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Deference in a Democratic Age: From Bagehot to Brexit

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Introduction: Why “Deference”?

Writing on Deference is like retrieving a long lost historical and political tool which over the 20th century has been discarded as analytically worthless and politically tainted. This book does not try to save the concept from the pejorative connotations with which it is loaded – quite the opposite. Analytically, deference is a slippery concept, but it is precisely for this reason and for what it says about its use – or ill-use – in modern British political thought and practice that it is important to give it the examination that has been lacking since the moment it was discarded by political scientists in the 1970s.

To summarize briefly, the term in its political capacity was in use in the seventeenth and eighteenth centuries, but never defined as such. It is really in the nineteenth century that it took its full political significance in the writings of the journalist and constitutionalist Walter Bagehot (1826-1877). This period was dominated by evolutionary ideas, even more so after the publication of Darwin’s *Origin of Species* (1859), which allowed the concept of evolution to flourish in its political and social understanding. At a time when most European nations were trying to make sense of the democratic age, the English were described by Bagehot as “deferential”¹. Bagehot referred specifically to the English – the same way he referred to an “English” constitution instead of a British one – but the term extended to an Anglo-British understanding of both the constitution and its people, imposing the dominance of the English over the rest of the Union. In Bagehot’s mind, English deference was a character trait which moderated the democratic transition in the country and made the English-dominated nation eminently governable. Bagehot used deference to describe the organic link between people and their uncodified constitution – especially with their Monarch – and how well fitted both

¹ Walter Bagehot’s use of the term is the object of chapter 3. For his description of the English as a deferential nation in *The English Constitution* (1867) see: Norman St John Stevas (Ed.), *The Collected Works of Walter Bagehot*, London, *The Economist*, 1965-1986, vol. 5, p. 378.

were, regardless of the details of reality. It also included reciprocal obligations between rulers and ruled. Later on, in the democratic age, the definition Bagehot had given was forgotten, and “deference” became a convenient veil which could be used to explain everything and nothing.

After WWII, the concept continued to be used to explain the traditional love and respect of most English people for the Crown, but less and less to explain the esteem the people could have for their political leaders and the duty such leaders were supposed to have towards those they led. Around the end of the 1960’s, and particularly during the 1970’s, the concept of deference was challenged by a number of political scientists as difficult to define, to prove and to quantify.² Ever since, it has been used by journalists to essentially define the reverential nature of the English for their institutions (sometimes extended to the British as a whole, confusing the issue even more so) and mostly for one person in particular, the present Queen. In academia, it has remained in use by sociologists, mainly linked to the language of civility and, in the United Kingdom, it has resurfaced, in the twenty first century, in the legal language of “due deference” and judicial review, to “determine the extent to which judicial opinion can legitimately override the contrary views of Government or Parliament”³.

Thus, although the concept of deference, fully introduced to British historiography in the Victorian period as a way of explaining Anglo-British political life, was debunked by political scientists in the 1970’s, it still lingers on. More than why, the question is really, how? How can such a concept hold any explanatory power about how the nation organises its political life, and what does it teach? Deference’s power as an explanatory tool has never been fully harnessed, at least in part because studies using deference come from different categories. The wealth of articles on the subject deal with a variety of fields which do not easily sit together, from history, psychology and political science, to sociology and law. This book intends to make sense of the different periods in which deference was used and focuses on its political use for what are essentially English institutions, those which dominated the Union well into the second-half of the twentieth century and until the post-1997 constitutional reforms. The link between the “Anglo-British Constitution”⁴ and deference is much more prescient than has generally been accepted and very few, apart from Walter Bagehot, have

² See especially: Dennis Kavanagh, “The Deferential English: A Comparative Critique”, *Government and Opposition*, July 1971, vol. 6, issue 3, pp. 333-60.

³ T. R. S. Allan, “Human Rights and Judicial Review: A Critique of ‘Due Deference’”, *The Cambridge Law Journal*, Vol. 65, n°3, Nov. 2006, p. 672.

⁴ Ian Ward, *The English Constitution. Myths and Realities*, Oxford and Portland, Hart Publishing, 2004, p. vii.

delves into it. As the British Constitution was increasingly transformed after the 1960's and especially after 1997, the link between deference and constitution evolved too.

There were several moments in the transformation of the concept of the deferential Englishman in the twentieth century – and by this is meant a citizen who respected the constitution of the country, wanted to conserve it, and felt that political life was better delegated to those more fit to rule than himself.⁵ In such a framework, parliamentarism and its representative nature suited the deferential English admirably well. The first challenge to this well-oiled and essentially Whiggish⁶ description, in which everything seemed to flow naturally regardless of the minutiae of the machinery, came after WWII. Britain had changed in many ways after the war, mainly through decolonisation, the opening of the country to immigration and the creation of the welfare state, which would attract many more to its shores. Politically speaking, the Suez Crisis of 1956 proved that the nation was no longer interested in fighting for a world role, post-WWII, and that what mattered was good governance at home. Much more telling was the way in which the main source of deference – i.e. the monarchy – was forced to adapt. If the monarchs had never been exempt from criticism since the nineteenth century – from Victoria's extended period of mourning after the death of Prince Albert in the 1860s, leading to a period of republicanism in the 1870's, to the unsettling episode of the Abdication crisis of Edward VIII in 1936 – the institution of the monarchy would now only be deferred to on certain conditions. From the quasi-mystic coronation of the young Elizabeth II in 1953, to the moment she became the longest serving monarch in 2016, the institution of the monarchy has been forced to modernize in ways which would have been deemed impossible to the Victorians. "The British Monarchy has survived because it is not a sacred institution, but one which depends, like every other British Institution, upon popular approval" wrote John Grigg in 1969 and it is still a fitting description of the situation.⁷ Slowly, the Monarchy was forced to appear less remote from its people. George V had already understood the importance of such a move in the 1920's and 1930's, when he extended a hand to the new Labour MPs; his son, George VI, remained in London during the war and shared the hardships of his people for the same reasons.

⁵ By the British Constitution – even though in this book, until the first Part, the emphasis will be on the English Constitution – is meant "What the Queen in Parliament enacts is law". See: Vernon Bogdanor, *The New British Constitution*, Oxford and Portland, Hart Publishing, 2009, p. 13.

⁶ The classical work on the subject is: Herbert Butterfield, *The Whig Interpretation of History* (1931), New York, W. W. Norton & Company, 1965, 144 pages. See also: John Burrow, *A Liberal Descent. Victorian Historians and the English Past* (1981), Cambridge, Cambridge University Press, 2008, x-308 pages.

⁷ John Grigg, "A summer storm", in: Jeremy Murray-Brown (ed), *The Monarchy and its Future*, London, George Allen and Unwin Ltd, 1969, p. 52.

Nevertheless, a change took place in the 1960's, essentially to make the Monarchy closer to its people because the nation had changed. This also led to a number of mistakes over the last sixty years, with ever closer exposure of the royal family, making them look far too normal to be deferred to. A century earlier, Bagehot had been very clear in his understanding of royalty, declaring that "you must never let daylight upon magic"⁸. Other errors were made too, as the young Queen was put in an unwise position to choose the Conservative Prime Minister in 1957, and especially, in 1963, after Harold Macmillan was forced to resign because of his health.⁹ How could deference survive if the Queen was to be sent into the political arena, to stoop down to the level of her people, and compromise her neutrality in the process? At the same period, but on another front, there were changes to open the royal prerogative to judicial review, making the remaining powers of the Monarch, exercised by the Prime Minister, much more open to scrutiny and, thus, to debate. Again, if each of these changes were normal in democratic countries in which the people had a right to understand and question the workings of their own constitution, for Britain, this meant that the very mechanisms of the constitutional Monarchy were exposed, removing the shrouds of mystery one after the other. The "Deferential Englishman" was made to open his eyes to the reality of his own institutions and this new awareness would further transform the mechanics of the constitution.

Deference to politicians suffered the same fate, due to important political scandals, throughout the twentieth century. If the patrician elite of the nineteenth century was better able to hide political embarrassments than the meritocratic elite which came to fully replace them in the 1960s, and especially in the 1970s, the credibility of those in power was dented along with the type of deference given to them and to the institutions they represented. Unreasoned deference was no longer suited to a democracy in which the people would have their say and had a right to keep their leaders in check. A radical change in the mores of society also took place in the 1960s. Some of the reasons for such transformations are well-known and range from the advent of economic affluence, the rise in education and social mobility. The other great nail in the coffin of Bagehotian deference was the Britain's entry into the EEC in 1972¹⁰ which gave another blow to the traditional understanding of the constitution, by effectively putting Parliamentary sovereignty under the primacy of European

⁸ Norman St John Stevas (Ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, p. 243.

⁹ Vernon Bogdanor, *The Monarchy and the Constitution*, Oxford, Clarendon Press, 1995, pp. 93-9.

¹⁰ Officially on 1 January 1973.

Laws. “Quite simply”, writes King of what happened in the sixties, “most of the old social and political deference was dead, killed off astonishingly rapidly”¹¹. But was it really?

After the 1970’s, the term deference was also discarded because it was deemed, mostly by radical thinkers, to have a paternalistic meaning, verging on the patronizing. It was seen as a tool to manipulate the people, as a sort of metaphorical pat on the back which meant that everyone should keep his place for the system to work with ease. It was mainly in this last sense that it was often used to describe the ways in which a certain category of politicians, mainly Tories, would react towards their voters and how Tory voters would react towards their leaders.¹² This opposition between a category of voters who would not question politicians and others who felt that it was their right to do so in a democracy, also pin-pointed the belief that the deferential voter, while not uninterested in political life, would necessarily be reluctant to get involved in it. According to such an understanding, deference became either pejorative or used to describe the love of the monarchy, but it was never explained in its context and its interpretation depended on the ideas of the authors using it. Deference ceased to be useful politically and it was abandoned as an analytical concept altogether.

