can we explain the divergence by the mere passage of time, for it is not a case of comparing de Lolme with Bagehot, or Burke with Dicey. The particular theories I propose to consider have all been propounded within the last two decades and have their devotees at the present time. I shall proceed in this way. I have selected four types of interpretation of the constitution, each expounded by a recognized authority but accepted, perhaps with small modifications in some cases, by wide circles of opinion. To anyone acquainted with them it might seem that they cannot *all* be true accounts of what they are supposed to describe and one will probably be led to ask which of them is right.

The first type of interpretation I shall consider is to be found in the writings of Sir Ivor Jennings,¹ and so influential has it become that people sometimes refer to it as the prevailing orthodoxy. It runs like this. The business of government in this country proceeds in a society where the great Whig principles of liberty and toleration are generally accepted. We also assume that one person's opinion on public policy is as good as another's and so we give one vote, but not more than one, to every adult person. We settle our differences by majority vote, yet

¹ The summary that follows is based on *Cabinet Government*, *Parliament*, *The British Constitution*, and *The Queen's Government*.

encourage the minority to play its part at all stages of our democratic system. It is a *democratic* system because the rulers govern according to the will of the people, in the sense that there is close correspondence between the actions of the government and the opinions of the electorate. In fact the whole machinery of government is keyed to public opinion because the character of the government depends on the results of the last general election, because there must be an election at least every five years and because the electors have a genuinely free choice between candidates putting forward different policies. And, since public opinion can rouse parliament, and parliament can rouse the cabinet, the close relation between government and public opinion is maintained in the intervals between elections. In short, our government is democratic: that is, the people are free, they choose their rulers, and the rulers govern according to the wishes of the people. All of which Jennings thoroughly approves. As he puts it: 'I have adopted the principles of liberalism and toleration which are implicit in the Constitution.'

Sir Ernest Barker best illustrates the second kind of approach. His concern is with the moral basis of democracy, of which our constitution is an example, and he finds it in the idea of discussion. Government resting solely on the will of the majority is just government by number—in other words, sheer force. To be legitimate it must elicit the capacities of each member of the community by facilitating a mutual interchange of ideas. The essence of democracy, therefore, is free discussion among individuals. It is government by discussion because the ideas which prevail bear the imprint of all members of society. It is a method of achieving a compromise which can be truly described as the national will.

Government by discussion, says Barker, proceeds by stages. In Britain there are four distinct yet interdependent

stages: party, electorate, parliament, and cabinet. The function of each stage is different and each is necessary to the system as a whole. The parties formulate the issues for presentation to the electorate. Discussion goes on within and between them. The electorate is engaged in discussion when it chooses a set of party representatives and the programme they stand for. The outcome of their choice is a pattern of parliamentary representation and a set of proposals for legal enactment. But parliament is more than a legislature; it has the task of reviewing the behaviour of the departments, of seeing that they conform to the general spirit of the programme approved by the electorate. Then, finally, at the level of the cabinet, discussion issues in decision. At each level discussion affects discussion at other levels and at the same time every stage has its own peculiar contribution to make: it is a process that combines division of labour with mutual control. What is achieved is the collection and sifting of public opinion, thus ensuring that the ideas which emerge triumphant have the mark of quality and a basis in consent. Moreover, in the grand debate we are all the time developing our personalities as we bring our minds to bear on matters of public concern.¹

The third account comes from the late Mr. L. S. Amery's *Thoughts on the Constitution*. The essential feature of our constitution, contends Mr. Amery, is that it consists of two independent but interacting elements, the Crown and the Nation. The Crown is represented by the government of the day and is the active and initiating element. The Nation is represented by its members in parliament whose function is to ventilate grievances and discuss the proposals put to them by the government. Parliament itself does not govern, nor does it legislate,

¹ I have followed Sir Ernest Barker's account in chap. ii of his *Reflections on Government*.

still less does it create governments. The Prime Minister is chosen by the monarch and selects his team of ministers without any dictation from parliament. No picture misrepresents our constitution so artlessly as the nineteenth-century Liberal version of it in terms of delegation from the people to parliament and thence to the cabinet, typified by Bagehot's description of the cabinet as a committee of the majority in parliament. In truth the people, as the electorate, exercise a choice within narrow limits because there is already a government in being and the only alternative is Her Majesty's Opposition. The Crown's authority is not derivative and has never rested on a mandate from the people: its power has been enlarged despite the extension of the franchise and the ever-increasing part played by public opinion. It has an independent status such that ministers, who undoubtedly have a responsibility to parliament, owe their first responsibility to the Crown as the embodiment of the unity and continuity of the life of the Nation. Moreover, it is quite alien to the spirit of our constitution to regard a decision by the majority *qua* majority as absolute and unquestionable, for as Burke reminds us, the constitution is something more than a problem in arithmetic.

