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## Unintended democracy: parliamentary reform in the UK

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# Unintended Democracy: Parliamentary Reform in the UK

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*En fait, avec ou sans suffrage universel, c'est toujours une oligarchie qui gouverne.*

V. Pareto, *Traité de sociologie générale* (Lausanne: Payot, 1932), § 2183

*The constitution of the United Kingdom underwent a series of incremental and important reforms in the period from 1815-1914. Suffrage was reformed in three waves (in 1831-2, 1866-7, and 1884-5), and finalised in 1919, 1928 and 1948. In addition, local government was reformed in 1835 and 1888. A.V. Dicey authoritatively articulated the doctrine of Parliamentary sovereignty in 1885 which today still forms the central regulative idea of the modern, liberal democratic British constitution. But what is the relationship between law and politics? Did the doctrine of Parliamentary sovereignty pave the way for democracy and a universal franchise? Or does Parliamentary sovereignty only make sense in light of the limited franchise that existed at the time Dicey wrote? This contribution argues that the political motivation behind the Reform Acts of 1832 and 1867 was anti-democratic and served to restore and stabilise the authority of the ruling class, and that this motivation is reflected in the doctrine of Parliamentary sovereignty.*

It is usually said that the United Kingdom became a modern democracy in the period from 1815-1914 through the process of a series of incremental and important reforms. Suffrage was reformed in three waves (in 1831-2, 1866-7, and 1884-5), and finalised in 1919, 1928 and 1948. In addition, local government was reformed in 1835 and 1888. Government was gradually being equipped with the machinery of a modern state – the Civil Service, procedural law, and the courts. Devoid of a (revolutionary) constitutional moment that reconstructed *de novo* the whole system of government, the transition from oligarchy towards modern democracy took place through independent legislative acts.<sup>1</sup>

Those developments used to be regarded as a progressive and teleological unfolding of democracy that matched Herbert Butterfield's Whig idea of history.<sup>2</sup> Today, the remnants of the Whig idea of history perpetuate the myth of the smooth transition from Royal absolutism to Parliamentary absolutism (read: democracy) that is so central to Britain's self-reflexive understanding of its own political set-up and which permeates legal and

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<sup>1</sup> Stevens 2005, p. xv.

<sup>2</sup> Butterfield 1931.

political texts.<sup>3</sup> At first sight, the Great Reform Act 1832 increased the size and scope of the franchise and kick-started ‘the process of bringing democracy to the constitutional order’ which (in hindsight) culminated in universal suffrage in the inter-war years.<sup>4</sup> As Britain’s leading constitutional lawyer, Albert Venn Dicey, noted in 1905: ‘no one...can doubt that by 1900, and indeed, considerably before 1900, the English constitution had been transformed into something like a democracy’.<sup>5</sup>

Yet, there is a danger that one is ‘too easily seduced by the long course of parliamentary history into believing that the coming of democracy in the twentieth century was an inevitable result of gradual constitutional change’.<sup>6</sup> The motivation behind and purpose of the Reform Acts of 1832 and 1867 were anything but democratic. At the time, the constitutional consequences of expanding the electorate were feared even amongst the reforming establishment who passed the Reform Acts in order to maintain some of their prerogatives and privileges whilst preventing the exercise of arbitrary power either by a monarch or an all-powerful assembly. The Acts created, to quote from the Project statement, ‘a mechanism of inclusion and exclusion, defining permissible and impermissible kinds of arguments as well as determining who may act and which procedural channels must be followed in order to address a grievance’. They were anti-democratic measures that served to strengthen government and the House of Commons and to create legal obstacles that working class men and women still had to fight to overcome.

This chapter seeks to add the background story to the conventional narrative.<sup>7</sup> The starting point for contemporary public law is, invariably and inevitably, Albert Venn Dicey’s seminal *Introduction to the Law of the Constitution* (first published in 1885)<sup>8</sup> whose central articulation of the legislative supremacy of Parliament (the ‘despotism of the King

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<sup>3</sup> Bradley and Ewing 2011, p. 31 (‘evolutionary development’); Wicks 2006; critically: Mitchell 1960, p. 332.

<sup>4</sup> Tomkins 2003, p. 165; Foley 1999, p. 20.

<sup>5</sup> Dicey 1905, p. 48. By ‘democratic’ Dicey meant that every reform had been designed to increase the number of people eligible to vote (at 52).

<sup>6</sup> Fletcher in Dicey 1997, p. 309-329, 329.

<sup>7</sup> The relationship between Parliamentary sovereignty and the extension of the franchise is not told by Goldsworthy 1999, who covers the entire nineteenth century in a little more than six pages in Ch. 8. The nineteenth century generally does not feature in public law textbooks. An exception is Loveland 2009, p. 201-214.

<sup>8</sup> Dicey 1959.

in Parliament')<sup>9</sup> is the closest the United Kingdom has to a constitutional text. But how would the machinery of Parliamentary government and sovereignty, i.e. the model for the mid-nineteenth century with a limited and unrepresentative electorate and a modest party system, respond to universal suffrage and mass parties in the twentieth century? Is it accurate to say that the political and legal developments in 1832 and 1867, even with perfect hindsight, paved the way for democracy?

### ***1. The Ideal of the Balanced Constitution***

One constitutional repercussion from the Reform Acts was the unbalancing of the eighteenth century ideal of a balanced constitution that depended on the traditional co-existence of classes within government.<sup>10</sup> Before the Revolution of 1688-89 the functions of government had been divided into those under the control of Parliament (like taxation) and those not directly controlled (prerogative government). The point of the Revolution was to establish *the principle* that the three Estates (Monarch, Lords and Commons), acting collectively, controlled *all* the functions of government (although, of course, in practice many areas of Crown prerogative remained and do so until today). The rationale behind locating sovereignty in the three estates in Parliament was to create the broadest base conceivable at the time for the legitimacy of laws. Legal measures, *jointly* enacted, were deemed to be superior to the actions of either House, the prerogative powers of the monarch, or the common law powers of the judiciary. The 1688 settlement and the governing ethos of sovereignty was thus compromised, if not upset, by the expansion of the franchise (especially after 1867), the decline of royal power (especially under Queen Victoria), the loss of the Lords' co-equal powers in the legislative process, the emergence of national parties, and the continuous increase in the volume of government work. By 1850, the House of Commons had become the undisputed centre of gravity for politics in the United Kingdom: the government was politically dependent on the co-operation of the Commons in which cohesive political parties were now organised. By 1885, Parliamentary parties had become national parties with strict party discipline, mass membership, branches in constituencies, and individual candidates fighting personal

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<sup>9</sup> Ibid, p. 145.