At least from an analytical perspective, this was a mistake, as this study hopes to show, and the reasons for its analytical abandonment were themselves political, deriving equally from wishful thinking, on the part of the left, and a desire to let sleeping dogs lie, on the part of the right. The abandonment of deference takes place on both sides, although at different paces, in response to a greater democratization of British society (which makes itself felt both within and outside of politics – and the outside of politics changes causing political ones). By retrieving the concept of deference, we can arrive at a new interpretation of attitudes to authority and to power in modern Anglo-British political thought. Observing political and institutional deference in an egalitarian age, when it is believed to have died out, can help us understand the political behaviour of both those who are governed and those who govern at a precise period – from several important moments in the nineteenth to the twenty-first century. The analysis of modern deference here is really a “theory of moral sentiments”¹³ of a given nation, at a given time. What appears with it is a set of moral attitudes in an English-dominated democratic society. Deference can still be a useful instrument in a constitutional box, which has been very shaken in the twentieth century and even more so,

¹¹ Anthony King, *The British Constitution* (2007), Oxford, OUP, 2010, p. 66.

¹² See: Jessop, Bob, *Traditionalism, Conservatism and British Political Culture* (1974), Routledge revivals, 2011, 287 pages. See especially the types of deference he describes: pp. 34-7.

¹³ If the expression necessarily brings back to Adam Smith’s seminal work, *A Theory of Moral Sentiments* (1759), it is also, here, especially in reference to the conclusion of the article of Claudine Haroche, “Le comportement de déférence”, *Communications*, 69, 2000, p. 24.

since 1997. If analysed in a political context, it allows us to understand some of the nation's decisions since the nineteenth century and how certain choices – including the vote in favour of Brexit in June 2016 – are the result of a certain English way of thinking – of its very nature – which transcends both the democratic changes of the twentieth century and the multicultural nation that the country has become.

The Many Uses of Deference

So, what is Deference? Can a simple definition be given as a starting point? The common definition is that of a form of respect bestowed to another, in either the meaning “to refer to” or “to yield”. *The Oxford English Dictionary* dates the use back to the seventeenth century from the French word “déférer”, in use since the fourteenth century, meaning to “yield or to comply” to the opinion of another person and to show him due regard. However, such a simple definition takes away one of the most important aspects of the word if it is to be analysed in the democratic age: showing deference to someone does not necessarily mean that this person is a superior to be “yielded or complied to”. It can be a gesture, an act which is willingly given to an equal as part of social customs. In this sense, it is part of the traditions of a given society which eases the links between people. It is not submission to a superior nor is it subordination to customs only but self-restraint, directly, for the common good and, indirectly too, to avoid conflict.

The term has been mostly analysed in its anthropological and its sociological meanings throughout the nineteenth and twentieth centuries, adding new layers of explanations.¹⁴ Deference is related to rules of conduct in society and also to a moral code of conduct. Such relations are determined by “obligations” and “expectations” between two people. It is the sense of propriety according to such rules of conduct – as adapted to the traditions and customs of a given society – which makes social interaction possible. If transposed into politics and into law, deference has a role to play in easing “obligations” and “expectations” in the working of a democratic regime.

¹⁴ Most recently, see especially: Allan Mazur, *Biosociology of Dominance and Deference*, Rowman & Littlefield Publishers, 2005, 184 pages. The term is also used in a number of ways which are not related to the present work. For example, see: Sue Harper and Vincent Porter, *British Cinema of the 1950s: The Decline of Deference*, Oxford University Press, 2003, 440 pages; Alison Jill King, *Domestic Service in Post-Apartheid South Africa: Deference and Disdain*, Aldershot, Ashgate, 2007, xi-214 pages; Robert Cummings Neville, *Ritual and Deference: Extending Chinese Philosophy in a Comparative Context*, State University of New York, Series in Chinese Philosophy and Culture, 2008, 202 pages; Frank N. Laird, “The Decline of Deference: The Political Context of Risk Communication”, *Risk Analysis*, vol. 9, n°4, 1989, pp. 543-50.

The sociologist Erving Goffman¹⁵ (1922-1982), drawing on data produced from observational studies in a medical environment¹⁶, drew out several comparisons concerning social action and deference. For him, “the rules of conduct transform both action and inaction into expression, and whether the individual abides by the rules or breaks them, something significant is likely to be communicated”¹⁷. By this, he means that following a law or not will have consequences and that it is the same thing for a custom, even if it is not enacted. In this sense, deference comes in as a ritual in society, as an act of respect which can only be given to somebody else. To reduce deference to an act of submission would miss the point. It is an act which follows a ritualistic rule of social conduct – such as in greeting one another in the street – without which it would be difficult to function smoothly. Goffman points to the fact that deference is often a sign of “affection and belongingness”¹⁸. This does not mean that this affection is necessarily sincere, but it is a rule which guides social interaction and is expected. If not given, it might cause offense or incomprehension and lead to exclusion. One could almost imagine deference as a cement to social interaction, not spoken of, not easily seen, but without which social interactions would not work. Goffman concludes that “many automatic acts of deference contain a vestigial meaning, having to do with activity in which no one is any longer engaged and implying an appreciation long since not expected – and yet we know these antique tributes cannot be neglected with impunity”¹⁹.

In many ways, neglecting deference is akin to a declaration of war, for example, one academic refusing to attend the inaugural lecture of a colleague of the same department when he should do so and not excusing himself or, to use another example, refusing to wash and to be clean. Goffman considers the first example as “presentational deference” and the second one as “deferential avoidance”²⁰. Those are unwritten but essential rules of conduct to the easy march of society and they are not only linked to etiquette or civility. In the first instance, the case of the academics, there are many capacities in which the colleague may be offended: first as a person of the same department, second as an academic in the same field and possibly, third, as a younger colleague not acknowledged by an older one or vice-versa. It is in each of those capacities that offence is given. If the personal offence could be overlooked, the explicit social offence may not be. The case of not washing and being clean in society is more problematic as it is the personal choice of the person to be dirty and to smell

¹⁵ Erving Goffman, “The Nature of Deference and Demeanor”, *American Anthropologist*, 58, 1956.

¹⁶ *Ibid.*, p. 473, ft p. 499.

¹⁷ *Ibid.*, p. 475.

¹⁸ *Ibid.*, p. 479.

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 485.

unpleasantly.²¹ What Goffman points out is that “presentational deference” and “deferential avoidance” are often opposed and difficult to combine. “There is”, he writes, “an inescapable opposition between showing a desire to include an individual and showing respect for his privacy”.²² Both forms of deference are useful because they describe what social interaction is all about. They also are based on the liberty of individual choice and the consequences of such choices on others. Lastly, such customs are educational in nature in the sense that without them, society may collapse. They are the invisible cement of the structure.

If transposed to the political world, this opposition – “presentational deference” and “deferential avoidance” – becomes valuable. In politics, it is related to the traditional opposition between the private and the public sphere, of liberty and responsibility in democratic societies. The main contradiction exposed by numerous thinkers, like Benjamin Constant or John Stuart Mill in the nineteenth century, is how to accept, on the one hand, growing individualism in society – which invariably removes people from the collective and – and, on the other hand, customary deference – which leads to the self-censorship of the individual to allow him to live fully in society? Another question interrelated to this one, is how to get the individual to participate fully in society and in the democratic process, whilst keeping both his individuality and his capacity to defer to the system. As will be seen in the first part of this study, Walter Bagehot and others such as the burgeoning Victorian sociologists, were most keen on using sociological explanations and applying them to political societies to find a solution to such predicaments.

Political institutions are shaped by the interactions of people and, in effect, political constitutions only exist because there are areas in which such interactions need to be regulated in order to find ways to accommodate confronting points of view. This is where deference becomes essential as one of the pillars of an Anglo-British political system which has been adapted to the nature of its people through the ages. If deference does not strike the eye, nevertheless, it is there for those who want to see it. Montesquieu noted how “there is also in the world, one nation that has, for the direct end of its constitution, political liberty”²³. He meant that the English were in their psychological and moral constitution suited to their political constitution. Deference was, and is still, part of the nature of the English – even, remarkably, in its very multicultural diversity nowadays. It is a lot easier for an external eye –

²¹ This attitude collides with the idea that one might wish to defer to established opinion and desire for social acceptance

²² Erving Goffman, “The Nature of Deference and Demeanor”, *American Anthropologist*, 58, 1956, p. 488.

²³ Charles Louis de Secondat, Baron de Montesquieu, *The Complete Works of M. de Montesquieu*, London, T. Evans, 1777, 4 vols, Vol. 1., http://oll.libertyfund.org/titles/837#Montesquieu_0171-01_879, accessed 2 June 2017.

in this case a French observer – to distinguish what is left of it at work nowadays than it is for the nation to see it themselves. Clearly, referring to “English deference” is problematic but the old constitution, as opposed to the post-1997 new one, had a clearly English nature which dominated the British constitutional settlement well until devolution in 1998. Therefore, if deference is less about behaviours nowadays than about a set of attitudes and beliefs towards politics (on the part of both rulers and ruled), then what is to be studied in this book is the acceptance of a moral order to which citizens willingly submit without a codified document compelling them to do so.²⁴ Those are questions which go deep into the core values of what being English is also about: their habits, their customs and their mores.

Over the last twenty years, as briefly mentioned above, deference has also been defined and used in English public law as “the principle that the courts (out of respect for the legislature or executive) will decline to make their own independent judgment on a particular issue”.²⁵ With the passing of the Human Rights Act of 1998, which incorporated the European Convention on Human Rights into domestic law, the judges can now issue a declaration of incompatibility if the national law is not conform to the Convention rights. These changes mean that the judges have much more scope than before in supervising the work of government and that a rationalization of the law is well ahead. This has led to a number of studies on the scope of the role of judges and how much they should defer on democratic grounds to the decisions of the government.²⁶ It is also linked to the question of how much deference should be given to the opinion of experts. Public Law scholars either reject the concept of “due deference” altogether as being dangerous to the concept of the separation of powers post-1997 – as the subordination of rational law to the government and/or to expertise – or they see its use in a society in which seeing every side of a given difficulty has become

²⁴ On deference as both a “type of behaviour” and a “set of attitudes”, the analysis that Howard Newby carried out in 1975 still remains very useful. Howard Newby, “The Deferential Dialectic”, *Comparative Studies in Society and History*, Vol. 17, No. 2, Apr., 1975, pp. 139-64.

²⁵ Richard Clayton, “Principles for Judicial Deference”, <https://fr.scribd.com/document/22572365/PRINCIPLES-FOR-JUDICIAL-DEFERENCE>, accessed 2 June 2017.