My fourth and final specimen is the economic interpretation of the constitution of which Harold Laski was the ablest exponent in this country. In the habits and procedure of the House of Commons, which he greatly admired, Laski saw government by discussion at its best. But government by discussion, he argued, was a very rare thing, able to grow and flourish in very special conditions; and its survival depended on the maintenance of those conditions. In Britain the success of liberal democracy has rested on the fundamental unity of the people, itself the function of economic expansion and prosperity. But now it is obvious that the régime of private property

in the means of production has outlived its purpose and in seeking to redefine the relations of production we cannot assume the state to be a neutral force which responds objectively to the will of an electoral majority. For our constitution has been adapted to the needs of a specific set of social relationships: the positions of power in the state, in the judiciary, the civil service, the police, and the defence forces are held by reliable servants of the propertied classes. Hence to understand the real nature of our parliamentary system we must recognize that behind the formal processes of liberal democracy there stands a pattern of social power based on the ownership of property. Our political institutions operate within the confines set by that pattern.¹

Confronted with these four divergent interpretations of our constitution we might be inclined to ask which of them is correct. But this would be taking it for granted that they are all in the same category, that if one is correct then it must be at the expense of the others. Perhaps they are not all trying to do the same thing. To take an obvious example. No one supposes that when Bagehot was writing the *English Constitution* he was engaged on the same sort of task as James Mill had set himself in his *Essay on Government*. Clearly they were doing different things: one *describing* the constitution as he found it in the 1860's, the other seeking to derive the form that government *ought* to take from the laws of human nature and the principle of utility. It would be absurd to regard them as rival accounts of the same phenomenon. I am not saying that we shall be able to make precisely this distinction among our constitutional theories, but we must allow for the possibility that the business of adjudicating between

¹ This is a recurring theme in Laski's political writings, but see especially his *Parliamentary Government in England*, chaps. i and ii.

them will prove to be far less simple than merely awarding the prize to the one which portrays the constitution with the greatest accuracy.

Of one thing we can be sure, all four interpretations are in the indicative mood, that is, they are, in varying degrees, concerned with the constitution as it operates in the real world. They have other elements too, but for the present let us consider them solely as attempts to reveal the essence of a working system of government, therefore standing committed to factual assertions about the way we transact our public affairs. Regarded thus we might call them empirical theories of the constitution. Now although I have said they all fall into this category there is an important difference between the type of account given by Laski and those of the other three, for Laski is dealing with the *conditions* of successful parliamentary government rather than its principal features. His is an explanation of the stability of, and widespread support for, our constitutional arrangements together with a prediction of grave difficulties ahead now that the economic system on which they were reared faces a period of decline. Such a prognosis can quite consistently be combined with a preference for liberal values, a willingness to describe our form of government as representative of the people, and a justification of that form of government in exactly the same terms as Sir Ernest Barker's. There would be no logical error in holding all these positions at the same time, any more than in saying in one place, as Laski does, that the state is in essence coercive authority placed at the disposal of the holders of economic power, and in another that it is an organization for enabling the mass of men to realize social good on the largest possible scale.¹ There is no contradiction here, for on the first

¹ Compare *The State in Theory and Practice*, p. 329, and the *Grammar of Politics*, p. 25.

occasion he speaks as a political scientist or sociologist and on the second as a political philosopher. I grant that if we agreed with Laski about the role of economics in social causation we should want to take the study of political power beyond the limits of law and convention. But that is another story. To return for a moment to Laski's theory of the constitution, on which I shall make only a brief comment. Laski himself was forced to acknowledge its weakness in the years after the first majority Labour Government came to power in 1945 and my evidence for saying this is not confined to what was extracted from him by Sir Patrick Hastings in the difficult circumstances of his libel action.¹ It is true that according to the extreme exponents of this brand of prophecy events have by no means upset the theory, but under examination their version becomes so flexible that its immunity from refutation, far from being a virtue, is in truth a vital defect.

If we can eliminate the economic interpretation as belonging to a separate species our next task is to assess the merits of the accounts that remain, for they appear to operate on the same level and to manifest differences which seem to be definite and irreconcilable. For example, Sir Ivor Jennings and Mr. Amery look as if they hold completely opposed views on the part played by 'the people' in the constitution. Jennings insists that the essential principle underlying the whole constitution is the principle of democracy: it is government by opinion and in accordance with the wishes of the people. Amery, on the other hand, is sure that we do not have government *by* the people, either directly or by delegation. The essential feature of the constitution, he claims, is that there are

¹ See Laski's *Reflections on the Constitution* (published posthumously), and Herbert A. Deane's *The Political Ideas of Harold J. Laski* (1955), pp. 270-5 and 290-1.

two independent elements, the Crown and the People. He maintains that the authority of the Crown is original and remains intact despite the power of public opinion and the fact that the People's verdict recorded at periodic elections is reflected in a parliament on whose continued support each particular government depends for its existence.