<sup>10</sup> See Vile 1998, chps. 3 and 5.

campaigns. 'While 1688 envisaged Parliament as a consensual forum designed to identify the national interest, it now operates as an arena of conflict intended to promote party interests'.<sup>11</sup>

Conceptually, in 1885 Dicey cleverly re-interpreted Austin's political theory of sovereignty (which identified the *foundation* of the legal system)<sup>12</sup> into a constitutional theory of sovereignty that identified Parliament *de jure* as the sole and ultimate law-making agent *within* the legal system. However, practically, mid- to late nineteenth century constitutional developments and changes had *de facto* handed political power to the House of Commons. Adhering to the 1688 doctrine of Parliamentary sovereignty as the central idea when its justification, the balanced constitution, had ceased to exist gave the doctrine of sovereignty vastly greater potency. The resulting 'socialist' legislation passed by the Liberal government in 1906 was used as evidence of the dangers of democracy.<sup>13</sup> The constitution now was 'uncontrolled'<sup>14</sup> and the government had effectively conspired 'to subordinate Parliament, to evade the Courts, and to render the will, or the caprice, of the Executive unfettered and supreme'.<sup>15</sup>

Nostalgia began to creep in for the constitutional arrangements of 1832 which had been lost to democracy.<sup>16</sup> But do the post-1832 developments amount to sufficient evidence of the progressive unfolding of democracy? Or were democracy and the right to vote, join trade unions, be educated etc argued for, fought for, and suffered for, by working class men and later women? Perhaps, and with the benefit of hindsight, the coming of democracy was inevitable. If it was, it was not the Reform Acts that democratised the United Kingdom, but the changing political, economic and social conditions and forces. As Norman Gash underlines, the three Reform Acts of 1832, 1867 and 1884 'were passed by men who had no belief in the kind of political democracy implicit in universal suffrage and equality of electoral districts and who feared that the introduction of such a system would lead to the tyranny of the illiterate many over the

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<sup>11</sup> Loveland 2009, p. 413.

<sup>12</sup> Austin 1995.

<sup>13</sup> Dicey 1914, p. lxiv-lxv, lxxxvii-lxxxix.

<sup>14</sup> In the sense referred to by Lord Birkenhead LC in *McCawley v The King* [1920] AC 691, 720.

<sup>15</sup> Hewart 1929, p. 17; see also Lord Hailsham of St. Marylebone 1976.

<sup>16</sup> Maine 1885; Lecky 1896.

cultured few and of a numerical majority over the interests of minorities'.<sup>17</sup> The purpose of the 1832 and 1867 Acts was to resist the *kind* of democracy wanted by Radicals and Chartists<sup>18</sup> through Parliamentary technique and electoral reform.

## ***2. Great Reform Act 1832***

The Great Reform Act is commonly portrayed as a political and constitutional watershed; as the first of a series of electoral reforms that ushered in the modern era of democracy. 1832 is easily viewed as the year from which 'the democratizing forces began to create a progressive narrative of a living and evolving constitution that was changing from parliamentary into popular sovereignty'.<sup>19</sup>

However, the Reform Act was not designed to make the system more democratic, e.g. by enhancing or ensuring fair popular representation. It was a necessary response to the discontent experienced by 'the bulk of informed and influential opinion in the country'<sup>20</sup> that stemmed from insufficient or a complete absence of representation of new and important (industrial) interests as well as an overrepresentation of (aristocratic) individuals. Reform was also a tactical response to the fear of popular revolt and political revolution. If there was a choice between bringing the middle classes, those 'vast masses of property and intelligence', into an alliance with the old governing classes (and restoring the balance of the constitution), or forcing them into an alliance with the lower classes (and strengthening popular discontent and disorder), then 'the essential point was to attach the middle classes to the aristocratic constitution'.<sup>21</sup> By 1830, even the Tories had come to accept the principle of Parliamentary reform which did not, however, imply support for the Bill proposed by the Whigs. 'Had it been a question of abstract principles, the ground of difference between Grey's ministry and the opposition would have been narrow. It was because the controversy was over detail that room for a full-pitched battle

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<sup>17</sup> Gash in Birke and Kluxen 1985, p. 57.

<sup>18</sup> The Chartist movement provided a national platform for a myriad of radical, trade union, and anti-Poor Law organisations. Its six points in 1838 were: i) universal male suffrage; ii) annual parliaments; iii) the secret ballot; iv) the equalisation of constituencies; v) salaries for MPs; vi) an end to property qualifications for parliamentary candidates.

<sup>19</sup> Horwitz 1997, p. 551-586, 568.

<sup>20</sup> Gash 1985, p. 10.

<sup>21</sup> Gash 1985, p. 15-17.

was secured'.<sup>22</sup> For the Duke of Wellington (the only member of his Tory government who did not accept the need for some reform of Parliament in 1830), the Act was a revolutionary destruction of the old system 'by due course of law'.<sup>23</sup> But other than his isolated opposition, 'the really noteworthy fact is the length of time needed in order to convince English men that their ancient institutions stood in need of alteration'.<sup>24</sup>

After more than half a century (1770-1830) of Tory dominance in the House of Commons, and of latent revolution in England, the Whigs returned to power in 1830.<sup>25</sup> The new Prime Minister Earl Grey immediately set about reforming the electoral system – a cause with which he had been identified since the 1790s and which was vital if his ministry was to survive.<sup>26</sup> The Reform Bill<sup>27</sup> took on various forms over the fifteen months it took to pass through the House of Commons.<sup>28</sup> In the end, the process of getting the bill through the Commons was more significant than the changes it brought about, a sentiment reflected by Bright when he described it as 'not a good Bill, though... a great Bill when it passed'.<sup>29</sup> On 7 June 1832, King William IV finally gave royal assent to the Great Reform Act.<sup>30</sup> In order to get it through the House of Lords, the King had threatened to alter the composition of that House in order to create a majority of supporters for the Bill (a threat that would be repeated in relation to the removal of the veto power of the aristocratic House of Lords by the Parliament Act 1911).

In 1832 electoral reform had become a pressing matter for a number of reasons. The first impact of the Reform Act related to demographics. The electoral system had failed to keep track of population growth and the electorate had in fact declined as a proportion of the population from 5.2% in 1715 to 3.2% on the eve of the Reform Act 1832.<sup>31</sup> The Reform Act increased the size of the electorate by about 41% to 614,654 (about one in

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<sup>22</sup> Gash 1985, p. 3.

<sup>23</sup> Cannon 1973, p. 204.

<sup>24</sup> Dicey 1905, p. 31.

<sup>25</sup> On the difference between reform-minded European aristocrats and the mission of the specifically English Whigs, which was 'to lead the people in their aspirations, to make contact with them, and to give practicality to their hopes', see Mitchell in Blanning and Wende 1999, p. 25.

<sup>26</sup> Gash in Birke and Kluxen 1985, p. 58.

<sup>27</sup> The unofficial title that actually comprised three separate bills for England and Wales, Scotland, and Ireland, all of which became Acts.

<sup>28</sup> The individual stages of the Bill are set out in Hilton 2006, p. 420-422; see also Salmon in Fisher 2009.

<sup>29</sup> Rogers 1879, p. 29. See also Peel in 1831: 'We shall be bound to proceed further': cited in Dinwiddy 1992, p. 430.

<sup>30</sup> 2 Gul. IV, c.45.