²⁶ See especially: David Dyzenhaus, “The Politics of Deference: Judicial Review and Democracy”, in: M. Taggart (ed.), *The Province of Administrative Law*, Oxford, Hart Publishing, 1997, pp. 279-307; Jowell, Jeffrey, “Judicial deference: servility, civility or institutional capacity?”, *Public Law*, 2003 (Winter), pp. 592-601; Aileen Kavanagh, “Defending Deference in Public Law and Constitutional Theory”, *Law Quarterly Review*, issue 126, 2010, pp. 222-50; Aileen Kavanagh, “Judicial Restraint in the Pursuit of Justice”, *University of Toronto Law Journal*, vol. 60, n°1, winter 2010, pp. 23-40; T. R. S. Allan, “Deference, defiance, and doctrine: defining the limits of judicial review”, *University of Toronto Law Journal*, Volume 60, Number 1, Winter 2010 pp. 41-59. See also: Lukasz Gruszczynski and Wouter Werner (eds), *Deference in International Courts and Tribunals: Standard of Review and Margin of Appreciation*, Oxford University Press, 2014, 464 pages; Legg, Andrew, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality*, Oxford, Oxford University Press, Oxford Monographs in International Law, July 2012, 251 pages.

increasingly impossible and deferring, without submitting, can still be useful.²⁷ Other questions are also related to such works, such as how to reconcile individual rights with public decisions, as in the case, for example, of a Catholic refusing same sex marriage in a country having voted in favour of it? Other scholars in this field, especially as clear a work as Philip Soper's *The Ethics of Deference. Learning from Law's Morals*²⁸ (2002), give new insight into the use of the duty of deference in political obligation from a legal standpoint that will be used in the conclusion of this book. Deference – taking on an egalitarian sense – then becomes the self-limitation of a citizen who has recognized the common value of the law and who willingly restrains his own desires but who, at the same time, is aware that this deference can be abused and used against him.

To try and briefly summarize what will be fully defined in the first chapter, there are two main ways of defining political deference: it is either hierarchical in its structure or it is not. An egalitarian type of deference may exist in a country in which the people recognize its governing elite having created it through a democratic process that they all willingly chose to accept at the start. Egalitarian deference means that, politically, citizens all start from the same equal position. The example of the USA can illustrate this type of deference even if, in the eighteenth century, equality was not recognized for slaves and women. Effectively, egalitarian deference, which could also be described as republican, entails a rational and independent acceptance of the citizens regarding their political institutions. This is not what English deference is about. Due to historical circumstances, English deference started from being hierarchical – despite the revolutions of the seventeenth century – and evolved into a democratic structure. In theory, all the citizens of the United Kingdom are also equal in their position regarding politics but, in reality, having a good understating of the rules of the political game is much more difficult.

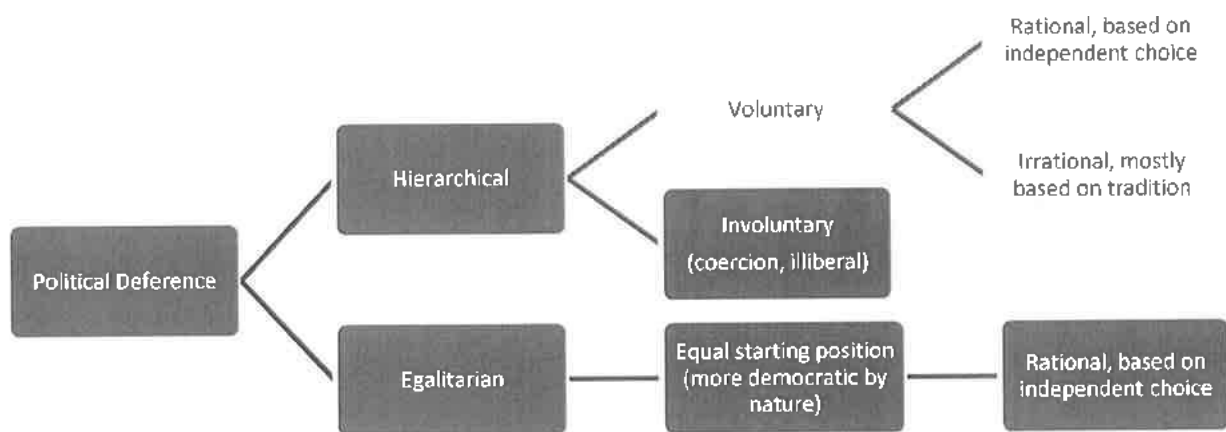
Initial hierarchical deference may be split into *involuntary* deference, which is essentially based on fear and generally not the appendage of democratic liberal societies, or it may be *voluntary*, and goes hand in hand with liberal-democracies. This is where the main point of this study will reside (in yellow in the graph below) because voluntary deference may be further subdivided into two final forms: either rational and enlightened, or irrational and mostly based on traditions. The one which has lasted in England is precisely voluntary

²⁷ For both sides of this question, see especially: T. R. S. Allan, "Human Rights and Judicial Review: A Critique of 'Due Deference'", *The Cambridge Law Journal*, Vol. 65, n°3, Nov. 2006, pp. 671-95; Alison Young, "In Defence of Due Deference", *Modern Law Review*, vol. 72, issue 4, 2009, pp. 554-80.

²⁸ Philip Soper, *The Ethics of Deference. Learning from Law's Morals*, Cambridge University Press, 2002, xvi-189 pages.

rational deference, even if it has often incorporated involuntary elements of deference via the notion of tradition and rituals.²⁹ Eventually, as is the case in the UK in the twenty-first century, egalitarian and voluntary deference end up being one and the same thing, but the ways of reaching such a stage are very different and have different results on the nature of the link between constitution and citizens. In the end, it is how the England-dominated Britain has moved through such stages which remains essential to understanding what English deference is, in accordance to the Anglo-British constitution.

1.1 Typography of political deference



This study is concerned with the political meaning of the term and its institutional implications in Britain over the past two centuries. More precisely, it is the English constitution and the English character which will be analysed, as most of the writings on the subject are related to England and to the English rather than to the other nations of the United Kingdom. Clearly, there was a dominance of England over the institutions of the country, but it is precisely in this evolution, from the old to the new post-1997 constitution, that the role of

²⁹ The concept of “rational deference” was expressed in a 1989 article to mirror the concept of “rational ignorance” of Anthony Downs (1957) and Gordon Tullock (1967). The definition given in the present work corresponds to the way in which the English have moved along with their uncodified constitution and therefore hopes to make clear what the concept means in relation to an English way of being deferential. See: James. M. Buchanan and Vanberg, Viktor, “A Theory of Leadership and Deference in Constitutional Construction”, *Public Choice*, vol. 61, n°1, April 1989, pp. 15-27, esp. pp. 18-20.

voluntary deference will better be brought out. Since the nineteenth century, the country has had to resolve the tension between deference and democratic equality and how to retain some form of the older idea of deference while adapting to a new political landscape that is now both democratic and partially codified in terms of the constitution.

Deference as political tool in a Democratic Age

The methodology chosen for this work will start with what Quentin Skinner (relying on Michel Foucault) meant by “bringing buried intellectual treasures back to the surface” in the debate of the past.³⁰ But once those treasures have been uncovered, their implications on our present way of thinking will be used. “Presentism”, or using the ideas of the past as a contribution to understanding the present, is nothing short of heresy for most intellectual historians. The dangers range from anachronisms to false reconstructions, but there is a connection between historically understanding what deference meant in several different contexts – in their self-compacted little histories – and making sense of the general picture of those little histories for contemporary political critique. The reason why deference has been rejected as a concept in the 1970’s, but is still used as a word with a vague meaning nowadays, is that the current usage is the child of the definitions given to it in the nineteenth century. It would be ill-advised not to make sense of what it has led to in the twenty-first century.

The study of deference as a political tool offers an insight into two important attitudes within the citizen: the attitude towards authority and the attitude towards political power. Of course, here, it is not to say that there exists – if such a thing were even possible – one and only English central value system common to all its citizens. There is no absolute as such possible and analysing deference this way could only be done according to a certain class or category of citizens and validated by data. There have been many studies of deference, especially over the second half of the twentieth century, but they have generally been carried out by political scientists concerned with voting behaviours and electoral support for a party, mainly the Conservative party.³¹ The present work is much more an attempt to uncover

³⁰ Quentin Skinner, *Liberty before Liberalism* (1998), Cambridge, Cambridge University Press, 2014, p. 112.

³¹ Several interesting studies were published in the 1960’s and in the 1970’s on parties and voting behaviours: see the bibliography. The most challenging work written at the time is certainly: Bob Jessop, *Traditionalism, Conservatism and British Political Culture* (1974), Routledge revivals, 2011, 287 pages.

political deference and, with it, to understand the nature and transformations of the Anglo-British institutions over the course of two centuries.

Firstly, the British constitutional Monarchy is a regime of its own in which the monarch has still got, in the words of Walter Bagehot, “the right to be consulted, the right to encourage, the right to warn”.³² If these rights did not encompass all those of Queen Victoria at the time – Bagehot was well aware of his simplified but useful explanation – they have certainly come to be regarded as the rights held by the sovereign in the twentieth century.³³ As Bagehot pointed out, these rights, if wisely exercised, gave enough scope for the monarch to play an important political role and keep capital influence.³⁴

Secondly, the United Kingdom is one of two countries, with Israel, which does not have a codified document to which citizens can refer to as their “constitution” and where they can read what the political rules are.³⁵ This is what Bagehot had attempted to do when writing the several articles which became his famous magnum opus, *The English Constitution*.³⁶ That he deliberately simplified certain aspects of the system does not disqualify his interpretation. He had wanted to give a manual which would explain to the people – that is, to those who were not only part of the chosen few – how the system worked at the time of the 1867 Reform Act. He did this by also offering a social interpretation of the mores of the nation in relation to its system. That uncodified constitution, as Bagehot had rightly pointed out, allows certain aspects of the past to have a mythical force as they are not plainly explained in writing (from the existence of the Monarchy and the sovereignty of Parliament, to the rule of law). Over the last twenty years in Britain, there has been a great deal of debate whether the country should remain with an uncodified instrument of governance. The country has changed. Parliaments now have a five year fixed-term³⁷ and a Cabinet Manual³⁸ has been put together – which

³² Norman St John Stevas (Ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 253.

³³ Interestingly enough, as George V, George VI and Elizabeth II have all been made to read Bagehot’s *English Constitution*, one often wonders in what ways they came to become the very embodiment of what he had expressed and which did not fit Queen Victoria at the time.