One of the problems here is to decide what would count as evidence for or against either view. How can we determine whether our system of government is correctly described as being in essence 'government by opinion', 'government in accordance with the wishes of the people', *or* whether its essential nature is that of balance between two independent elements, the Crown and the Nation? Is there a real conflict: if so, what facts are relevant to settling it? Or are we wrong in thinking that facts matter in an issue of this sort? It could be that the features of the constitution Amery and Jennings have in mind as justifying these expressions are really not in dispute between them. They might agree about the powers of the monarch, the cabinet, parliament, and so on, yet still choose to look on them in the manner indicated by their central concepts. The question then could not be settled as we may originally have thought it could, and consideration of quite another order would have to enter. So our problem becomes one of discovering the exact nature of the disagreement (if any) between them, and as a contribution to this let us consider Jennings's interpretation on its own merits.

Government in Britain, says Sir Ivor Jennings, is carried on according to the wishes of the people and in close relation to public opinion. What facts does he cite in support? He points out that the character of the government is determined by the results of periodic elections in which the voter has a genuinely free choice, that under our

present electoral arrangements a slight shift in opinion (that is, when a relatively small number of voters change their allegiance) can turn out a government or at least considerably reduce its majority, that government leaders are anxious not to have opinion (as defined) move away to the opposition and are thus sensitive to what they take to be signs of movements in opinion, and that government policy is sometimes shaped, modified, or even changed, by outbursts of public opinion as manifested by the attitude of the press, reports from private members on feeling in the constituencies, conversation in the clubs, and so on—what Jennings calls ‘vocal public opinion’, implying thereby that it need not represent in exact proportion the views of the public as measured by a Gallup poll (a frequently quoted example of the influence of public opinion in this sense, which Jennings himself also gives, is the resignation of Sir Samuel Hoare in 1935 after the country had learnt of the plan he had agreed upon with Laval for a peace settlement in Abyssinia). There can be no doubt about the importance of these facts: they would not be denied by most students of the constitution and nothing in the works we have so far mentioned can be construed as denying them. But are they sufficient for the claim that government is carried on according to the wishes of the people, in close relation to public opinion? They are not, if we interpret these phrases in a strict or literal sense. For even when public opinion, in whatever sense, is unmistakably expressed, governments do not always defer to it. Jennings recognizes this when he says that although governments are very sensitive to public opinion it is also true that public opinion follows the lead of governments. Moreover, he points out that if there are some cabinet ministers who adapt their views to the changing currents of opinion, most of them ‘place their opinions before their prospects’. And of the relation

between public opinion and the foreign policy of the Baldwin Government he remarks: ‘Finding public opinion against it in 1933–35, the Government neither changed its policy nor tried to change public opinion.’ In foreign policy, however, the public’s interest is not close and constant. Indeed the analysis of public opinion polls over a number of years shows that about a third of the electorate admit not having read or heard of important foreign policy questions and that another third have only the most rudimentary knowledge of them. Only a minority of the British people knew about Marshall Aid after we had been receiving it for a whole year, yet the decision to put the Marshall Plan into operation was surely one of the crucial points in the history of the Cold War. It would be reasonable to expect greater interest in and knowledge of domestic affairs, but even here vital decisions are taken of which the bulk of the population is largely ignorant and on which, had it been consulted, it would probably not have bestowed its blessing. As Mr. Amery says, it is very doubtful if a Gallup poll would have shown a majority in favour of the creation of the National Government in 1931. And we can be sure that no British government would assign such a low priority to the development of nuclear energy as the public are currently recorded as doing in the opinion polls. If we add to all this such evidence as we have about voting behaviour—like the fact that support for a party at an election is no guarantee that the individual items of the party programme are approved—the qualifications we should have to make to formulas like ‘government in accordance with the wishes of the people’ are so important that their use cannot be justified by the degree of considered reflection on public policy that takes place or the amount of continuing popular control exercised over the administration. But the attraction of these favoured expressions is not to be

accounted for solely in terms of their very limited explanatory power: we must also reckon with the place they occupy in a style of political philosophy going back to at least the seventeenth century, to Locke and the Levellers.