<sup>31</sup> O'Gorman 1989, p. 179.



seven of the adult male population). The Reform Act thus confirmed and accelerated a trend that began long before 1832: the English electorate had already grown by 38% from 314,970 in 1820 to 434,530 in 1831.<sup>32</sup> The advance for democracy, however, was limited: the male electors constituted a smaller proportion of the population than had enjoyed the vote in 1640.<sup>33</sup> It would be ‘inappropriate’ to treat the Reform Act primarily as an enfranchising measure;<sup>34</sup> and it would be ‘absurd to treat the electorate as the British people, the ultimate source of power’.<sup>35</sup>

The second impact of the 1832 Act relates to the archaic distribution of seats. Representation had reflected the pre-modern importance of counties over towns (or boroughs), and had been largely unchanged since 1675.<sup>36</sup> This deprived the enterprising bourgeoisie in the fast-growing industrialised areas of political influence. Earl Grey wanted to get rid of the overrepresented ‘rotten’ and ‘pocket’<sup>37</sup> boroughs and secure representation for the UK’s new industrial towns and cities. The rotten boroughs were towns or areas of medieval economic and political importance that had fallen into economic insignificance whilst retaining their political power. It gave decayed boroughs in Cornwall (with a couple of hundred inhabitants) the same level of representation (two MPs) as county constituencies with more than a million. The Suffolk town of Dunwich, formerly the capital of East Anglia, had practically ceased to exist, having fallen into the sea over the centuries leaving 32 voters with two MPs. In 1831 the fabled Wiltshire borough of Old Sarum contained three houses and eleven persons qualified to vote. Otherwise, it consisted of ‘vast ditches and ramparts and fragments of the foundation walls of houses and castle. A temporary building was erected under a tree for holding elections’.<sup>38</sup> All told, sixty rotten boroughs lost their representation entirely, while large towns (like Manchester, Birmingham, and Leeds) were given two members each.

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<sup>32</sup> Salmon 2009, p. 411.

<sup>33</sup> Hirst 1975, p. 105.

<sup>34</sup> Salmon 2009, p. 411.

<sup>35</sup> Gash 1985, p. 21.

<sup>36</sup> Cannon 1973, p. 29.

<sup>37</sup> Also known as nomination boroughs, in which elections were controlled by a single MP who was nominated by the landowner.

<sup>38</sup> Philbin 1965, p. 216.

However, the Reform Act produced intended consequences which ‘sit uncomfortably with popular expectations about the extension of the franchise’.<sup>39</sup> The 1832 Act ‘substantially reduced’ the number of electors (by removing non-resident electors) in almost a third of the English boroughs that survived reform. As a result, these boroughs had a smaller electorate after 1832. ‘This alone represents an important qualification to the widely held perception of 1832 as some form of democratic advance’.<sup>40</sup> Also, the 1832 Act did not abolish all pocket (or proprietary) boroughs in England and Wales: over forty continued their existence into the third quarter of the nineteenth century.<sup>41</sup> Parliamentary representation in 1832 was not rational, or fair;<sup>42</sup> it was (as the title of Norman Gash’s book indicates) a ‘technique’ and it continued to be founded (as in the eighteenth century) on property.<sup>43</sup>

The Reform Act was neither a revolutionary<sup>44</sup> nor a democratic measure.<sup>45</sup> The debates at the time focused pragmatically on the defects of the unreformed system (corruption, high taxation, loss of community) and not on natural rights, popular sovereignty, fair representation, or the superiority of democracy to oligarchy. The principal defects of the old system were redressed in a manner that deflected any impending democratic ambitions. Although the rotten boroughs were eliminated, the Reform Act also swept away the broadly democratic poor ratepayer ‘scot and lot’ franchise that had existed in some thirty-seven boroughs. In its place, a uniform qualification was introduced,<sup>46</sup> enfranchising all adult males who owned and/or occupied houses with a rental value of at least £10 per annum. For a county vote, the basic qualification remained ownership of a forty-shilling (£2) freehold, but two new, and wealthier, categories were created: on the one hand, a £10 property qualification that

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<sup>39</sup> Salmon 2009, p. 389.

<sup>40</sup> Salmon 2009, p. 392.

<sup>41</sup> Gash 1953, chps. 8 and 9, and Appendix D.

<sup>42</sup> In March 1831, Lord Russell acknowledged the anomalies in the representative system and found that they were deliberate: ‘A regular distribution of an equal proportion of members to equal population might be a wise and great scheme, but the proposers of this measure had not thought fit to bring such a plan before Parliament’ (*Hansard*, III, 207; cited in Gash 1953, p. 26).

<sup>43</sup> Lord Durham: ‘...there is no principle affecting the representative system, that has not property for its basis...’ (*Hansard*, III, 1020), cited in Gash 1953, p. 18.

<sup>44</sup> Hanham 1969, p. 257.

<sup>45</sup> Gash 1985, p. 422.

<sup>46</sup> This replaced a myriad of franchise qualifications that had developed over the centuries: householder, freeman, corporation, scot and lot, burgage, and freeholder. For an explanation of these terms see Cook 2005, p. 57; and in Fisher in Fisher 2009.

served to disenfranchise large numbers of working-class men, and on the other hand, the £50 tenants-at-will (aka the ‘opulent serfs’) whose relative wealth, coupled with lack of security of land tenure, made them easy targets for manipulation by landowners.<sup>47</sup> To the excluded, the Act conveyed a very English social message, namely ‘that personal fulfilment had come to be associated exclusively with private life, while political systems were to be judged according to their utility’.<sup>48</sup>

So, although it is true that the Reform Act rationalised the electoral machinery and allowed more people to vote, it was more of the commercial middle class: the prosperous county electorate increased by about one-third. Everyone below the arbitrary £10 line was excluded – and the danger that the unrepresented working class could turn against parliamentary institutions was well known at the time.<sup>49</sup> The government’s response to that danger was ‘to make aristocratic government acceptable by purging away its most corrupt and expensive features’.<sup>50</sup> The Reform Act thus created a division not between Whigs and Tories, but between economic (rural vs. industrial) interests, classes, and also the sexes. Whereas previously some female property holders had exercised the vote, after 1832 women were expressly forbidden to vote in national elections and, after 1835, in local elections too. The new constituents were either aristocratic or wealthy and, of course, educated and male.

Contemporary commentators never took seriously the idea of a new dawn of democracy. The Act was widely noted for its continuities rather than changes. At the introduction of the Reform Bill, Lord John Russell (its patron) argued that the uniform borough franchise of taxpaying citizens was restorative rather than revolutionary:

‘Our ancestors gave Old Sarum representatives, because it *was* a large town; therefore we give representatives to Manchester, which *is* a large town. I think we are acting more as our ancestors would have acted, by letting in representatives for

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<sup>47</sup> See O’Gorman 1989, p. 217: The Reform Act ‘diminished the penetration of the electorate down the social scale’.

<sup>48</sup> Hilton 2006, p. 430.

<sup>49</sup> Hilton 2006, p. 433.

<sup>50</sup> Brock 1973, p. 44.

our great commercial and manufacturing towns, than by excluding such representatives'.<sup>51</sup>

The political diarist Charles Greville concluded that 'a Reformed Parliament turns out to be very much like every other Parliament...except that the Whigs have got possession of the power which the Tories have lost'.<sup>52</sup>

So, what was the significance of the Reform Act within the UK's constitutional system? First, it was the first time that any British government had successfully carried out a major change to the electoral system, which set a crucial precedent for the future extension of the vote. Second, it bound a larger class of people to the House of Commons whose role was now explicitly a political tribunal where grievances were aired and remedied. Third, it neutralised the revolutionary potential of Thomas Paine's *Rights of Man* whose validity after 1815 was assumed and already formed 'the response of the whole community'.<sup>53</sup>

That left the revolutionary demands of the Chartists which emerged after the 1832 Act. Why did the British constitution classify their demands (which were not particularly new, having formed the platform of the Peterloo march twenty years earlier and of the Levellers two centuries earlier) as radical in the 1830s and 1940s? Essentially, because they went far beyond what parliamentarians were able to countenance. In fact, five of the Six Points would not be fulfilled until the 1918 Representation of the People Act, while annual or even fixed-term parliaments have so far never been realised.<sup>54</sup> The reason Chartism peaked in the wake of 1832 is because basic ingredients of democracy had been left out of the reformed system.