³⁴ Bagehot added just after his famous description of the rights of the monarch, “and a king of great sense and sagacity would want no others. He would find that his having no others would enable him to use these with singular effect”. Norman St John Stevas (Ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 253.

³⁵ New Zealand was a third country but the Constitution Act of 1986 and the Bill of Rights Act of 1990 can be considered as covering most of the country’s constitutional law even if there is still no constitution as such. Israel has also a series of Basic Laws.

³⁶ *The English Constitution* first appeared as nine articles published in the *Fortnightly Review* from 1865 to 1867. See: Norman St John Stevas (Ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, pp. 161-3.

³⁷ The Fixed-Term Parliaments Act was passed in 2011 as one of the points of agreement between the Conservatives and the Liberal-Democrats to set up the 2010 Coalition government. The act has long lasting constitutional consequences as it modifies the old ways of governing when a government would fall with a vote of confidence or a dissolution would take place when the PM decided it would be most favourable for a new general election. See: <http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted> (accessed 10 August 2015).

makes more explicit the “internal rules and procedures under which the Government operates”³⁹. However, the lack of an uncodified constitution remains an oddity as the constitutionalist Vernon Bogdanor wrote in a both witty and warning tone in June 2015:

If one joined a tennis club, paid one’s subscription and asked to be shown the rules, one would not be pleased to be told that they have never been gathered together in one place but were to be found in past decisions of the club’s committee over many generations, lying scattered in many different documents, and that in any case some of the rules – conventions – were not written down at all. We would pick these up as we went along, with the implication that if we had to ask we did not really belong. Such a rationale might have been acceptable in the past when Britain was a more homogenous and deferential society. It will hardly do for the assertive, multicultural country of today. Britain used to resemble a country house suitable for those prepared to live in it as guests and accept the rules of the proprietors. A codified constitution could help make Britain a genuine home for all its citizens⁴⁰.

Vernon Bogdanor rightly points out that if this could work out in the past, it can no longer do so in a multicultural and devolved Britain. However, one of the most admired traits of the English has been the ability to constantly adapt and find ways of solving the problems through debate and a certain amount of common sense. In the words of the constitutionalist Sir Ivor Jennings, echoing numerous thinkers of the past: “Even a written constitution, however, is but a slight check – as many dictators have shown – and the foundation of our democratic system rests not so much on laws as on the intention of the British people to resist by all the means in its power attacks upon the liberties which it has won”.⁴¹

The question of political rationalism remains important, because reconstructing an uncodified constitution is not easy and may lead to a number of other disadvantages. Such political decisions as the reform of the role of the Lord Chancellor, after the Constitutional Reform Act of 2005, have shown that unforeseen consequences then appear in an age-old

For the constitutional implications see the report by Professor Robert Hazell and his team on Fixed term parliaments: <https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/150.pdf>, accessed 10 August 2015. Theresa May has decided to repeal the act, see “Forward, Together: Our plan for a Stronger Britain and a Prosperous Future – The Conservative and Unionist Party Manifesto 2017”, p. 43, accessed 21 May 2017.

³⁸ *The Cabinet Manual. A guide to laws, conventions and rules on the operation of government* (2011) is available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf, accessed 10 August 2015.

³⁹ *Ibid.*, p. iii.

⁴⁰ Vernon Bogdanor, “Magna Carta: The competing forces that cry out for a constitutional convention”, *The Independent*, 14 June 2015.

<http://www.independent.co.uk/news/uk/politics/magna-carta-the-competing-forces-that-cry-out-for-a-constitutional-convention-10319520.html>, accessed 7 August 2015.

⁴¹ Sir Ivor Jennings, *The British constitution* (1941), Cambridge, Cambridge University Press, 1968, p. 11.

system leading to a number of new problems.⁴² Furthermore, society may be less *hierarchically* deferential than it was, while still remaining deferential in many other ways – for example, in a voluntary way, as will be seen further on. The type of deference to which Bogdanor refers is the type of behaviour mentioned above, by which he means a voluntary type of submission which is really unenlightened, as it does not question power. But, there is another type of deference which is rational, enlightened, and based on independent choice. As a set of attitudes, it still remains. So, the need for the codification of the constitution as described by Bogdanor should not be linked to the end or not of deference in society but, much more, to the changes required in a twenty-first century democracy. What Sir Ivor Jennings pointed out about the importance of the spirit of liberty of the English, and by extension the core of their constitution, is linked to this very type of rational deference which has supported the system all along. The challenge is to achieve the one without getting rid of the other.

Therefore, trying to understand deference is linked to an idea of liberty which is very English in its definition, essentially one of “freedom as non-interference” instead of a much more Republican description of “freedom from subjection”.⁴³ Deference in its voluntary form is part of this liberal framework because it allows the uncodified constitution to breathe, so to speak, through it. One of the main problems nowadays is that the nation is moving toward conflating freedom as non-interference with freedom from subjection, wanting a codified constitution to secure their rights, and walking away from their past and what made them so different and so admired. Essentially, voluntary rational deference emerges as the backbone of English Liberty.

The main problem with refusing to engage fully with the concept of deference – by just saying that it has faded away – is that neglect of deference obscures what is hidden at the core of the system. In the twenty-first century, the Anglo-British population has kept a certain innate deference which is difficult to pinpoint and quantify but which is there, very much alive, like a little flame. The main weakness of hierarchical deference is that it is seen as being incompatible with the democratic and egalitarian age. This is a false criticism which ignores

⁴² The constitutional implications of the changes made to the role of the Lord Chancellor were numerous, see: Lord Falconer of Thoroton, “The role of the Lord Chancellor after the 2005 Reforms”, 2015 Bentham Association Inaugural Address, 11 March 2015, <http://www.laws.ucl.ac.uk/wp-content/uploads/2015/03/The-Role-of-The-Lord-Chancellor-After-the-2005-Reforms-Lord-Falconer-of-Thoroton-PC-QC.pdf>, accessed 15 August 2015.

⁴³ Philip Pettit prefers to refer to “freedom as non-domination” in the Republican tradition. For a short version of his ideas see his own “Conclusion. The argument in summary” in: Philip Pettit, *On the People’s Terms. A Republican Theory of Model of Democracy* (2012), Cambridge, Cambridge University Press, 2014, pp. 293-310.

the notion of rational deference as something more complex than strict submissive behaviour. It might also not suit a great number of citizens to look into the machinery of power as closely as some politicians would like. The mainly English understanding of decorum, of “pomp and circumstance”⁴⁴, their love of traditional elements in their political system and their attention to such details but in a modernised way are the sign that they may well have adapted hierarchical voluntary deference to an egalitarian society.⁴⁵ The only question is how?

What is much more dangerous is that the democratic age has encouraged political disengagement. This has backfired on the people themselves. Describing the type of despotism he feared would arise in democratic nations, Alexis de Tocqueville analysed the dangers in democracies and attempted to give a solution reconciling private individualism with the public good.⁴⁶ He was well aware that Democracies had innate faults which could create despotism. “I believe”, Tocqueville wrote,

“that it is easier to establish an absolute and despotic government among a [democratic] people where conditions are equal than among another, and I think that, of such a government were once established along such a people, not only would it oppress men, but in the long run it would rob each of them of some of the principal attributes of humanity”.⁴⁷

Tocqueville could see that democratic people were naturally deferential to the majority and to public opinion and that they could be ill-treated. While Britain has not fallen victim to the despotism Tocqueville feared, a new political class has appeared in Britain – one much more aware of the still deferential attitude of the citizens and, thus, better able to abuse it.

Effectively, it is a double problem that contemporary British politics is facing : that of several kinds of deference – rational but also the remains of irrational voluntary deference –

⁴⁴ In reference to Edward Elgar's 1901 *Pomp and Circumstance March no. 1*, also known as the ‘Land of Hope and Glory’ march. It is also a reference, made by Elgar himself, to William Shakespeare's *Othello* when in Act III, Scene 3, Othello referring to what he believes has been Desdemona's infidelity cries:

“Farewell the neighing steed and the shrill trump,
The spirit-stirring drum, th' ear-piercing fife,
The royal banner, and all quality,
Pride, pomp, and circumstance of glorious war!”

⁴⁵ Not everybody agrees with deference – therefore agreeing that it still exists. At the time of the Queen's Diamond Jubilee in 2012 some dissenting voices appeared. Penny Laurie, for example, in the *New Statesman*, wrote about Andrew Marr's documentary on the Queen at the time that he was “obsequiously describing the point of all this panting and groaning: the desperate notion that royal pomp and circumstance can bring together a country which is, in reality, only growing more divided, and the idea that the burgeoning representative crisis in Britain doesn't matter because an unelected aristocracy is actually in charge. That this is supposed to be comforting says much about the state of the nation. Whether or not the Queen herself is a lovely old lady with a fantastic array of hats is beside the point. This is not history. This is masturbation, and Britain is in too much trouble right now to sit around playing with itself. Penny, Laurie, “Enough of this royal deference”, *New Statesman*, 13 Feb. 2012. <http://www.newstatesman.com/node/183925>, accessed 13 August 2015.

⁴⁶ Alexis de Tocqueville, *Democracy in America*, Liberty Fund, vol. 2, chapter 6, pp. 1245- 77.

⁴⁷ *Ibid.*, chapter 7, p. 1262.

which also accepts certain attitudes in a modern democracy that make citizens more vulnerable to abuse. Added to the two unsolvable dilemmas of individualism and globalization, several moral questions arise, from the behaviour of the citizens to the role of their leaders. To a certain extent, democratic Britain has ruled out the aristocratic influence and the old ways of resorting to patronage and influence, but it has not brought a new morality into politics. It has even encouraged a form of individualism which encourages political inertia; in a globalised world which cuts direct-line accountability, this has led to a dangerous web of political apathy which only seems to shift when great questions are at stake (the Scottish Referendum of 2014 and the referendum on Brexit in 2016).

What this work, on the different political uses of deference, wants to uncover is precisely what cannot be measured or easily seen, and to get to the core of some of these perennial questions. Because of a supposed lack of empirical evidence, deference has been rejected by political scientists, left aside by political philosophers, and scarcely regarded by historians and some sociologists. Yet, it is still at the heart of – and perhaps even more important to – Anglo-British political life and it can be perceived, even if one can no longer see it as well as in the nineteenth century. Or rather, deference is perceived in the constitution and its ceremonialism, keeping alive in the country a love of traditional rituals and honours which cannot be easily overlooked for their political significance. The transformation of the constitution since 1997 has also had an impact on rational deference (and vice-versa) but, maybe now, more than ever, as the existence of the UK as a Union is compromised, understanding one of the internal mechanisms of the old structure helps to make sense of what has been happening in the last twenty years.