Coming now to Mr. Amery's account of the constitution we find that many of the things he wishes to emphasize would not be disputed at all by those who accept the type of interpretation offered by Sir Ivor Jennings. Parliament, says Amery, is not primarily a law-making body: the government holds the initiative in legislation and parliament's function is to discuss the administrative activity and legislative proposals of the government. He maintains that the starting-point and mainspring of action has always been the government, that our system is not one of delegation from the people to parliament and thence to the cabinet, and that Bagehot's famous description of the cabinet as a committee of the parliamentary majority is false because a committee 'usually implies definite appointment in detail by the parent body'. Compare this with what Jennings has to say. Parliament, he observes, usually approves what the government puts before it—'the last word as well as the first rests with the Government'—and since parliament cannot govern its main job is to criticize. The House of Commons controls the government, but it is equally true to say that the government controls the House. It is difficult to see any significant difference between them. Again, the accounts they give of the stages in the formation of cabinets—the powers of the monarch in the choice of a Prime Minister, the latter's choice of cabinet colleagues, the weapon of dissolution—are virtually identical.¹ But, it may be said, there is surely one contention of Amery's that quite decisively separates his from the Whig approach to the constitution and it is over this that he and Jennings are

¹ i.e. in *Cabinet Government and Thoughts on the Constitution*.

basically at odds. In Amery's view ministers on taking office accept 'a first and dominant responsibility to the Crown, as representing the unity and continuity of the life of the nation and of the Empire, for defending the wider national and Imperial interest'. Jennings, with so much emphasis on the popular control of our rulers, on government according to the wishes of the people, might be thought to take quite the opposite view. Is not the whole spirit of assertions like, 'The fundamental principle (of the Constitution) is that of democracy' and 'The House of Commons and the Cabinet are the *instruments* of democracy' the very negation of Amery's belief in the independent authority of the Crown? Yet even here, when the difference seems genuine and fundamental, it is hard to see just what the disagreement is, partly because Amery doesn't make it altogether clear what sort of responsibility it is. Plainly it is not a responsibility which the monarch personally can enforce by the dismissal of ministers who seem to be disregarding the national interest. For although there may be circumstances in which the Queen is justified in refusing assent to the policy of her ministers there is no one today who would uphold Disraeli's statement, made in 1878, that 'If your Majesty's Government have . . . not fulfilled their engagements to their Sovereign . . . your Majesty has the clear constitutional right to dismiss them.'¹ I do not remember any suggestion made at the time or since that Mr. Baldwin should have been dismissed from office by the King for neglecting the defences of the nation. But what Amery probably intends to say is that ministers have an overriding duty to promote the national interest, that the interests of the nation come before those of party or pressure group, and that this is recognized in all parties as a constitutional duty. And I think we must agree with

¹ Quoted by Jennings, *Cabinet Government*, p. 303.

Amery, for vague though the idea of promoting the national interest is, it is a widely accepted doctrine. In his recent book, *Government and Parliament*, Mr. Herbert Morrison states that in a well-conducted cabinet the main consideration is to do what is right for the nation. It is 'a sound moral principle', he goes on, right in itself but also more likely to bring success than 'if policy were settled by low-down considerations of party advantage'.¹ Now if this is what Mr. Amery means it turns out to be no very startling proposition and it is, as we have seen, one with which there would be scarcely any disagreement. When Sir Ivor Jennings says that 'the main function of government is the provision of services, including the maintenance of external relations and the defence of the country, for the welfare of the people', is he not putting forward essentially the same view?

The key to understanding our constitution, Mr. Amery maintains, is to see it as a 'balance and adjustment between two elements each of independent and original authority, the Crown and the Nation'. We have seen why it is misleading to describe the constitution as one of government according to the wishes of the people. Is this formula of Mr. Amery's an improvement? I fear not. For one thing I find the notion of adjustment and interaction between Crown and Nation somewhat obscure. As these terms are used by Mr. Amery the Crown is the central executive—the cabinet and the departments—and by the Nation is meant the various 'classes and communities' that make up our society, that is, the whole network of interlocking and overlapping associations, classes and localized communities that we often refer to by the word 'society'. Between Crown and Nation, one may suppose, the relation is one of ruler and ruled, and this relationship obtains wherever we find government. The forms such a

¹ p. 11.

relationship may assume are many, and there seems no point in saying that the essential feature of *our* constitution is the balance and adjustment that must of necessity be present in every society with a government: the specific nature of that balance needs to be described. Once it is explained that the balance achieved in our system assigns to the government and to parliament distinctive yet interdependent functions, that they are separate entities for all the interaction between them, one wonders why it should be necessary to call our attention to this familiar and essentially simple fact by means of a formula which really tells us nothing about the constitution itself. There is no reason to regard it, outside the context of the delegation theory, as a more important fact than, for example, the legislative sovereignty of parliament.