The contemporary response to the 1832 Act suggests that it was a conservative, good housekeeping measure that did little more than tidy up a few rotten boroughs and grant

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<sup>51</sup> *Hansard Parliamentary Debates*, 3<sup>rd</sup> ser. (1830-91), ii. 1085-6 (01 March 1831). Sir Robert Inglis (Conservative MP) rebutted the connection between representation and population. The reason Old Sarum had been favoured was not due to its population (which had never been substantial) but due to a personal favour Edward I had bestowed on the Earl of Salisbury by giving him a right of nomination in the Commons. 'Nothing is more certain than that boroughs were created by the mere will of the King, sometimes at the requisition of a favourite': *Hansard Parliamentary Debates*, 3<sup>rd</sup> ser. (1830-91), ii. 1098, 1103 (01 March 1831); both references in Hilton 2006, p. 431.

<sup>52</sup> Cited in Vallance 2009, p. 357.

<sup>53</sup> Thompson 1968, p. 660, 663.

<sup>54</sup> But see the Fixed-Term Parliaments Bill 2010-11, which, for the first time, fixes the date of the next UK General Election (at 7 May 2015), and provides for five-year fixed terms.

the right to vote to a limited number of middle class voters. Indeed, ‘...the prevailing view in 1832 was that the Reform Act was a final settlement based on the 19<sup>th</sup>-century concept of representation, not the first instalment of democracy’.<sup>55</sup> The old forms had not been destroyed: the House of Commons continued to represent property, rather than people, and it was the property-owning constituency that opposed the reforms. They feared that the extension of the franchise carried with it a rise in political corruption through the increase in the number of dependent voters capable of being bought. To appease the middle classes, the property qualifications for MPs and voters not only survived but increased – so that neither could be bought.<sup>56</sup> The Great Reform Act was the least the politicians could do, and all that they were prepared to do.

However, Dicey looks beyond the form and practical consequences of the Reform Act and points out that it did have one revolutionary quality:

‘It altered the way in which people thought of the constitution, and taught Englishmen...that venerable institutions which custom had made unchangeable could easily, and without the use of violence, be changed’.<sup>57</sup>

Dicey suggests that the Reform Act inadvertently kick-started the process of democratisation which it (equally inadvertently) also legitimised: it ‘fostered the conviction or delusion that the will of the nation could be expressed only through elected representatives’.<sup>58</sup>

Dicey (and Walter Bagehot) saw the real value of the Act as lying in the opinions of the next generations of law-makers which it helped to shape.<sup>59</sup> The 1832 Act thus destabilised the constitution by allowing for a counter-narrative (politics driven by popular demand, the possibility of universal suffrage) to develop alongside the constitutional hegemony (of the balanced constitution, i.e. the relationship between Crown, Commons and Lords). It was a cautious first step as well as the point of no return. Sir Robert Peel’s reason for

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<sup>55</sup> Rush 1981, p. 35.

<sup>56</sup> Symmons 1817, p. 404.

<sup>57</sup> Dicey 1905, p. 42.

<sup>58</sup> Dicey 1905, p. 42.

<sup>59</sup> Dicey 1905, p. 34; Bagehot 1872, p. i-ii.

opposing the Reform Act ('I was unwilling to open a door which I saw no prospect of being able to close'<sup>60</sup>) would eventually be entirely vindicated.

### ***3. Parliamentary government***

The argument of this chapter/section is that by placing government in the House of Commons, the 1832 Act successfully averted autocracy (oligarchic government) and democracy (public opinion) – which was precisely what its supporters (e.g. Lords Melbourne and Holland) had intended<sup>61</sup> – and firmly established 'Parliamentary government' in the United Kingdom. The year 1832 marked, quite possibly, the pinnacle of Parliament as an institution: 'The Commons had never been, and would never again be, so important. The era of court politics was over; that of party politics had not yet arrived'.<sup>62</sup> In 1832 the old view of class government transitioned to a government based on the elected representatives of the middle class. The aims of old concepts, like checks and balances, were now to be achieved by a balance between government and Parliament. In 1832, a young scholar called John James Park coined the term 'Parliamentary government' to capture the shift away from oligarchic (or prerogative) government.<sup>63</sup> Whether 'the executive government has merged into the legislative, or the legislative has merged into the executive' is a separate question.<sup>64</sup> The fact was that executive and legislative powers were conjoined, not separated.<sup>65</sup>

'We find that no sooner is an administration formed, than it immediately takes upon itself not only what is properly called the *executive* government, but [also] the

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<sup>60</sup> Peel speaking during the House of Commons debate on the Second Reform Bill, 6 July 1831 (*Hansard*, IV, 890).

<sup>61</sup> Hawkins 1989, 649.

<sup>62</sup> Pemble 2010, p. 34-35. The two-party presence in the Commons developed from about 1807 and took on clearer contours after 1815. But the parties were not monolithic blocs of MPs. Discipline was loose, and although the Tory and Whig parties were uniformly against and in favour of Reform, other questions (Ireland, the church, free trade) divided the parties internally: See generally Fisher 2009.

<sup>63</sup> On this point see Hawkins 1989, p. 638-663, 641.

<sup>64</sup> Park 1832, p. 41.

<sup>65</sup> Park 1832, p. 35: '...neither the making of laws,...nor the executing of the laws which are already made, constitute more than *a portion* of the functions of political power. Parliament, if we watch its operations, will be found very frequently engaged in functions which are not legislative; and the administration will be found engaged, still more frequently, upon functions which are not executive'.

management, control, and direction, of the whole mass of political legislation, according to its own views of political science and civil economy'.<sup>66</sup>

In this new system, the House of Commons was an autonomous arena from which the executive, as organised in the Cabinet, drew its authority. To function properly, executive authority needed to be insulated from two powerful rival sources – the monarchy and the people. In fact, the Crown's attempt to control Parliament proved more and more unsuccessful. To illustrate, in the autumn of 1834, William IV dismissed Lord Melbourne's Cabinet. That act was viewed by some Whigs as the exercise of the tyrannical prerogative and an abuse of executive discretion. But the exercise of the King's powers was ultimately ineffective as Melbourne resumed the premiership merely a year later. In other words, the Crown's loss of power after the 1832 Act was a further aspect of the political conditions that would (much later) pave the path for democracy: political power had shifted from the Crown to the Commons (as analysed by J.J. Park).<sup>67</sup>

The other problem, and the central one from that point onwards, was how to protect parliamentary government from electoral dictate. How could the aristocracy remain in power and be voted for by the middle classes? Which proposals for reform would be able to reconcile the old restricted interests with the demands by the masses of new voters? The answer, once again, was 'Parliamentary government' which accommodated the development of political parties from the middle of the nineteenth century with relative ease. Peel may have shown disdain for party organisation, but after his accidental death in 1850 the chances of the executive operating outside the party structure were drastically reduced. 'Peel's death made possible the near-unanimous acceptance within Westminster of parliamentary parties as the necessary and desirable source of executive authority'.<sup>68</sup> Peel's successor, Lord Derby, linked the Conservative leadership as well as executive authority to party support. The legitimacy of parties was concluded with the formation of the Victorian Liberal Party in 1859,<sup>69</sup> and the form of Parliamentary government was finalised with the acceptance of a new generation of politicians who had grown up under the post-1832 system.

