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English Constitutional History, by S.B. Chrimes

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ENGLISH CONSTITUTIONAL HISTORY. By S. B. Chrimes.*
London: Oxford University Press, 1947. Pp. 189. \$2.00.

Mr. Chrimes has written a very readable account of the English Constitution as it exists today, tracing the important constitutional institutions from their origins. His own political philosophy woven into the narrative adds to the finished product. The problems of government are eternal, and it is only the solutions that change. According to the author liberty must be reconciled with law, progress with stability, and the State with the individual. England has arrived at the best answers to the perpetual riddles through her ability to compromise. Yet in the background is the lurking danger that the quest for catholicons will beguile the ignorant into accepting the Leviathan State. "Knowledge as well as eternal vigilance is the price of liberty."¹ It is to prevent such a contingency that Mr. Chrimes has shown "in broad outline what the English Constitution is now, and how past ages have contributed to it."²

The English Constitution is remarkable for many reasons. It is an historical process which has never been entirely

18. The N.Y. Times Magazine, Nov. 28, 1948, pp. 32, 34 (The Paris Meeting of the U. N. General Assembly); The N.Y. Times, May 8, 1949, § 4, p.E 1 (The lifting of the Berlin Blockade).

19. His address delivered at the Yale Daily News annual dinner on February 28, 1949, is an eloquent argument for the North Atlantic Pact as one such step, and encourages that hope. 20 DEP'T OF STATE BULL. 281-2 (March 13, 1949).

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2. P. 3.

broken over a period of fourteen centuries. Highly exportable to other countries, it is an adjustment of apparent irreconcilables, and is a compilation of statutes and conventions delicately balanced. Its uniqueness, which in many ways is its strength, may also be a source of danger. The British Constitution, unlike the Constitution of the United States, does not have sufficient safeguards to prevent pressure groups from railroading the country into the adoption of quack remedies which might cause the ruination of the country. It is a fact often overlooked that it is easier to smash democratic institutions than to build them. Mr. Chrimes thinks, and rightly so, that the executive in England is exercising power out of proportion to the Parliament and the Common Law. There is a possibility with the growth of administrative law at the expense of long and well established legal customs that the very essence of the Constitution might be destroyed in the next half-century.

The simple formula that the British developed to supply the balance needed in good government was thirteen hundred years old before people became fully cognizant of it. This formula is the temporary entrusting of great powers to a small Cabinet or body of ministers. These ministers, who are members of Parliament, are formally appointed to office by the King and are dismissible by him, but they are politically responsible to the electorate through the House of Commons. The members of Commons are periodically elected on a wide, popular franchise. The ministers are legally responsible under the law and are "served by a corps of permanent civil servants."³

The most conscious theme running through the entire constitutional history of England is the Crown. Mr. Chrimes renders yeoman service in setting the Crown in its proper perspective not only for the present day but for fourteen centuries of constitutional evolution. He does a splendid job in tracing the growth of the realm in medieval England and in distinguishing between the dual roles of the sovereigns as kings and as feudal overlords. Additional specific landmarks interspersed in the treatment of the Constitution's medieval foundations would have made the book more valuable both to student and layman.

Mr. Chrimes poses an interesting academic question

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when he places the zenith of the medieval constitution in the days of the Tudors. This reviewer would be inclined to agree with him on most counts, but wonders if calling Tudor despotism a despotism of public opinion rather than of dynasty is not stretching the point a bit. Surely the Tudors did much to channel the thinking of their subjects in the "right" direction.

The Tudors then culminated the ideals of monarchy "in alliance with the assent of parliament for certain purposes, and acknowledging the supremacy of the Common Law where appropriate."⁴ As the king was always considered to be in the Parliament, there was little concern in the sixteenth century over the matter of sovereignty. It is unfortunate that Mr. Chrimes did not expand this thesis in order to render more lucid the fact that the clash between the Stuarts and the Parliament was not only over religion but also over the relative merits of Roman law as opposed to the Common Law. The attempts of the Stuarts to place themselves above the latter contributed to the Civil War and to the Revolution of 1688, at which time the constitutional law of England was firmly established. Since then there have been no fundamental constitutional conflicts in England. There have been reforms, but no revolutions. The balance of King, Lords, Commons, and Courts of Common Law was to vary, but the government of England, as explained in a poem by Kipling, was to be a "four-legged stool."

Some American readers will be surprised to discover that the Crown has considerable power even today, and that the King does not always select the leader of the majority party to be prime minister as illustrated by the appointments of Mr. Stanley Baldwin and Mr. Winston Churchill. In matters of grave emergency the Crown can act without ministerial advice. To do so, however, brings it into political controversy, something which if possible is to be avoided. According to convention, all political acts of the Crown are made on the advice of the Cabinet or the ministers. The King, however, is not a mere automaton, for he has the right to advise, criticize, and to warn his ministers. It is too bad that Mr. Chrimes did not develop this point more completely, for it is an important one, and unfortunately one not too well understood by Americans. To quote him, however, "the