In parliament, continues Mr. Amery, the Crown and the Nation conduct 'a continuous conference or parley'¹ and so it is 'the centre and focus of the nation's affairs', the arena where 'the great game of politics is played'. And of course it is true that parliament is a principal forum for debating the affairs of state and that it is an organ to which we turn for the redress of grievances. But we must not overlook the other channels of contact between rulers and ruled; the way, for example, the departments of government are approached by those who wish to bring pressure to bear on behalf of the countless interest groups that form part of 'the Nation'. These contacts usually take place outside parliament altogether and although members of parliament act frequently on behalf of associations, either because they belong to them or are sym-

¹ The 'Nation', it will be remembered, is made up of classes and communities. It is difficult to see how the Crown could parley with a class. Perhaps Her Majesty's Opposition represents a class? But the suggestion that parties represent classes is contrary both to what Mr. Amery believes about the social basis of our major parties and what we know of the voting behaviour of classes in Britain.

pathetic to their aims, the associations also deal directly with the departments and some are without a single advocate in parliament. Again, to say that parliament is the arena where the Crown and the Nation meet does not sufficiently recognize the importance of the vast amount of extra-parliamentary discussion and protest (in the press, over the radio, at public meetings, in the reports of Royal Commissions or private committees, in the work of experts, and so on), not all of which finds corresponding expression in the House of Commons; yet it is a form of influence that can be successfully exerted without, or not mainly on account of, its being formally recorded in Hansard. Moreover, if we say that the government, and not parliament, is the active and originating element in the constitution, this may be so understood as to ignore the extent to which many of the proposals which issue as legislative enactments are not born in the departments, in the cabinet or any of its committees. The Labour Government of 1945 was committed to and largely succeeded in carrying out a programme which owed very little, apart from the actual drafting of the bills, to anyone in the official machine, and much the same could be said of many of the legislative proposals of other governments. From interest groups, inner-party discussions and research, individual publicists, and committees of inquiry there is a constant stream of recommendations from which any single government has to select when it prepares its legislative programme. However, in using the formula of 'balance and adjustment' Mr. Amery wishes to direct our attention to specific aspects of the constitution which he claims are too often neglected. He wants to emphasize the active, governing role of the Crown, holding as it does the initiative in legislation. He insists that parliament's job is not to govern but to ventilate grievances and discuss the government's proposals, that ministers regard them-

selves as under a duty to promote the national interest, and that the cabinet and parliament are independent bodies each having its characteristic methods of controlling the other. But we have seen that there is nothing in Jennings's account of the constitution which is at all incompatible with any of these particular assertions. The contrasting terminology of their general theories obscures the fact that they really agree about the working of particular institutions. And whether the working of those institutions should be described as 'a balance and adjustment between two elements . . . the Crown and the Nation' cannot be decided as one would, for example, decide the question of whether the cabinet usually gets its way in parliament.

Why then does one writer wish to speak of the constitution in terms of a balance and adjustment between the Crown and the Nation, while another prefers to regard it as government in accordance with the wishes of the people? (I have been arguing that they need not disagree in any significant way about the actual functioning of political institutions despite the appearance of conflict created by the formulas used to characterize the general nature of the constitution. I shall be dealing with Sir Ernest Barker's interpretation presently but I can say now that there is nothing to suggest that he would dissent from the detailed descriptions of Mr. Amery and Sir Ivor Jennings.) Probably the most important reason—and one long recognized—is that a theory of the constitution is closely bound up with the writer's political philosophy: or you might say that an interpretation of the constitution is *part* of one's political philosophy. When he emphasizes the independent authority of the Crown Amery at the same time repudiates the view that the 'active and originating element' in our constitution is the voter selecting a delegate to carry out his wishes in parliament, which

in turn selects an administration to act in conformity to those wishes; that is to say, he is repudiating the delegation theory both as a putative account of our constitution and as a profession of what ought to be, for government by delegation, he claims, carries with it such control by the legislature over the government as to render the latter unstable in its tenure of office and vacillating in its policy. Thus the effect of Amery's espousal of the doctrine of balance between Crown and Nation is to uphold strong government and assign to the popular will its appropriate role of checking and approving, rather than instructing, the government. In this he is quite explicitly following Burke, who said:

No legislator has willingly placed the seat of active power in the hands of the multitude; because then it admits of no control, no regulation; no steady direction whatever. The people are the natural control on authority; but to exercise and to control together is contradictory and impossible.¹

According to Burke, and those who follow him, we court disaster if we attempt to rely solely on the meagre 'stock of reason' nature has granted us. And so they exhort us all to 'approach to the faults of the state as to the wounds of a father, with pious awe and trembling solicitude', for we shall find the guidance we need in the accumulated experience of the nation as embodied in the laws and customs passed down from our forbears. They assert the claims of established authority because they deem strong government a necessary price for order and progress. Society being an intricate organism, its health would be in danger if the recurrent upheavals of mass emotion were registered each time as a political mandate, a consequence impossible to avoid when in the constitution there is faithfully reflected the doctrine of popular delegation. This, as I see it, is what Amery is arguing in

¹ Quoted by Amery, *op. cit.*, p. 15.

his theory of balance between Crown and Nation. He is warning us against an executive dependent on the legislature, against a legislature with the power to initiate and which is yet an instrument of popular control. 'Such a system of government', he claims, 'is bound . . . to be weak and unstable, subject to the continual shifting and reshuffling of coalition ministries and to the influence of personal ambitions.' Government by an elected assembly cannot work and it is not the kind of government we have in Britain. We put a high premium on strong and stable government and that is why ours is a 'democracy by consent and not by delegation'.