History of political thought, intellectual history and the study of the concept of deference

In the history of political thought, signalling that one is attempting to understand the meaning of a concept over a long period of time immediately sets off alarm bells in some of the readers' minds. Since the end of the 1960's, with the writings of the historians of the Cambridge School and, later on, of the Sussex School⁴⁸, the history of political thought has

⁴⁸ The "Cambridge School" is the expression used to refer to the historians (generally from the University of Cambridge but not only) who have followed the path laid by the British historian Peter Laslett in his innovative studies of the texts of John Locke and Robert Filmer. See: John Locke, *Two Treatises of Government*, Peter Laslett (ed.), Cambridge University Press, 1960, xiv-521 pages and Robert Filmer, *Patriarcha and Other Political Works of Sir Robert Filmer*, Peter Laslett (ed.), Oxford: Basil Blackwell, 1949, 326 pages. Laslett was followed by John Dunn, John Pocock and Quentin Skinner who all transformed the ways of studying the history

challenged the very possibility of making sense of a concept over any other period than its own, i.e. the background in which it was produced and used.⁴⁹ Analysing the development of a concept becomes the study of ideas in context, in the texts in which the concept was used and the ways in which the texts were received and used by contemporaries. The focus is on what an author was trying to do within his *milieu*. The name “contextualism” was given to it but it has the great disadvantage of reducing this approach to “the context” whereas what was meant was to make sense of the conventions (whether cultural or political, of language, to name but a few) used by authors of the past to communicate their views.⁵⁰ Therefore, this “contextualist” approach, as developed by Quentin Skinner and J. G. A. Pocock (even if both authors have differences of points of view), does not consider the history of a concept. The very idea of a “history” of deference would be in great danger of rewriting the past to fit in a linear story of deference which would necessarily be the constructional framework bias of its author. There can only be separate “histories” of the use of a concept in argument, and not a linear history of a concept itself. Hence the reason why this work is a genealogy of the term and does not attempt in any way to be a history of deference.

However, one of the problems of studying the concept of deference is that it *has* been used over a long period of time – even if it is considered as an ineffective analytical tool

of political ideas by focusing on the intellectual and linguistic context of the creation of a text and the intentions of its author. The foundation of the Cambridge School is explained by John Pocock in: J. G. A. Pocock, “Foundations and Moments”, pp. 37-49 in: Annabel Brett, and James Tully (eds), *Rethinking The Foundations of Modern Political Thought*, Cambridge: Cambridge University Press 2007, 310 pages.

The founding historians of the so-called “Sussex School” are Peter Burke, John Burrow, Stephan Collini and Donald Winch. Together in the 1980’s, they produced a number of studies which have helped to reshape intellectual history. See the description given by Stephen Collini, “Intellectual history”, *Making History the changing face of the profession in Britain* in:

http://www.history.ac.uk/makinghistory/resources/articles/intellectual_history.html, accessed 17 August 2015. A number of historians, such as Richard Whatmore and Brian Young, have since imposed intellectual history as a field of its own. See their 2 volumes: Stefan Collini, Richard Whatmore and Brian Young (eds), *Economy, Polity, and Society & History, Religion, and Culture: British Intellectual History 1750–1950*, Cambridge University Press, 2000.

⁴⁹ The main article to have explained this approach is Quentin Skinner’s published in 1969. See: Quentin Skinner, ‘Meaning and Understanding in the History of Ideas’, *History and Theory*, vol. 8, n°1, 1969, pp. 3-53. Skinner amended it over the course of his career as it generated criticism to which he has answered extensively. See: James Tully (ed.), *Meaning and Context : Quentin Skinner and his Critics*, Princeton, 1988, xii-353 pages. See also the last version in: Quentin Skinner, *Visions of Politics. Volume I: Regarding Method*, Cambridge, Cambridge University Press, 2002, 225 pages. The other main work as the pillar of the contextualist method is John Pocock’s. See: John Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton, 1975, x-602 pages. Pocock’s ideas on his methodology may be found in: J. G. A. Pocock, *Political Thought and History. Essays on Theory and Method*, Cambridge University Press, 2009, 296 pages. See also: John Dunn, “The Identity of the History of Ideas”, *Philosophy*, 1968, vol. 43, pp. 85-104.

⁵⁰ The “contextualist” method is explained in all its richness by Iain Hampsher-Monk in “Speech Acts, Languages or Conceptual History”, pp. 37-50 in Iain Hampsher-Monk (et al), *History of Concepts. Comparative Perspectives*, Amsterdam University Press, ix-293 pages.

nowadays⁵¹. The ways in which it has evolved over that long period do help us to think about present social institutions and behaviours but this does not mean reconstructing a linear history of the idea of deference or creating a retrospective theory out of it.

The “contextualist” method has transformed the history of political ideas and the point of the present study is not to depart from it, however much the study of the history of concepts may seem anathema to Skinner’s approach. At the end of his famous 1969 article on the subject, he wrote: “To discover from the history of thought that there are in fact no such timeless concepts, but only the various different concepts which have gone with various different societies, is to discover a general truth not merely about the past but about ourselves as well”⁵². This has led to the criticism – especially on the part of political philosophers⁵³ – that the past would then have nothing to give to the present. If Skinner refuses “general truths”, he has amended his position over the years and does not deny the existence of perennial questions.⁵⁴ To study deference, in such a light, this book will first explain what deference is and focus on the main definitions as they appeared pre-nineteenth century and especially in the writings of Walter Bagehot in the 1860’s. Then, it will attempt to show how deference operated in the twentieth and twenty-first centuries at a number of critical moments in the political history of the country, giving several separate stories of deference in the context of the transformations of the old constitution to the new, post-1997 one. Perennial questions do arise regarding deference, none less than the reason why the term is still used.

To a certain extent, out of the “contextualist” way of looking at the past, grew intellectual history⁵⁵. This expression would tend to make believe that these historians are a homogenous group but, in reality, if some historians came from Sussex University, they all added a new layer to Skinner’s methodology by welcoming interdisciplinarity and the study of a variety of sources in the study of intellectual history. Their work has focused on the activity of intellectual life – its historical evidence – the way others had focused on social history or the history of science. They have also “opened” up their research to European

⁵¹ “...Our constitutional problems have not arisen in a vacuum but reflect real pressures of social change – in particular, the end of deference and the breakdown of old class and party loyalties”. Vernon Bogdanor, “The crisis of the constitution”, *New Statesman*, 23 April 2015.

<http://www.newstatesman.com/politics/2015/04/vernon-bogdanor-crisis-constitution>, accessed 3 August 2015.

⁵² Quentin Skinner, ‘Meaning and Understanding in the History of Ideas’, *History and Theory*, vol. 8, n°1, 1969, p. 53.

⁵³ See the debate between Quentin Skinner and Yves-Charles Zarka on this point: Quentin Skinner and Yves Charles Zarka, « *Hobbes. The Amsterdam debate* », edited and introduced by Hans Blom, Goerg Olms Verlag, 2001, 88 pages.

⁵⁴ See: Quentin Skinner, *Visions of Politics. Volume I: Regarding Method*, op.cit., pp. 88-9.

⁵⁵ For a history of Intellectual history, see: Donald Kelley, *The Descent of Ideas: the History of Intellectual History*, Aldershot, England: Ashgate, 2002, vii-320 pages.

intellectual history and to the long nineteenth century and twentieth century. It is with such historians, who have extended a hand to other types of disciplines and countries, that the analysis of certain questions, such as “political science” or “evolutionary social theories”, have been studied in context through several looking glasses, enriching the debate. The focus has moved from the history of ideas, which focused mainly on the construction of the ideas in context, to the study of intellectual life as a whole, in context, encompassing several perspectives from history, religion, culture, literature, linguistics to economics, politics and society. The two movements – history of ideas and intellectual history – run on parallel lines and in France, regarding British history, they also fit into what is known as British Studies.

Therefore, the aim of the present work is to look at how the concept of deference was defined, employed, analytically and politically (and often enough in both ways simultaneously) in different periods and contexts. Such an approach would be rejected in part by the contextualist method and by the followers of the Sussex school too, because it is reintroducing a long period in intellectual history – a broader context – but it will also emphasise the discontinuities regarding the use of deference. It could be viewed as a “History of the several histories of Deference”, to take advantage of the title from John Burrow’s monumental 2007 study *A History of Histories. Epics, Chronicles, Romances an Inquiries from Herodotus and Thucydides to the Twentieth Century*.⁵⁶ The intent is not to draw a unified history of deference, linear and easy to absorb, but to engage with the difficulty of its use in periods in which we, as twenty-first century readers, have difficulty in making out what it meant and means nowadays.⁵⁷

The historian Alan S. Kahan, in the appendix to his latest book *Tocqueville, Democracy, and Religion. Checks and Balances for Democratic Souls* (2015), has written what can be read as a separate essay on the large scale approach.⁵⁸ After exposing what

⁵⁶ John Burrow, *A History of Histories. Epics, Chronicles, Romances an Inquiries from Herodotus and Thucydides to the Twentieth Century*, New York, Alfred A. Knopf, 2008, xviii-517.

⁵⁷ Such a methodology - of the study of a concept over a long period of time – could also be seen as endorsing German conceptual history, known as *Begriffsgeschichte*. However, the latter comes close to isolating concepts from the contexts in which they have been used and would not allow to tell the full story of deference in Britain from the 19th to the 21st centuries. The danger of creating an ideology of “deference” is precisely what the present study wants to avoid. Also, unlike the “contextualist” method and the work done in intellectual history over the last thirty years in the Anglo-American world, conceptual history has German theoretical foundations which, as a consequence, makes it difficult to endorse for this study on a very English word.

On this subject, see the very clear contribution of Jan-Werner Müller, “On Conceptual History”, pp. 74-93 in: Darrin M. McMahon and Samuel Moyn (eds), *Rethinking Modern European Intellectual History*, Oxford University Press, 2014, 320 pages. See also: Iain Hampsher-Monk in “Speech Acts, Languages or Conceptual History”, pp. 37-50 in Iain Hampsher-Monk (et al), *History of Concepts. Comparative Perspectives*, Amsterdam University Press, ix-293 pages.