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<sup>66</sup> Park 1832, p. 41.

<sup>67</sup> Newbould 1976, p. 311-330.

<sup>68</sup> Hawkins 1989, p. 656.

<sup>69</sup> See generally Hawkins 1987.

The 3<sup>rd</sup> Earl Grey, the son of the Prime Minister who had passed the first reform bill, set out the answer to the new challenges in *Parliamentary Government Considered* (1858), an essay that was ‘a clear, authoritative description of a constitutional system that, at the moment of writing, enjoyed a greater degree of acceptance than at any earlier time’.<sup>70</sup> The fusion of the executive and legislature, which formed the basis of Parliamentary government, required large-scale party organisation, which has been described as ‘the most significant political development in the years following the 1867 Reform Act’.<sup>71</sup> Party was the *conditio sine qua non* for parliamentary government.<sup>72</sup> Party derived direct authority from neither the monarch nor the popular will, which, coupled with the irregular system of representation, protected the Commons from both despotism and democracy.<sup>73</sup>

‘For parliamentary government is essentially a government by means of party, since the very condition of its existence is that the ministers of the crown should be able to guide the decisions of Parliament, and especially of the House of Commons; and all experience proves that no popular assembly can be made to act steadily under recognised leaders except by party organisation’.<sup>74</sup>

Grey’s analysis of Parliamentary government found support in two subsequent constitutional studies: Sir Thomas Erskine May’s *Constitutional History of England* (1861-1863) and Walter Bagehot’s *English Constitution* (1867). Like Grey, Erskine May steers the constitution past the hazards of dominance by the prerogative or by the populace straight into the safe haven of parliamentary government and parties. Erskine May was in no doubt that Parliament indirectly, but nonetheless effectively, controlled the executive, and that in this the House of Commons was the dominant body.<sup>75</sup> Walter Bagehot affirms Grey’s analysis of the crucial role of the Cabinet as the focus of executive and legislative power; the pre-eminence of the House of Commons, the necessity of party, and the

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<sup>70</sup> Hawkins 1989, p. 658.

<sup>71</sup> Birch 1998, p. 34.

<sup>72</sup> In 1872, Disraeli noted that ‘without party, parliamentary government is impossible’: cited in Williams and Ramsden 1990, p. 268.

<sup>73</sup> Grey 1864, p. 36-57. See also Todd 1867, p. 1: ‘In a parliamentary government, rule and authority must receive the sanction of popular consent, though it does not necessarily emanate from the will of the people’.

<sup>74</sup> Grey 1864, p. 49.

<sup>75</sup> May 1863, p. ii, 1.



advantage of an irregular representative system. The notion of Parliamentary government had clearly established itself as the centre of the political system: 'The whole life of English politics is the action and reaction between the ministry and the Parliament'.<sup>76</sup>

Parliamentary government was workable in 1832, when parties had been parliamentary groupings with some organisation inside Parliament. By the second half of the nineteenth century, the Conservative and Liberal parties had become national, extra-Parliamentary, autonomous institutions with mass membership, centralised bureaucracies, a relatively homogeneous ideology, and independent candidates who were in charge of their own campaigns. The groundwork for a two-party system had been laid. The foundations of Parliamentary government that Park described in 1832, and which were supposedly affirmed by the 1867 Act, were actually being undercut by the dominance of 'party' and 'cabinet government'. At the same time, Erskine May and Bagehot were still claiming that Parliament effectively controlled the executive. Parliament had been caught unawares:

'No statute, no rule of common law, no resolution even of either House of Parliament has yet recognised the Cabinet itself. The real organ of executive government under our present system is a body yet unknown to the law'.<sup>77</sup>

But if it was true that the House of Commons provided the prime political forum in the country, then the arguments for franchise extension threatened to create a tyrannical democracy by undermining the constitutional character and importance of the Commons. And this was precisely Bagehot's argument: without the checks and balances of the eighteenth century balanced constitution, i.e. by the monarchy and aristocracy which the Reform Act 1832 had relegated to 'the dignified parts' of the constitution, whichever party controlled the Commons had absolute power.

#### ***4. 1867 Reform Act***

The myth of the Reform Act 1867 is that it was the second instalment in the long process during which Britain peacefully transformed into a modern democracy.<sup>78</sup> Like its predecessor, the second Reform Act of 1867 was motivated by many things, but

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<sup>76</sup> Bagehot 2001, p. 100.

<sup>77</sup> Hearn 1887, p. 8; (see also 1<sup>st</sup> ed., p. 120-123; 2<sup>nd</sup> ed., p. 124-127).

<sup>78</sup> Himmelfarb 1966, p. 97-138.

democracy and fair representation of the people were not among them.<sup>79</sup> It differs significantly from the middle class agitation behind the 1832 Act and Chartism which is usually said to have failed in 1848.<sup>80</sup> After Peel's death in 1850, numerous proposals for parliamentary reform were published as pamphlets, books and private members bills in the Commons.<sup>81</sup> Reform was a part of every ministry, and reform bills were introduced, but not passed, in 1852, 1854, 1859, and 1860. The second reform movement was well underway.

### **Motivation behind the Reform Act**

Continuing his great ambition of franchise extension, Lord John Russell's attempt (as Foreign Secretary) in March 1860 to introduce a new Parliamentary Reform Act in March 1860 did not have the support of Prime Minister Lord Palmerston, and inevitably failed. The death of Palmerston in July 1865 meant that Lord Russell succeeded him as Prime Minister and could once again try to persuade Parliament to accept the reforms that had been proposed in 1860. The measure received little support in Parliament and was not passed before Russell's resignation in June 1866.

The potted history of the 1867 Act has been told and re-told. Victory of the Union over the Confederate States in the American Civil War demonstrated the viability of democracy and strengthened the calls for reform. Lord Palmerston's death in 1865 deprived the Liberal party of a unifying presence and breathed new life into the Conservative party. It also removed an obstacle to further reform. Lord John Russell, briefly the Prime Minister, introduced the Reform Bill in 1866. William Gladstone (1809-1898), as Chancellor of the Exchequer, thought it would be prudent to widen the franchise so that 'every man who is not presumably incapacitated by some consideration of personal unfitness or of political danger is morally entitled to come within the pale of

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<sup>79</sup> Herrick 1934, p. 216-233, 220: '...the nature of the bill itself shows little relation to the democratic idea if the realities of power are considered as well as the mere act of voting?'

<sup>80</sup> 'The movement's failures lay in the direction of securing legislation...Judged by its crop of statues, Chartism was a failure. Judged by its essential...purpose, Chartism was a success. It achieved not the Six Points, but a state of mind': Ward 1973, p. 245.