It is worth digressing here for a short while to notice that Mr. Walter Lippmann in his book, *The Public Philosophy*, published earlier this year, sets out from premises almost identical with those of Mr. Amery. He maintains that there is a correct balance of power between governors and governed, a proper relationship 'between, on the one hand, the governing and executive power, and, on the other hand, the elected assembly and the voters in the constituencies'.

The executive is the active power in the state, [he says] the asking and proposing power. The representative assembly is the consenting power, the petitioning, the approving and the criticizing, the accepting and the refusing power. The two powers are necessary if there is to be order and freedom. But each must be true to its own nature, each limiting and complementing the other. . . . The health of the system depends upon the relationship of the two powers. If either absorbs or destroys the functions of the other power, the constitution is deranged.

And like Mr. Amery he sees no virtue in the voice of a majority *qua* majority. The opportunities the enfranchised masses have for judging matters of state are so few that we ought not to take their opinions to be expressions of the social good, for 'the public interest may be

presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently'. But whereas Mr. Amery believes the essential character of our constitution has remained intact throughout its history—he quotes Hearn approvingly: it is the 'very constitution under which the Confessor ruled and which William swore to obey'—Mr. Lippmann is convinced that since about 1917 the Western democracies have entered a period of decline due principally to a radical change in the nature of their constitutional systems. I am sure we should all admit that the character and extent of state activity has undergone a massive transformation since 1917. And Mr. Amery recognizes that the Crown has 'enormously increased the sum total of its power and influence' and that public opinion has been exercising ever greater control on the whole process of government. Yet he maintains that the essential principle of the constitution—the balance between Crown and Nation—has been left undisturbed. Mr. Lippmann, on the other hand, is alarmed by the eclipse of the executive branch of government: it has been pushed out of its traditional position in the political structure by the representative assembly, the mass electorate, party bosses, and the agents of pressure groups. Mass opinion, he complains, now exercises irresistible influence on cabinets, but the mass of people lack the knowledge to arrive at wise decisions on the terribly complex and intractable problems of the mid-twentieth century. Mass opinion always chooses the easy alternative when often the national interest requires austerity, determination, or even sacrifice. In our age of mass democracy the constitutional pattern of the West has been shattered and it is in this breakdown of the traditional balance between rulers and subjects that lies the true cause of the decline in Western power and prestige. As Mr. Lippmann puts it: "This

devitalization of the governing power is the malady of democratic states.'

Here then we have two writers, who start off from the same postulates with regard to the proper division of powers in the political system, disagreeing fundamentally in their interpretation of an important phase in our recent constitutional history. The continuity Mr. Amery claims to see is the continuity of a balanced interaction between Crown and Nation, maintained despite the incessant modification and adaptation of the particular instruments of government. And the balance corresponds to what he insists is the right and true allocation of power. For Mr. Lippmann our ills derive from the derangement of the system which at one time exhibited the principle both he and Mr. Amery strongly approve. What has vanished, says Mr. Lippmann, is an equilibrium in government and he is so firmly a believer in the virtues of the equilibrium that he discovers in its demise the prime cause of our predicament. What has survived, says Mr. Amery, is a balance in the constitution and he is so convinced of the rightness of the balance that he attributes the strength and stability of our government to the fact of its survival. The interpretations of both revolve around a cardinal aspect of their political philosophies: 'the relationship between governors and governed which is rooted in the nature of things'.¹

Before this digression I was saying that Mr. Amery's portrayal of the constitution was a product of the Burkian idea of the state. In the case of Sir Ivor Jennings we are aided by his forthright declaration: 'I have adopted the principles of liberalism and toleration which are implicit in the Constitution.' But we could have inferred from the type of interpretation he provides that his philosophy falls within the great liberal tradition coming down from

¹ Lippmann, *op. cit.*, p. 34.

Locke, a tradition that regards organized coercion as legitimate only when it is based on the free consent of the people. As Jefferson and the revolutionaries of 1776 proclaimed: 'Governments are instituted among Men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the People to alter and abolish it.' It is a doctrine with a long career: beginning as a justification of revolt against ungodly and despotic power it has roots in the Middle Ages, grows to maturity in the hands of the Monarchomachs, put into classic shape in the seventeenth century, and emerging as part of the enlightened man's outlook in the age of reason. It has had more than one function: at times to sanction rebellion, by others to provide a moral basis for established government and yet again to serve as an abridgement of democracy at work. Nurtured in this tradition men have frequently thought our constitution to be the embodiment of their principles. But it seldom happens that constitutions can be identified from the formulae of their admirers: historically at least they have rarely conformed to the prescriptions of doctrine, liberal or otherwise. The constitution described by Sir Ivor Jennings, we have seen, refuses to fit tidily into the simple categories acquired from the tradition he is heir to, and if we turn to the picture of our democracy painted by Sir Ernest Barker we shall find that he too has composed an idealized version of our political system.