⁵⁸ See: Alan S. Kahan, *Tocqueville, Democracy, and Religion. Checks and Balances for Democratic Souls*, Oxford, Oxford University Press, 2015, pp. 213-24.

contextualism really opposed (in the context of the 1960's) and the evolutions in Skinner's thought, Kahan then draws the advantages and drawbacks of the method and shows that it can still evolve through the acceptance of a "broader contextualism". In so doing, he introduces other methods, such as the historian David Armitage's use of the study of history over time⁵⁹ or the philosopher Donald Davidson's "passing theory"⁶⁰ in discourse production. What Kahan points at is that it *is* possible to make valuable additions to the contextualist approach (still considered as the core methodology) and that this should be the aim of the historian, not narrowing his own line of thought by rigidly following one exclusive methodology. Kahan concludes: "Without attempting the impossible task of seeing everything, of writing a 'total history', we can profit from seeing more than one thing at a time. Eclecticism is the method natural to history, and nowhere is this more true than with regard to intellectual history"⁶¹. Such a spirit has guided this work.

It is possible to write a history of the stories of deference over time by focusing on the history of the use and different interpretations of deference from the nineteenth to the twenty-first century. Deference is a word and a concept that, while varying in shape and form over time, remains a tool that has been used to accomplish a variety of tasks that the historian can identify. If one can try and translate what it meant in the past for the people who used it in language, and to analyse the texts and use of language to which the concept of deference is replying in context, one can also analyse the history of deference over a period of time in view of what each of the different "histories" of deference recover from the past – of their implications. The main pitfall is to believe that the idea of deference should have a final cause. This would lead to misrepresentations, anachronisms and historicism. By not isolating deference from its diverse uses and by grasping the answers to the questions of such uses in the past, we can understand how the twenty-first century citizen stands in relation to it. Hence, this study is a mixed genre which will focus on the stories of deference(s) in a broader contextual approach in the field of intellectual history and combine it with a critical discussion on its (mis)use in twenty-first century Anglo-British political thought.

⁵⁹ See: David Armitage, "What's the Big Idea? Intellectual History and the *Longue Durée*", *History of European Ideas*, 2012, 38, n°4, pp. 493-507.

⁶⁰ See: Donald Davidson, "A Nice Derangement of Epitaphs" in: Ernest Lepore (ed.), *Truth and Interpretation: Perspectives on the Philosophy of Donald Davidson*. Blackwell, 1986, pp. 433-446, p. 442.

⁶¹ Alan S. Kahan, *Tocqueville, Democracy, and Religion. Checks and Balances for Democratic Souls*, *op.cit.*, p. 224.

Part 1:

The theory of Deference – Definitions in context

Chapter 1

The Historical Foundations of Deference

In terms of deference, the period from the seventeenth century in England to the aftermath of the French Revolution gives numerous clues as to what the concept meant and how it developed in the three main countries which were concerned by major political upheavals: England, the USA, and France. In that very politically active period for these countries, political relationships were regulated by different types of deference which need to be distinguished in order to understand where the nineteenth century thinkers started from, in their own use of the concept.

The concept of deference took many shapes in view of the political relationship between governed and those governing and, later on, between representatives and represented. The link between rulers and ruled was at the heart of the battles of the seventeenth century in England. Post-1688, the essential questions were: who retained sovereignty, on what grounds and in what form? Deference, in its hierarchical and egalitarian understandings, was both present in the seventeenth century and took different roads.

A typology of deference in the seventeenth and eighteenth centuries

The different types of deference found in the seventeenth and eighteenth centuries in England and in the USA have characteristics in common but looking back at them, differences are apparent. It often when their foundations break down that the different types of deference can be best analysed.

The period going from the first Revolution in England up to the French Revolution in 1789 gives insights into the breaking up, recovery, and creation of political regimes, from the

Interregnum in England, the Glorious Revolution of 1688, the 1776 American Declaration of Independence to the 1789 French Revolution. In the same period, numerous thinkers wrote on the nature of power, on the virtues of those in power, and on the role of those ruled. The fundamental ideas of the period were related to liberty and equality in political societies. The French Enlightenment, along with the Anglo-Scottish one and the German *Aufklärung* of the middle of the eighteenth century, brought new understandings of what liberty and equality meant for citizens. This is when the various understandings of deference appear in a clearer light and also when the various definitions become fixed for what they will come to entail in the nineteenth century and the centuries after. The two main types of deference, hierarchical and egalitarian, need to be broken down into many separate distinctions. Hierarchical deference is English in its substance, whereas egalitarian deference can be found in the USA and, to a lesser extent, in France. It is through the examples given in the seventeenth and eighteenth century that a typology can be devised.

First, let us consider English hierarchical deference. Its specificity, as explained in the introduction, is that it is based on the assumption that one person defers to another, willingly or unwillingly. However, the act of choosing to defer is crucial and opens a split into “voluntary” and “involuntary” deference. By voluntary deference is meant the fact that one person will willingly defer to another’s superior rank or class, recognising a capacity or virtue or legitimate status that the other has got in terms of governance. Men who are voluntarily deferential have the autonomy and the freedom to decide that submitting to another is what they choose to do, either rationally (based on independent choice) or rationally (resulting from custom). Voluntary deference implies the knowledge within one person that another person is superior ; it means that the position of superiority is respected for what it is and the position of inferiority willingly embraced. By contrast, there are a number of other hierarchical deferential attitudes : those which are involuntary as if half-innate and which are, more often than not, drawn from fear. In this sense, involuntary deference can be perceived as illiberal and coercive as men are not guided by the autonomy of their own reason.

The voluntary and involuntary aspects of hierarchical deference are usually confused, and this is in itself a source of misunderstanding since voluntary deference is compatible with political liberalism as it came to be understood in the seventeenth and eighteenth centuries. English political philosophers of the seventeenth century were fighting against the fear and inequalities generated by bad regimes and seeking ways in which through the supremacy of laws, a liberal spirit could prosper. In a way, involuntary deference was what philosophers

such as John Locke, but later, most of the philosophers of the French Enlightenment too, were opposing by showing that men were free to make their own choices and take responsibility for themselves. The period of the 1630's and 1640's under King Charles I (1625-1649) in England and the period of the Restoration under Charles II (1660-1685) allow us to see why and how hierarchical deference could be split into two.

King Charles I wanted to impose hierarchical deference on his subjects but it was an involuntary deference which was both coercive and illiberal and which led to his demise. By contrast, Charles II was wary of the reasons which had led to the untimely death of his father and allowed the rise of a type of hierarchical deference which was voluntary. He had been asked back and thus, the obedience and deference given to him were understood as voluntary. The republican ideas which had been developed during the Interregnum and which afterwards were not cast aside, just gave rise to republican deferential ideas (which will take their own path as seen below) and voluntary hierarchical ones. It is the episode of the Commonwealth and Protectorate which, throw this into relief, allowing us to see this clearly with the Restoration of the Monarchy in 1660. Illiberal deference saw its full demise, in term of English politics, after the Glorious Revolution of 1688 which made clear that the power of the King was subordinate to that of Parliament. From then on, voluntary deference of the people, liberal in its spirit and mostly not coercive, would take on in England, whilst deference would take an egalitarian and republican course across the Atlantic and across the Channel.

The period of the French, Anglo-Scottish and German Enlightenment in the eighteenth century and the aftermath of the 1789 Revolution can be used as a comparison between political ideas in theory and their use in practice. It also allows us to see that voluntary hierarchical deference can be split into two. The first is a form of rational and enlightened voluntary hierarchical deference which is based on human reason and man's enlightenment through it. The second is an irrational and unenlightened form of voluntary deference which can be traced back to the aftermath of 1688 in England but, most importantly, to Edmund Burke's fear of the spread of what he understood as the French dangerous rationalism and misunderstanding of what liberty and equality meant in practice. Hierarchical voluntary irrational deference was based on the customs and habits of a nation and had the advantage of allowing traditional and conservative ways, conducive to relatively peaceful and stable lives. Its use was not to enlighten, which could lead to such upheavals as the French Revolution, but to allow steady progress according to the circumstances of a given nation. Such an irrational, unenlightened, hierarchical voluntary deference will be found in the nineteenth century and

allow the steady development of the Suffrage encouraged by a Whig/Liberal vision of political evolution through gradual changes.

However, hierarchical deference – whether involuntary or not, whether voluntarily rational and enlightened or not – is opposed to egalitarian deference. In this case, it is the 1776 American Revolution and the writings around the creation of the newborn American Republic which act as catalysts of what deference could also be in a Republic in which equality was at the core of its foundation. In this sense, egalitarian-republican deference, and especially the one seen at work in the founding colonies, at the time of the 1776 Revolution, and even later in the nineteenth century, is essential to understand all the subtleties of hierarchical deference in the mother country. It is by contrast that deference is best seen – especially during a period of turmoil – and it is especially in contrast to what is going on in England at the time, that the distinctions are made clearer. In this sense, both the USA and France are the prime counter-examples for understanding English deference and its specificities.

The most fundamental difference between hierarchical deference (in all its nuances) and egalitarian/republican deference is best seen in the consequences of the two Revolutions of 1776 and 1789. Initially out of English liberal roots, the American Revolution of 1776 founded its constitutional settlement on equality, meaning that it had the constitutional institutions in place to allow the peaceful changes in power at a time of election, whereas France, which had only experienced hierarchical forms of deferences (involuntary and voluntary enlightened types of deference), did not have the backbone necessary to take in the full political consequences of 1789. In fact, such a type of deferential society could only either degenerate into naked coercion as was the case at the time of the Terror – sending shockwaves of fear into hierarchical deferential England – or take in equality for several short periods (such as the second Republic from 1848 to 1851), before descending again into instability with Louis Napoléon Bonaparte's coup d'état in 1851, a period of stability (but under a Caesarist Emperor) at the time of the Second Empire (1852-1870) and finally a period of longer relative stability under the third Republic (1870-1940). The reality was that 1789 had not brought what liberty and equality had meant to the French philosophers of the Enlightenment and that the successive changes of regimes from 1789 to the third Republic were the sign of its institutional instability. This is what several English thinkers, such as Edmund Burke who reacted to the Revolution of 1789, but also Walter Bagehot, who was reacting to the 1848 Revolution in France, believed. Getting rid of hierarchical deference –

which was aristocratic in nature – was discarding what had kept the nation respectful of its institutions – without it, the edifice was in great danger of collapse. The French, for both Burke and Bagehot, had confused deference for servitude when hierarchical deference was a form of respect which could have been considered as a virtue in society.