<sup>81</sup> Stapleton 1850; One of the Middle Class 1854; Bagehot 1859; *The Danger of Democratic Reaction, and suggestions for placing the franchise in a sound & defensible state while still possible* 1864. Euclid 1866. Pochin 1866; An Elector 1866; Cole 1866; Moncrieff 1867. A Reformer 1867.

the constitution'.<sup>82</sup> But the Bill split the Liberal Party: on the one hand, forty dissenting Liberals, led by Robert Lowe and referred to by John Bright as the 'Cave of Adullam', voted with the Tories and were supported by *The Times*; on the other hand, the pro-reform wing was supported by radicals and reformers. The Tories had registered an important success: the Liberal government was divided, Gladstone had been denied a triumph, and Lord Russell had to resign. Lord Derby became Prime Minister, leading a minority Conservative government, with Benjamin Disraeli (1804-1881) leader of the Commons. The Adullamites were still anti-reform, but refused to buttress a Conservative government.

Conservatives had few incentives to retain the 1832 settlement which had given them only one majority government in thirty-five years. Disraeli argued that the Conservatives were in danger of being seen as an anti-reform party. They had discussed the *idea* of franchise extension, which made sense as a political strategy as it gave them control over the reform process, attracted radical support, and did not injure Conservative interests.<sup>83</sup> Disraeli himself had introduced a bill in minority office in 1859. But how could an unpopular leader of a minority government pass a reform bill in the Commons, having blocked a Liberal Reform Bill only months earlier?

Within those months, the political climate had changed just enough for Disraeli's measure to gain political traction. At the conservative-reactionary end of the Liberal spectrum, the Adullamites had split and ceased to be a reference point for the dissenting voice. On the other side, the radicals had also split. John Stuart Mill's entry into Parliament in 1865 had provided a focal point for younger radicals. But William Gladstone's principled conversion to reform made him dependent on Conservative support. Disraeli capitalised on this situation with remarkable skill, but also with opportunism and courage.

It was opportunistic because one might easily suspect that Disraeli and the Conservatives pursued radical suffrage reform out of political expediency or fear of public

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<sup>82</sup> 3 *Hansard* Vol. 185, cols. 324-5, 11 May 1864. The phrase 'within the pale of the constitution' stems from mediaeval Ireland that evoked images of the electorate as civilised settlers surrounded by savages without. Gladstone's bill excluded unskilled workers and what was known as the 'residuum', i.e. the feckless and criminal poor.

<sup>83</sup> By February 1867, when the question of household suffrage was formally introduced for the first time, a majority of Conservatives in cabinet and Parliament were in favour.

protests. However, Himmelfarb argues that they did so for ideological reasons: the Conservatives granted votes to the working class because they believed that many working-class voters would vote for Conservatives due to their reverence for Britain's traditional aristocracy. 'The Tories were democratic, one might say, because they assumed that the demos was Tory'.<sup>84</sup> In the words of the *Times*: 'In the inarticulate mass of the English populace, [Disraeli] discerned the Conservative working-man as the sculptor perceives the angel imprisoned in a block of marble'.<sup>85</sup> With the Act, Derby intended to 'dish the Whigs'.<sup>86</sup>

But the measure was also courageous because without a working majority in the Commons, Disraeli had to offer political concessions to Liberal backbenchers that were unpalatable for members of his own party (in short, 'wise concessions to enlightened agitation'<sup>87</sup>). Lord Cranborne resigned in protest against what he perceived as a dramatic extension of democracy. Conservative MPs decided to back reform if their own leaders introduced it. Disraeli and Derby introduced a Reform Bill in February 1867. Derby's reputation and support from the Queen saw it through the Lords, and it became law in June 1867. It was, in Derby's words, 'a leap in the dark'.

The point of this historical summary is to show that the reason the Reform Bill 1867 was enacted was not to advance democracy in any fundamental sense. The debates on the Reform Bill were about the technicalities of householder franchise,<sup>88</sup> not about the merits of democracy. Nor was the Reform Bill a direct response to the demands of the people, but a Conservative measure. It was supported by the *Times* and opposed by the reformer John Bright, and as such made no sense at all to most people. 'Many Radical members who had been asking for years for household suffrage were much more surprised than pleased at the near chance of obtaining it; they had asked for it as bargainers ask for the highest possible price, but they never expected to get it'.<sup>89</sup>

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<sup>84</sup> Himmelfarb 1966, p. 97-138, 113.

<sup>85</sup> *The Times*, 18 April 1883.

<sup>86</sup> Cited in Blake in Birke and Kluxen 1985, p. 107.

<sup>87</sup> Herrick 1934, p. 216.

<sup>88</sup> The radical proposal was to change the existing £10 borough franchise to £6. Gladstone, however, favoured the £7 franchise so that the urban male working-class householders remained a minority of the electorate. The £7 electors (but crucially not those below that threshold) were hailed as 'our fellow subjects, our fellow-Christians, and kin of flesh and blood': *3 Hansard*, 182: 873 (23 March 1866).

<sup>89</sup> Bagehot 1872, p. xvi-xviii.

There is no unanimity in the literature as to whether the strength of the popular movement on the streets coerced Disraeli into bringing about electoral reform. The end of 1866 and the start of 1867 saw a preoccupation with political violence, which was being discussed openly. Huge demonstrations were planned in Hyde Park on 23 July. The government banned the meeting, but the order was disregarded and the police failed to stop the demonstration. Technically, these demonstrations were more about the right of assembly than about the right to vote.<sup>90</sup> Symbolically, however, the riots signified to the governing elite the threatening power of the working men's movement.<sup>91</sup> John Morley attributes the 'strange reversal' leading up to the Act to the popular agitations and change in public opinion.<sup>92</sup> Joseph H. Park thinks that the large, frequent and peaceful demonstrations by the Reform League might have turned violent in the absence of reform, and so public opinion indirectly did force Parliament to enact the Reform Bill.<sup>93</sup>

However, Francis H. Herrick points out that reform was not a political issue in the 1865 election. On the Reform League, which had been founded in February 1865 and spoke for the skilled working class, he asserts that not only was it 'no more significant than the meetings and societies to promote education, world peace, or economy in government', but also that the final Reform Bill bore little relation to its demands.<sup>94</sup> Instead, the Reform bill was the outcome of party competition: Disraeli's minority government was dependent on the Radicals. Herrick belittles the effect of public opinion and popular agitations: 'Why should a demonstration on July 23, 1866, which only damaged an old fence and some shrubbery,<sup>95</sup> have much effect on parliament when it assembled in February, 1867, to hear Disraeli's Reform Bill? There is absolutely no evidence that...the popular leaders even considered the use of violence, as was most certainly done by Reformers in 1832'.<sup>96</sup> Gash attributes public indifference in the 1850s and 1860s to a number of factors: the failure of Chartism, the social and economic reforms of the 1830s and 1840s, the growing prosperity of Victorian society, and the

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<sup>90</sup> Himmelfarb 1966, p. 104.

<sup>91</sup> Hall et al 2000, p. 4.

<sup>92</sup> Morley 1903, p. 226-7.

<sup>93</sup> Park 1920, p. 7-8; 133-4. This point is echoed by Gillespie 1927, p. 235-288.

<sup>94</sup> Herrick 1934, p. 222.

<sup>95</sup> A detail from *Riot in Hyde Park* from *The Illustrated London News*, 4 August 1866, graces the current OUP paperback edition of Bagehot 2001. It confirms damage to the fence and the flowerbeds. Another Reform league meeting in 1867 took place quietly without damage to a single flowerbed, the railings or policemen.