Government in Britain, says Sir Ernest, is government by discussion. And we must agree with him that the widespread discussion of public policy in conditions of freedom is with us a common practice: indeed, this is one of the reasons for calling our state a democracy. Proposals which started life as no more than the schemes of small minorities have passed through ever-broadening

circles of critical scrutiny, often benefiting from the clash of views accompanying their journey, and have eventually arrived in parliament supported by the bulk of articulate opinion. Bentham and law reform, the Webbs and the poor law, the later extensions of the franchise, and Eleanor Rathbone and family allowances: it is a plausible reading of our history that would regard them as examples of this kind of process. The more proposals for reform travel this journey the better, for I agree with Barker that a system of government which encourages discussion of public affairs in this spirit has a claim on our loyalty and is to that extent justified. What better reason could there be for respecting the laws and institutions of a state than that its citizens have, and regularly make use of, the opportunity to decide after free and full discussion what those laws and institutions should be like? But even if we suppose that the examples I have quoted are evidence for the claim (and this is what Sir Ernest Barker claims) that our method of government by discussion results in a compromise solution to which *all* ideas contribute and made acceptable because it bears the imprint of *all*—a charitable interpretation I should say—how would measures like the Parliament Acts of 1911 and 1949, the Trades Disputes Act of 1927, or the Iron and Steel Act of 1949 fit into the picture? They were all resisted—some of them bitterly—at every stage of their progress through parliament. Nor were their antagonists reconciled after they had reached the statute book, for the last two were repealed when the opposition came into power. Perhaps some other meaning could be given to the idea of 'a compromise in which all ideas are reconciled and which can be accepted by all because it bears the imprint of all'? It might be said that an act of parliament bears the imprint of all merely in the sense that it has been the subject of discussion on the part of everyone who took part in the

debates, but from this we could not draw any conclusions about the national will being embodied in the final enactment. It might also be said that there is a national will for the *procedure* through which all legislative proposals have to go; that is, the three readings and the committee stage in the House of Commons, and the corresponding stages in the Lords. But general approval for a specific form of legislative procedure cannot be stretched to include the proposals which emerge from that procedure; nor does it distinguish a democracy from a totalitarian state, since there might be a real unanimity in the latter for that part of the constitution which prescribes the rules for law-making. The crucial difference here is that in a democracy there are genuine clashes of opinion, sometimes involving the fundamentals of foreign and domestic policy, and—what is equally important—a variety of views on subjects which are not connected with politics at all. Most of us, I think, would wish to emphasize that diversity of opinion was not only a necessary *sign* of democracy but even an argument in its favour. And of course Sir Ernest Barker would wish to do the same. An implied convention of government by discussion, he says, is that there is no sole possessor of the truth: differences of opinion should therefore be tolerated. Moreover, he urges us to be moderate and reasonable ‘even in the throes of defeat’. But I do not see how this can be squared with the notion of a national will to which we all contribute or with the idea of law as bearing the imprint of all those who come under it.¹ However, we must attempt to see Sir Ernest Barker’s interpretation of the constitution as part of his general

¹ Another possibility would be to say that there is a general will for the main features of the constitution, for the framework within which we conduct our party battles, and for the principle of abiding by majority decisions to amend the constitution. But here again we are dealing with something quite different from general support for specific acts of the administration or particular items of legislation.

theory of the state, for although liberals have, historically, been champions of free discussion the way it enters into their philosophy has not always been the same.

In political society the many are constrained to obey laws made and administered by the few. Can this be justified? Here is one of the traditional questions of political philosophy. The answer Locke gave was simple. Men set up governments on the understanding that those who govern will protect their rights and in return they promise to obey the laws. Government is therefore justified because it enables men better to enjoy the rights to life, liberty, and property with which they are endowed by nature. The theory was built on the two notions of a contract to establish government and a law of nature apprehended by the faculty of reason, two notions effectively undermined by David Hume in the eighteenth century. Thereafter liberal theory gradually abandoned the ideas of contract and natural rights and in their stead took up the principle of utility. For the utilitarian the duty of government was to promote the greatest happiness of the greatest number: he counselled obedience to law up to the point when the probable pains of resistance were equivalent to the sufferings of continued obedience. It mattered not how happiness was obtained: the pleasures of the intellect assumed no pride of place in his calculus unless they brought with them more enjoyment than was available from any alternative source. But first Mill and then T. H. Green began to insist upon the *quality* of happiness and conceived its content in terms of the moral and intellectual development of man. In this way the goal of state activity became that of enabling each citizen to fulfil his personality. The purpose of the state, says Sir Ernest Barker in his version of the reformed liberalism, is to promote ‘the highest possible development of all the capacities of personality in all

of its members'. Believing this to be the only basis for state power, how natural that he should see in the constitution those very features required by his philosophy. 'The form of government we have to find', he argues, 'is one which elicits and enlists . . . the thought, the will, and the general capacity of every member. It must be a government depending upon mutual interchange of ideas. . . . A government depending on such a process . . . will be self-government: it will square with, and be based upon, the development of personality and individuality in every self.'