4. P. 123.

Crown remains the keystone in the structure of the Constitution, even though the government is carried on in practice by its servants. Furthermore, who can doubt that, in the very last resort and *in extremis*, it is to His Majesty alone that the people can look for the ultimate guardianship of the Constitution?"⁵

The chapters concerning Parliament will contain some shocks to Americans accustomed to glib generalizations. The King was primarily responsible for the early growth of that great body even though the servant recently has taken over most of the master's duties. Mr. Chrimes considers that the methods used by the Stuarts to raise money was a fundamental cause for the break between King and Parliament. It is probable that the English in the seventeenth century would have resented any method of taxation as did the colonists in British North America one hundred and twenty-five years later. He is correct in finding the germ of representation in the sworn inquest, but it is possible to quibble with him over the origin of that institution. Recent scholarship is more apt to attribute it to the Anglo-Saxon or to the Dane rather than to the Roman and the Frank. The need for a second chamber in the legislature is stressed in view of the declining power of the House of Lords. It is well to note that all members of that body are not hereditary peers as portrayed by Hollywood, but that many are persons recognized for special service to the state or for possessing outstanding talents.

The weightiest branch of the government is in the last analysis the House of Commons. However, the widened franchise has decreased the caliber of that body's personnel because, according to Mr. Chrimes, "democracy usually tends to patronize mediocrity, for it understands that better."⁶ There is also a tendency for the Commons to become more and more the pawn of the "Government," that is, of the ministers and the civil service. Civil servants who are barred from sitting in the Parliament initiate far more legislation than do the members themselves. The general level of M.P. intelligence plus the complexity of modern legislation is responsible for the current situation. The Commons do discuss the bills with an eye toward the electorate, but the debates in the

5. Pp. 19-20.

6. P. 171.

House of Lords sometimes show a better understanding of affairs than do those of the lower house. Votes in the Commons follow a straight party line, and there is little chance that the peoples' representatives will "cross over" on an issue as they did in the nineteenth century.

The question and answer period is more important than the formal debates, and it is during this phase of the parliamentary process that legislation is reviewed before the bar of public opinion. It is at this time that the ministers are reminded of their responsibility to the Parliament. A good percentage of the questions are poorly phrased and often do more to obscure than to illuminate the issue. A greater display of initiative by the Parliament than is current practice would be more in keeping with the democratic tradition of the English Constitution.

The Cabinet and the civil service are rapidly obtaining the ascendancy in the British system of government. Ministers of the Crown are a development from the households of the medieval kings, and find their origins more in the history of the duchy of Normandy than in the Anglo-Saxon kingship, as stated by Mr. Chrimes. Legally speaking there is no such thing as a Cabinet, although a statute exists which provides salaries for ministers of cabinet rank. Mr. Chrimes has relied on the Ministers of the Crown Act of 1937 for his discussion of the ministry, and upon his own deep understanding of the conventions of the English Constitution for his explanation of the rise of cabinet government. The increase in the power of the executive constitutes one of the most significant developments in modern Britain. "This has been due in part to the exigencies of the long struggle to survive against the menace of external enemies that has been imposed upon the State during the most of the first half of the twentieth century; and in part to the changing conceptions of the proper functions and scope of government itself."⁷ At present the control of finances is becoming latent in the Parliament, and it is by no means improbable that the next fifty years will see the legislative bodies lose effective control of the purse and become mere rubber stamps for ministerial policies.

The civil service, which is nineteenth century in form, stems from the clerks and officials in the households of the early kings. At it exists in England, it occupies a place in

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the national life that transcends its obvious administrative sphere. It helps the Ministry to formulate policy and to carry it out. It is a brave minister indeed who will buck the permanent secretariat. The civil service has many of the weaknesses of large bureaucracy. It is overloaded with a cumbersome hierarchy; it lacks unification and is too departmentalized; and it suffers from the great curse of modern times, seniority. Nevertheless it is above party politics, and the British people are fortunate to have such a corps of highly-trained personnel working for the best interests of the nation.

The last great basis of the Constitution is the Common Law. There is no high sounding enunciation of the rights of man in the British Constitution, yet the subjects of England in fact enjoy more liberties than do people who are slaves in nations which abound with theory. Freedom of speech, freedom for property, and right of petition within the limits of the law are the birthrights of Englishmen, who have the privilege of going to the highest courts of the land to win a redress of grievances. The highest officials are liable for their actions. In the last few years, however, there has been an expansion of the English treason laws, for "His Majesty's subjects enjoy great privileges, and are fortunate among mankind, the great bulk of whom are in a very different position. It is fitting that the betrayer of his duty, the traitor, or, by ancient usage, the *perfidus*, should render account and pay his forfeit."⁸ The law is superior to King, minister, civil servant, and subject. It has and will continue to fight for England's constitutional heritage.

What the future holds for the United Kingdom is not known, but Mr. Chrimes from an admittedly conservative viewpoint has written a book which causes one to pause and think. He calls attention to fourteen centuries of constitutional history which have gone into the making of "a just balance between law and liberty, progress and stability, the State and the individual."⁹ He pleads for an understanding of the past before gambling with the future, and he himself has contributed much to make that understanding possible.

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8. P. 66.

9. P. 189.

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