<sup>96</sup> Herrick 1934, p. 223; see also the account of the Hyde Park incident in Park 1920, p. 102-104.

increasing importance of the trade unions to the working class leaders.<sup>97</sup> Withdrawing the Reform Bill of 1860, Lord John Russell said: “The apathy of this country is undeniable. Nor is it a transient humour; it seems rather a confirmed habit of mind”.<sup>98</sup> This condition can be attributed either to satisfaction (as late as January 1867 Bagehot was able to write: “The mass of the English people are politically contented as well as politically deferential”<sup>99</sup>) or inebriation:

For Reform we feels too lazy:  
Too full of beer.  
Much malt liquor makes us hazy,  
Too full of beer.  
We don’t want no alteration  
Of the present Legislation;  
‘Twon’t affect our sittiwation,  
Too full of beer.<sup>100</sup>

Forensically, there is enough evidence to undermine the thesis that the popular movement forced the Reform Bill, and plenty of evidence to support the thesis that the Bill was the product of parliamentary and political horse-trading: ‘a kind of parliamentary Dutch auction (one in which the price becomes progressively lower) between a weak Conservative minority administration and a majority but divided Liberal opposition’.<sup>101</sup> It was parliamentary politicians, rather than the people, who reconfigured the relationship between the governors and the governed. As Maurice Cowling puts it, the ‘centre of explanation’ lay in Parliament which ‘was not *afraid* of public agitation: nor was its action *determined* by it’.<sup>102</sup> Disraeli played his cards right at the crucial time: he undermined Gladstone and the Liberals on the need for reform; he produced an acceptable Bill; he legitimised the Reform movement, precluded potentially violent eruptions from the mob, and sidestepped the issue of universal suffrage. In short, Disraeli and Gladstone had not embraced democracy; they had conspiratorially tamed it.

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<sup>97</sup> Gash 1985, p. 59-60; see also Himmelfarb 1966, p. 98.

<sup>98</sup> Walpole 1889, p. 342.

<sup>99</sup> First published in *The Fortnightly Review*, 1 January 1867; see now Bagehot 1914, p. 35.

<sup>100</sup> *Punch*, IV (1859), p. 70; cited in Himmelfarb 1966, p. 99.

<sup>101</sup> Gash 1985, p. 57. For an analysis of economic considerations that might have persuaded the elites to extend the franchise see Lizzeri and Persico 2004, p. 707-765.

<sup>102</sup> Cowling 1967, p. 3, (original emphasis).

## Consequences of the Reform Act

The mid-nineteenth century concern, best encapsulated by Bagehot, was how to ‘admit the working classes to some power without giving them the whole power? How can we concede to them a share in the Constitution without sacrificing the whole Constitution to them?’<sup>103</sup> At first blush, the Reform Act 1867 added 938,427 new voters to the register and increased the size of the total electorate by 88% (four times the size of the increase in 1832)<sup>104</sup> – more than twice as many as envisaged by Lord Russell’s measure. The numbers are impressive, and are clear evidence that the hegemonic resistance to popular demand had been destabilised. Indeed, for Stephen, ‘...the Act of 1867 signified the acceptance, no less final, of the principle of democracy’.<sup>105</sup>

However, the idea of representation as a ‘technique’ should be recalled and, as in 1832, the numbers need to be broken down. First, the 1867 Act did not tackle the distinction between counties and boroughs, and so unequal representation prevailed: the number of borough voters increased by 138% to 1.22 million and county voters by just under 46% to 791,916. The Act abolished the property qualification in the boroughs and gave the vote to all householders with 12 months’ residency and to £10 lodgers. In the counties the franchise was extended to £5 property owners and £12 occupiers. The most significant change was the abolition of the practice of ‘compounding’ rates (landlord paid rates for the householder). This meant that all male occupiers were in future to pay their rates personally, which could in turn qualify for a vote. As a consequence, the 1867 Act in effect created a new subject: the working class male citizen.<sup>106</sup> The Act enfranchised 35-40% of the adult male urban working class. Three in four new electors were created in the towns – but their representation in Parliament was proportionately smaller than the counties (which enjoyed greater representation notwithstanding a numerically smaller electorate). The ratio of MPs to voters was dramatically reduced in precisely those areas where the franchise was extended. So the number of voters in Birmingham increased from 10,823 to 63,909, but that only served to increase the number of MPs from two to

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<sup>103</sup> ‘Appendix on Reform’ in Bagehot 2001, p. 201.

<sup>104</sup> The figures are taken from Seymour 1915, Appendix I.

<sup>105</sup> Cited in Clark 1962, p. 231.

<sup>106</sup> McClelland in Frader and Rose 1996.

three. In Sheffield, the number of voters rose from 8,389 to 42,402 but the number of MPs remained unchanged.<sup>107</sup> Since, overall, the towns returned radicals and the counties Conservatives, the effect of the 1867 Act was to bestow upon radical MPs large numbers of voters and upon conservative MPs a larger number of seats in the Commons. The technique of Parliamentary representation was doing an expert job.

Second, the Act incorporated the ‘fancy franchises’ (special franchises for holders of university degrees and bank depositors of over £50) to placate reactionary Tories. Their presence harked back to the old system before 1832, except that the advantages previously secured through corruption were now legalised and institutionalised. Instead of reforming the franchise along fair and equitable principles, the pattern was deliberately ‘lopsided, typically English’,<sup>108</sup> emblematic of:

A land of settled government,  
A land of just renown  
Where Freedom slowly broadens down  
From precedent to precedent.<sup>109</sup>

Writing in the *Economist* on 24 December 1864, Bagehot had recognised the need for ‘some new plan, some additional experiment, some uncommon conception’ – not to bring about, but to prevent the emergence of democracy, i.e. ‘a worse America, in which the lower classes are equally despotic, but are not equally intelligent. We must choose between *anomaly* and *democracy*. There is no third alternative’.<sup>110</sup> From this perspective, the asymmetric electoral system of the Reform Act 1867 (although Bagehot rejected it) was a near-perfect solution, and not a defect.<sup>111</sup> Populist democracy had been abated: ‘The element of conservatism in both of the chief parties maintained its position and found

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<sup>107</sup> Martin 1884, p. 75-124.

<sup>108</sup> Pugh 2002, p. 7.

<sup>109</sup> From Alfred (Lord) Tennyson’s untitled poem beginning ‘You ask me why, tho’ ill at ease’ (1833, published in 1842).

<sup>110</sup> Reprinted as ‘Appendix on Reform’ in Bagehot 2001, p. 201.