Conversely, the USA had succeeded in its transformation from a colony to a democratic republic because it had taken in with the newcomers the fundamental importance of deference but not its drawbacks. For the colonists, hierarchy was not innate but came from the free choice of a future inferior and this choice was made as an equal of one to another. Unlike the English or the French, the young Americans were starting from a position post-state of nature, which was one of equality: to the earth, to the laws, to the rulers and to themselves. They did not have the historical luggage of subjection to a monarch anymore, and they were starting anew on an equal foundational footing. This is what made them much more democratic and protective of what a republic meant. The French and the English could only look across the Atlantic to see, like Alexis de Tocqueville did, that Democracy in America was something different, altogether more subtle and remote from their own histories. France's catastrophic consequences of 1789 acted as the second counter-example for England, which understood that a soft evolution towards democracy would be wiser and more suited to its national character.

The English had had their two revolutions in the seventeenth century, and the writings they inspired came to inspire the thinkers cross-Channel and cross-Atlantic of the eighteenth century which, in turn, taught them other new lessons at the end of the eighteenth century. It is in the history of these three different countries that the different types of deference can be analysed. The diverging paths the Americans and the French took, after their own change of political regimes, enlightened the English as to what their own course should be. The Americans changed the form of government from monarchy to republic, but while they rejected the English governmental form, they did not reject the rational deferential element within that form. Instead, they transformed or adapted hierarchical voluntary deference to a republican context, meaning – among other things – that deference was to the constitutional and to laws first, and to men holding office second. Retrieving the different meanings of deference means looking at the development of the American and French societies after their revolutions, and how English thinkers reacted to such breakdowns.

The American case: republican deference in the name of equality

The first historical example to demonstrate the development of deference is the case of the USA and how its thinkers used some of the English republican authors of seventeenth century to create their own new vision of an egalitarian Republic. It is also through the micro-analysis of the situation in society at the time which allows to see egalitarian-republican deference in practice.

In 2004, a number of historians met for a one-day conference entitled “Deference in Early America: The Life and/or Death of an Historiographical Concept”. The essays were later published in *Early American Studies*¹ and give insight into how problematic the concept remains to this day. The collection of essays mostly refute or embrace what Michael Zuckerman describes as “this deferential understanding of colonial America [which] is – and has been for more than a decade – the dominant understanding among scholars of repute”.² Of course, regarding the early modern American republic, the debate is still very fierce concerning the attitude of the population to power. The concept of deference often referred to in these essays is the idea of involuntary hierarchical deference (for lack of a better description) challenging the innate spirit of liberty at heart in the young Republic. This remains a hotly contested question: was the young American nation free and equal, putting the autonomy of men at the centre of their new world? Or was it free because the nation had kept a form of deference for power, long cherished in the heart of the mother nation, which made citizens easier to govern? The real focus is on the mores and attitudes of the citizens to power, and in the case of the young American nation, the challenging link to the former mother nation overseas.³

¹ *Early American Studies: An Interdisciplinary Journal*, vol. 3, number 2, Fall 2005.

² Michael Zuckerman, “Endangered Deference, Imperiled Patriarchy. Tales from the Marchlands”, p. 233 in: *Early American Studies: An Interdisciplinary Journal*, vol. 3, number 2, Fall 2005, pp. 232-52.

³ As most of these essays point out, a number of historians have worked on this aspect of the question since the 1960’s. See: J. R. Pole, “Historians and the Problems of Early American Democracy”, *American Historical Review*, 67, 1962, pp. 626-46; J. G. A. Pocock, “The Classical Theory of Deference”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 516-23; John K. Alexander, “Deference in Colonial Pennsylvania and That Man from New Jersey”, *Pennsylvania Magazine History and Biography* 102, 4, 1978, pp. 422-36; Gary B. Nash, *The Urban Crucible: Social Change, Political Consciousness, and the origins of the American Revolution*, Cambridge, Mass, Harvard University Press, 1979, xv-548 pages; Richard R. Beeman, “Deference, Republicanism, and the Emergence of Popular Politics in Eighteenth-Century America”, *William and Mary Quarterly*, 49, 1992, pp. 401-30; Alan Tully, *Forming American Politics: Ideals, Interests, and Institutions in Colonial New York and Pennsylvania*, Baltimore, MD, John Hopkins University Press, 1994, xv-566 pages; Robert A. Gross, “The Impudent Historian: Challenging Deference in Early America”, *Journal of American History*, vol. 85, no 1, 1998, pp. 92-7; Michael Zuckerman, “Tocqueville, Turner, and Turds: Four stories of Manners in Early America”, *Journal of American History*, vol. 85, no 1, 1998, pp. 13-42; Michael Zuckerman,

One of the most insightful essays is the one written by the historian John Smolenski who focuses on the “political speech economy” of the colony of Pennsylvania to show that to analyse deference it “must be placed within a broader discursive context”⁴. By this, Smolenski means how the elite was rejected or accepted by those they perceived as their inferiors in colonial America and how the discourse of deference to the elite “was replaced by a political discourse that linked martial masculinity and political authority”⁵. In so doing, Smolenski comes to two conclusions: first, that there “is a need to re-examine standard narratives of the relationship among gender, virtue and political authority in early America” and that “if the old debates about whether or not early America was deferential are dead, there may be life yet in debates over the meaning of these changes”.⁶ What Smolenski also successfully demonstrates is the change which operated within the nation concerning what “virtue” meant, especially at the crucial period between the Revolution and the early days of the Republic.⁷

Focusing on the idea of virtue in relation to deference brings in a new dimension to the concept and it is J. G. A. Pocock, in the 1970’s, who has brought in a new understanding of deference, as “republican deference”⁸ or egalitarian deference. In 1974, the American Historical Association held a symposium on deference to which J. G. A. Pocock gave a paper entitled “The Classical Theory of Deference”⁹. It is the article most often referred to in reference to deference but it has also been the source of much confusion as to what the term really meant. “In seeking to understand the so-called deferential society”, he wrote in the introduction, “we should start by inquiring what that society thought deference was”.¹⁰ Hence the fact that deference takes many forms according to the many societies and periods in which it was/is in use. Pocock focuses on what the term could mean and how it changed from the ways in which British Whigs understood it in eighteenth century England to how the American Federalists had to reinterpret it to suit their own needs in the creation of their own

“Authority in Early America: The Decay of Deference on the Provincial Periphery”, *Early American Studies* 1, 2, Fall 2003, pp. 1-29.

⁴ John Smolenski, “From Men of Property to Just Men: Deference, Masculinity and the Evolution of Political Discourse in Early America”, *Early American Studies: An Interdisciplinary Journal*, vol. 3, number 2, Fall 2005, p. 283.

⁵ *Ibid.*

⁶ *Ibid.*, p. 285.

⁷ The different colonies (later, new states) were very different in their political cultures and in their cultures more generally. Pennsylvania’s Quakerism would make the virtue shift Smolenski sees a “shift”, since the Quaker culture would have been a pacifist one. But certainly a place like Virginia would already laud martial masculinity.

⁸ J. G. A. Pocock, “The Classical Theory of Deference”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 516-23.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 517.

“instrument of government” for their new republic. Therefore, Pocock is describing deference in relation to the Americans, and not to the English (even if he starts with them) and this is the source of the confusion relating to the various definitions of deference.

In essence, what Pocock is saying – interestingly, a year before the publication of his seminal work *The Machiavelian Moment*¹¹ (1975) – is that American Federalists traced back a way of understanding deference which was republican and egalitarian in the writings of some of the English Republicans of the 17th century. The latter themselves had retrieved a republican Civic virtue from Machiavelli’s *Discourses on the Ten Books of Titus Livy* (1531) which went back to the Roman Republic and the historical model of State Machiavelli celebrated.

Initially, Pocock’s definition of “the classical theory of deference” is misleading as for him “classical” only applies to eighteenth century England and America and not to the word deference itself – which, one would expect initially to mean involuntary hierarchical deference. However, Pocock makes immediately clear that deference in the eighteenth century sense, is:

usually conceived of as consisting of an elite and a nonelite, in which the nonelite regard the elite, without too much resentment, as being of a superior status and culture to their own, and consider elite leadership in political matters to be something normal and natural”.¹²

By a “natural” elite, he means a republican and egalitarian elite. He traces such a political language – that of a “natural elite” as opposed to an “hereditary elite” – to the seventeenth century English Republican James Harrington (1611-1677) and his work *Oceana* (1656).¹³ Harrington himself in *Oceana* was in line with Machiavelli’s *Discourses on the Ten Books of Titus Livy*.

In so doing, Pocock clearly states that the word “deference” was not used as a framework for political organisation but that its meaning, what it portrayed and summoned to its contemporaries, was very clear: “the voluntary acceptance of a leadership elite by persons not belonging to that elite, but sufficiently free as political actors to render deference not only a voluntary but also a political act”.¹⁴ This is not the type of voluntary hierarchical deference

¹¹ J. G. A. Pocock, *The Machiavelian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (1975), Princeton, Princeton University Press, 2003, 640 pages.

¹² J. G. A. Pocock, “The Classical Theory of Deference”, *The American Historical Review*, *op.cit.*, p. 516.

¹³ James Harrington, *The Commonwealth of Oceana and A System of Politics* (edited by J. G. A. Pocock), Cambridge, Cambridge University Press, Part of Cambridge Texts in the History of Political Thought, 1992, 332 pages.

¹⁴ J. G. A. Pocock, “The Classical Theory of Deference”, *The American Historical Review*, *op.cit.*, p. 517.

mentioned above in England as the main distinction is that here, these men are equals, whether or not some are part of the elite. They all start from the same starting ground based on equality. It is a very subtle distinction but it is fundamental. Here was the definition that Jefferson and the Founding Fathers could make their own and the best example was found in the description of how political life should be organised, given by Harrington in *Oceana*.