It is now time to summarize and draw one or two conclusions. We began with a number of divergent accounts of the constitution and noticed that they did not all operate on the same level. Diversity did not imply incompatibility, so there was no question of choosing between theories of a different type. We found that even when the interpretations were of the same kind the differences which at first seemed basic and irreconcilable turned out to involve no substantial disagreement about the working of specific institutions. I have been maintaining, too, that each theory has a tendency to exaggerate the extent and importance of some aspect of the constitution and convert it in this magnified form into the essential principle of the whole system of government. A constitution, I contend, is a complex set of arrangements whose nature is inevitably distorted by the attempt to compress its leading characteristics into a simple formula. That is why features which figure prominently in the detailed accounts of our authorities are perforce neglected in their general theories.

It may well be objected that it is not possible to describe any constitution without at the same time interpreting it. Some institutions are obviously more important than others and it is one of the jobs of the political

scientist to stress those aspects that deserve to be stressed. Are not the theories under discussion just ways of emphasizing certain characteristics of the constitution, of drawing attention to features the significance of which other accounts neglect or underestimate? Mr. Amery, for example, wishes to discredit the theory of popular delegation which, he claims, has been responsible for the widely accepted misconception of the relation between cabinet and parliament, and his idea of a balance between Crown and Nation is at once a denial that parliament instructs the executive and an insistence on the independent role of the modern cabinet. Now I do not want to gainsay the necessarily selective character of any treatise on the constitution. Emphasis is inescapable and desirable, and the sort of emphasis one gives will clearly depend on the context in which one is writing. In face of the popularity of the delegation theory it is indeed proper to stress the powers of the executive, just as it would be legitimate to stress against the opposite view, that governments *do* sometimes bow to pressure from the House of Commons and what is taken to be public opinion, and that their complexion *does* depend on the results of general elections. Similarly, in contrast with government in the totalitarian world, it is surely right to emphasize the role of free discussion in our political life. But all this, I maintain, falls short of the sort of emphasis I have been discussing in this lecture: what may be called *absolute* or *over-emphasis*. I mean that the features stressed are seized on irrespective of context and given an importance quite disproportionate to their actual place in the living constitution.

There have been times when the nature of political activity was conceived in narrow and purely rational terms. We are not all Burkians now but most of us are

ready to grant the importance of prejudice and prescription. And it is not as if political behaviour drew on irrational sources as external aids to its own momentum, for the relationship is an internal one with habit and myth as part of the activity itself. Political authority has undoubtedly been fortified by beliefs about its origin and sustained by theories which seem to lend it justification. They may take the form of a general theory of the state or an interpretation of a particular constitution. The growing power of international communism is attributable in part to the enormous attraction Marxian theory has for millions over the world, a theory which appears to explain and support the political régimes in China and the U.S.S.R. That there might be a gulf between deed and doctrine—as, for example, between the specification of the conditions for social revolution in the Marxian texts and what the Bolsheviks actually did in 1917—seems not to matter: the power of the myth endures. Now, it may be asked, does not liberal democracy need to be sustained by myths appropriate to its character? Indeed, could we do *without* a political doctrine of this kind? And if, like Sir Ernest Barker's, it succeeds in *combining* a justification of democracy with a theory of the constitution, is not this an added virtue? True, it embodies an embroidered version of the constitution, but can men be satisfied with less? Is it not the task of the political theorist to strengthen the hold of liberal ideals by maintaining or repairing or perhaps even replacing with others more suitable the ideological constructs without which democracy cannot survive?

These are very large questions to which it is tempting to make the simple and defiant reply, 'Truth must prevail.' I am sure that any plan that would subordinate intellectual integrity to the need for an inspiring myth can never succeed so long as we remain a democratic society.

For we should have to state not what we find to be the case but rather what we believe is likely to preserve a system of government whose true nature cannot in fact be concealed if it continues to be what its admirers say it is now—government by free discussion. But is the future of democracy really linked with the fate of the political philosophies which accompanied its growth? For my part, I do not believe—though there is no time to marshal the evidence—that democratic government is endangered by the absence of an inspiring myth. Certainly in my programme for political studies at this College I shall assume that in a democracy such as ours we do not need to distort reality before we can be stirred to defend it.

PRINTED IN
GREAT BRITAIN
AT THE
UNIVERSITY PRESS
OXFORD
BY
CHARLES BATEY
PRINTER
TO THE
UNIVERSITY