<sup>111</sup> See also Grey 1864, p.61: ‘...the success with which [the House of Commons] has been able to take so active a part in the government of the Country, and its peculiar excellencies, are to be attributed, quite as much as some of its faults, to what are regarded as defects and departures from principle in our Representative system;’ and ‘...it is chiefly by means of these defects that the Ministers of the Crown have enabled to obtain the authority they have exercised in the House of Commons’.



support in many characteristics of the electoral system, which were all to the disadvantage of democracy'.<sup>112</sup>

In sum, the ruling classes had successfully fought to defend and maintain their supremacy in Parliament. The hierarchy of the political order had been kept intact, with the monarch at the head, performing the functions of the sovereign in public. Using the tried and tested procedure of 1832, the political impulses from below had been harnessed within the existing institutional framework, thus uniting previously antagonistic classes and binding them to the existing institutions: '...the politics of the excluded began to become the politics of the included'.<sup>113</sup> Parliamentary government (as the form of government) and the House of Commons (as the representative body of the nation) had again claimed the political middle ground by providing the form and procedure for resolving political disputes. Who needs a revolution when the same results can be achieved by a political majority in a sovereign Parliament? Social and political reform had become politically acceptable to such an extent that it even seemed possible to start talking about creating a community or a nation 'instead of a number of mutually exclusive classes', and a 'national conception of politics, and a *national* government'.<sup>114</sup>

The constitutional settlement (never entirely clear or fixed in the first place) was simultaneously affirmed and undermined in 1867. 1867 upheld the system of Parliamentary government that had begun in 1832. The suffrage, government, and administrative reforms did not explicitly and fundamentally alter the legal conception of the constitution. A third wave of reform between 1883 and 1885 rationalised the electoral system which became uniform in England and Wales, Scotland, and Ireland: instead of returning two or three MPs, henceforth the normal pattern was one. With the third Reform Act in 1884 Gladstone extended the borough franchise to counties so that male householders could vote whether they lived in town or country. In short, the UK gradually acquired 'the main features of the twentieth-century electoral system'.<sup>115</sup>

But 1867 also destabilised the constitution. The imbalanced electoral system fuelled the democratic counter-narrative (politics driven by popular demand, the possibility of

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<sup>112</sup> Seymour 1915, p. 315.

<sup>113</sup> Joyce 1996, p. 194.

<sup>114</sup> Morley 1867, p. 496. See generally Hall et al 2000.

<sup>115</sup> Hanham 1969, p. 259.

universal suffrage). The Representation of the People Act 1867 (the formal title of the 1867 Act) still excluded a significant number of men. The first category contained men who were not householders, such as sons living with their parents, or servants residing with their employers that amounted to 1.5 million men by 1914.<sup>116</sup> The second category contained potential householders or lodgers who were not able to demonstrate continuous residence for 12 months (mainly in the cities where workers were mobile), which by 1914 amounted to 3.75 million men.<sup>117</sup> In addition, the early suffragists, who emerged in the late 1860s, also threw the new constitutional settlement into a state of crisis at the very moment at which the 1867 Act had tried to affirm it. Women were still voteless, and the 1867 Act disadvantaged the position of women householders further by making illegal the convenient and cost-effective practice of ‘compounding’ (combining) rates into rent.<sup>118</sup> Although Disraeli had no choice but to reform the existing property qualifications, he could not countenance the enfranchisement of women: the link between property and masculinity (rather than class) was now explicit.

### ***Conclusion:***

The late-Victorian constitution is a synthesis of ‘two different but complementary forms of possessive individualism – the oligarchic whiggery of the seventeenth century and the democratic radicalism of the nineteenth’.<sup>119</sup> The royal absolutism of the Stuarts had transformed into Parliamentary absolutism, and the Radicals’ demands (framed in Thomas Paine’s rhetoric of natural rights and constitutionalism, and by the Chartists) had been defused when Peel’s administration introduced social and economic reforms (and ignored the demands for constitutional reform).<sup>120</sup>

This constitutional compromise is befitting of an ‘unprincipled society’<sup>121</sup> that bequeathed an historic set of constitutional values (the balanced constitution, common law courts, private law concepts) to later generations and future Parliaments.<sup>122</sup> Whereas

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<sup>116</sup> Pugh 2002, p. 9.

<sup>117</sup> Pugh 2002, p. 9.

<sup>118</sup> Rendall 2000, chp. 3, p. 135-136.

<sup>119</sup> Marquand 1988, p. 177.

<sup>120</sup> Jones 1983, ch. 3.

<sup>121</sup> Marquand 1988.

<sup>122</sup> Mitchell 1965, p. 95.

France experienced an upsurge of administrative law between 1870-1914 to deal with the growth of legislation and executive responsibilities, the United Kingdom modified Parliamentary technique and relied on the old constitution (common law practices, doctrines, courts and conventions). Constitutional development was quickly out of step with social development. The supposed perfecting of the constitution ('round about 1911, just at the time when the state for which it was invented was about to die'<sup>123</sup>) coincided with a quantitative and qualitative change of government activity which Dicey regretted.<sup>124</sup> The historic constitution, valid for both Burke and Dicey, was not ready to equate popular sovereignty with rule by the majority of the people:

'...no legislator, at any period of the world, has willingly placed the seat of active power in the hands of the multitude: Because there it admits of no control, no regulation, no steady direction whatsoever. The people are the natural control on authority; but to exercise and to control together is contradictory and impossible'.<sup>125</sup>

The actuality of the idea and practice of Parliamentary government had been overtaken by the expansion of the electorate and the greater equality of constituencies, which removed some of the anomalies cherished by Grey. In 1866, a reviewer of Earl Grey's book captured the shortcomings of Parliamentary government when he wrote of the dangers of a weak government being elected by the 'ignorant multitude':<sup>126</sup>

'America during the last five years has only repeated to the world the lesson that had already been taught in France, that, if you will have democracy, you must have something like Cæsarism to control it. The feeble and pliable Executive of England is wholly unsuited to such an electoral body. A Government that yields and must yield to the slightest wish of the House of Commons, is only possible so long as that House of Commons is the organ of an educated minority. Such an instrument of Government has never yet in the history of the world been worked by a Legislature chosen by the lower class.'<sup>127</sup>

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<sup>123</sup> Mitchell 1969, p. 35.

<sup>124</sup> See the introduction to the second edition of Dicey 1914.

<sup>125</sup> Burke 1791, p. 97-98.

<sup>126</sup> Both Bagehot 1872, p. xvii, and Dicey 1959, p. cii-cv, were concerned by the lack of the new electorate's level of education.

<sup>127</sup> January 1866, *London Quarterly Review*, p. 131-148, 147.

Gamaliel Bradford (a contemporary US commentator) also exposed its weakness when he questioned whether the machinery of Parliamentary government was ‘adapted to this immense new force of universal suffrage’.<sup>128</sup> To give the legislative branch of government unlimited power of legislation in those conditions, he argued, ‘will sooner or later reduce not only the executive but the very society which has elected it to be the mere instruments of the caprices and passions of its members’.<sup>129</sup> Instead, it was vital to limit legislation so that it could further the public welfare. Within twenty years of the publication of the first edition of *The Law of the Constitution*, Dicey had to acknowledge that political developments had altered the scope and meaning of his theory of Parliamentary sovereignty:

‘Parliament under the progress of democracy became the representative, not of the middle classes, but of the whole body of householders; parliamentary sovereignty, therefore, came to mean...the unrestricted power of the wage-earners’.<sup>130</sup>

Universal adult suffrage established itself as a basic requirement of democracy only after 1918. It is obviously a necessary condition of democracy, but maybe less obviously it is not a sufficient one. By privileging the House of Commons, the political system transforms (revolutionary) popular sovereignty into (institutional) Parliamentary sovereignty, whilst simultaneously creating a political power hub that has been described as uncontrolled and despotic. The upshot is that the UK continues to enjoy a special variant of ‘democracy by consent and not by delegation, of government of the people, for the people, with, but not by the people’.<sup>131</sup>

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<sup>128</sup> Bradford 1899, p. 256- 263, 258.

<sup>129</sup> Bradford 1899, p. 262.

<sup>130</sup> Dicey 1905, p. 309.

<sup>131</sup> Amery 1947, p. 20-21.

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