Pocock then proceeds to describe how the twenty men, imagined by Harrington to take political decisions in *Oceana*, should organise themselves and shows how the six of “superior capacity” will be the natural leaders recognised by the fourteen others. “But”, Pocock makes very clear, “the fathers owe their superiority less to their own superiority than to the acknowledgment – it would be proper to call it election – of their inferiors. Here surely, is what is meant by deference”.¹⁵ Not only is this understanding capital to see the links between republican thought in sixteenth century Florence, seventeenth century England and eighteenth century America – that Pocock will expose clearly a year later in the *Machiavellian Moment* – but it also illustrates his methodology in the history of ideas which consists in retrieving a political language from a given context.

As Machiavelli had posited in *Discourses on the Ten Books of Titus Livy*¹⁶, what was most important from a republican perspective was not the strict stability of the institutions and a life securely led – even if this was a minimum requirement – but a free way of life (*vivere libero*¹⁷). This meant especially the acceptance of debate and conflict among all the citizens – whether nobility or the people – to secure liberty. What Pocock nails down in this 1974 short article, and then again in the *Machiavellian Moment*, is precisely the classical republican ideal to uphold liberty, fight corruption, debate and defend classical virtue, which the American Founding Fathers used as a model for the setting up of their own Republic, in Pocock’s view.¹⁸ Here, it is not a liberty based on non-interference but a liberty founded on non-domination, to use Philip Pettit’s expression¹⁹.

¹⁵ *Ibid.*

¹⁶ Nicolló Machiavelli, *Discourses on Livy* (translated with and introduction and notes by Julia Conaway Bondanella and Peter Bondanella), Oxford: Oxford University Press, 2008 (first published in 1997), xxxi-414 pages.

¹⁷ *Ibid.*, p. xxiv.

¹⁸ It is important to add that Pocock’s views have been contested especially because the Federalist Papers, for example, did not seem too worried about classical virtue. The Federalist papers, 10 and 51, in which they explain how ambition could check ambition or, 70-77, where the President’s desire for glory is a check on bad behaviour, do not refer to a classical virtue, <https://www.congress.gov/resources/display/content/The+Federalist+Papers>, accessed 17 August 2017.

¹⁹ See: Philip Pettit, *On the People’s Terms. A Republican Theory of Model of Democracy* (2012), Cambridge, Cambridge University Press, 2014, pp. 293-310.

With Harrington, liberty is secured by “debate” and “result”, themselves related to republican deference because the two ideas have got to be separated in the hands of the six natural leaders (“debate” or theory) and the fourteen citizens (“results” or practice). They all have political roles but different ones and it is in the distribution of their roles that a true republic may emerge and survive. “Deference, then,” writes Pocock, “is perfectly compatible with equality, so long as the latter is proportionate equality, in the Aristotelian sense”.²⁰

If, for Harrington, deference – or what Pocock makes of what Harrington describes – is necessarily egalitarian to be republican, an ambiguity persists in the sense that in *Oceana* there is still an elite – albeit a natural one. Pocock traces Harrington’s desire back to his need to “rehabilitate aristocracy in the wake of what he saw as the collapse of feudal oligarchy”.²¹ Harrington was writing at the time of the Interregnum between the death of Charles I and before the restoration of Charles II. How was one to govern when the land could belong to the many and when the many could also decide? Harrington’s solution is the interdependence of the six, who propose, and the fourteen, who dispose; only then could classical equality and civic relations be retrieved. It is in the interesting separation between “natural aristocracy” and “hereditary aristocracy” that a solution is found. The six “natural” aristocrats described by Harrington know that they only lead thanks to the recognition of the many and what keeps them all bound together is deference (a republican egalitarian one). The fourteen others are not the subordinates of the six, quite the opposite. This is what makes the whole difference, for Pocock, leading to a whole new way of understanding civic relations in a modern republic:

Deference precludes them from the capacity for leadership, but not from an intelligently critical attitude toward those who possess that capacity. It is wholly compatible with proportionate equality and public virtue. Indeed, if these things presuppose political relations between individuals of diversified capacity, they depend upon deference, and deference is no more than the recognition of one capacity by another. It might even be shown by the few toward the many.²²

While Pocock’s analysis is very rich, it does not address fully what the historian John K. Alexander – fiercely opposed to the concept of deference in early America – considers as the mistaken use of the term.²³ For Alexander, what Pocock defines as deference should really

²⁰ J. G. A. Pocock, “The Classical Theory of Deference”, *The American Historical Review*, *op.cit.*, p. 518.

²¹ *Ibid.*

²² *Ibid.*, pp. 519-20.

²³ John K. Alexander, “Reflections on Political Deference in Early America: Let’s Meet at the Graveside”, *Early American Studies: An Interdisciplinary Journal*, vol. 3, number 2, Fall 2005, pp. 383-401.

be termed “negotiation”²⁴ between the political actors of the nation who operate within a society dominated by class (whether a “natural aristocracy” or a “hereditary one”). Much worse for Alexander, what Pocock describes is not deference at all because there is nothing “deferential” (in the sense of “respectful”) in accepting that political power is shared, for this is simply what politics in a Republic is all about: the willing acceptance by the various political actors of the political separation of powers.²⁵ The main mistake for John K. Alexander – or what he believes to be the hypocritical use of the term deference without sufficient evidence – is that the proofs needed to show how “willing deference”, as he calls it, has often never been corroborated by historians. What is pointed out is the lack of sheer evidence that “those in authority did have to negotiate in various ways with the less powerful”.²⁶ This means that micro-studies of a certain type of society at a given time can be the only possible way of analysing such a type of deference (if any other type of deference at all), and that no broad conclusion can be reached from the (mis)use of the term, whether it be for early America or any other political society. Indeed, there is something definite in the powerful rejection of the concept by Alexander, especially in the last condemnation. The conclusions of his essay reads:

If the concept of (willing) deference does not lose its popularity and we do gather at its graveside, that will, I fear not be the end of the historiographical tale. For if “deference” is buried, it will likely be replaced by yet another “slippery” term or terms fashioned to meet the continuing interpretative need of those who privilege elite sources, who share elite views, and who want as much as they can to paper over the divisions – especially class divisions – that existed in early America. So the term may change, but the struggle to depict the early American political world in a way that accurately reflects the agency that the less powerful had as they negotiated their way through that political world will remain.²⁷

This analysis is unconditional and focusing on the idea of “class” only brings in other dimensions – of the struggle of classes to start with – which can be misleading. The problem is not to study the concept of deference (hierarchical deference, in this book) to justify the rule of an elite, but to strip deference of its different meanings to better understand what it reveals about a given nation. Furthermore, Alexander misses Pocock’s point which is precisely to reveal a use of deference compatible with equality between classes. That Alexander chooses

²⁴ *Ibid.*, p. 400.

²⁵ *Ibid.*, p. 389.

²⁶ *Ibid.*, pp. 400-1.

²⁷ *Ibid.*, p. 401.

to show that this is a ploy by Pocock to introduce a politically correct word to lead to the submission of some is one way of seeing it. The other way is also to find an understanding of how to be free, both as an individual and as part of the collective. Pocock's article on deference has often been misunderstood precisely because he was focusing on one aspect of deference which mostly fitted the Americans – and to a lesser extent the French. It was about republican deference in the name of equality.

What Pocock shows, through the use of Harrington's work, is the premise of a representative system which so far has been the only form of regime to allow liberty and equality to prosper.²⁸ That the twenty-first century has now reached a point when this is questioned is another matter which will be dealt with at the end of this study, but in the seventeenth century, Harrington was showing the road to a number of classical liberal thinkers who would think about the nature of power, the link between rulers and ruled and the refusal of any form of arbitrary power imposed on the individual (whether as "interference" or as "domination").

What the other articles of the *Early American Journal*, especially the micro-studies, reveal is that, in reality, the settlers of America were not ready to give their egalitarian deference to any elite they did not respect. In his article, "Endangered Deference, Imperiled Patriarchy. Tales from the Marchlands"²⁹, Michael Zuckerman analyses the lives of common people and wants to demonstrate whether or not deference (a hierarchical voluntary one) existed. He tells the story of William Byrd, a very rich American gentleman who was entrusted to settle a boundary dispute between Virginia and North Carolina in 1728 and who recorded the results of his commission in two separate and distinct accounts. What appears very clearly is that "the common men of the company did not accord their leaders deference because their leaders were not worthy of it"³⁰ and that "simple folk did not submit to their superiors because their superiors did not constitute a class of men who could merit such submission"³¹. Unwittingly, what Zuckerman proves rather well is that republican deference was very much at the heart of the new world and that these men, simple or not, were born equal and perceived themselves as the equals of any men, whether rich, aristocratic, powerful or not, who crossed their path. Such a spirit has also a lot to do with the Protestant roots of the

²⁸ If Pocock's assertions about Harrington's have been influential, their centrality have been contested. See: Jonathan Scott, *Commonwealth Principles. Republican Writing of the English Revolution*, Cambridge, Cambridge University Press, 2004, 416 pages.

²⁹ Michael Zuckerman, "Endangered Deference, Imperiled Patriarchy: Tales from the Marchlands", *Early American Studies: An Interdisciplinary Journal*, vol. 3, number 2, Fall 2005, pp. 232-52.

³⁰ *Ibid.*, p. 240.

³¹ *Ibid.*, p. 242.

founders (except for Maryland which was Catholic), perhaps more than in what Pocock very skilfully retrieved in his understanding of republican deference. Such an understanding cannot be replaced by the word “negotiation” as it is much more the character, or the mores, of a nation that it is concerned with. What makes the distinction between the two types of deference, whether republican/egalitarian or hierarchical voluntary, possible in America is the fact that the mores and the peoples of the new world started from something different to the mother country. They were democratic and republican by nature because they chose to make the equality already existing formalized in a political context and to live through it.

In *Anglophilia: Deference, Devotion, and Antebellum America*, Elisa Tamarkin expands such an idea to the republican society of nineteenth century America, to describe how deference was able to thrive.³² Using Edward Shils’s sociology, she writes: “If we defer when we are obligated to do it (say, as subjects to a Queen), then it is not deference at all. While power demands submission, Shils sees deference as a desire to submit that is compatible with democratic practice – an affect that says, I am free enough to admit your worth and to take my pleasure in it”.³³ This again is egalitarian/republican deference. Tamarkin’s study shows in a very subtle way, through paintings, books and key moments in the life of the country in the nineteenth century, how the antebellum Americans defined themselves against England, but not necessarily by rejecting its habits and customs. Even though this can be perceived as a contradiction, what is meant is that nations need something to love together to enhance the feeling of being one. It is what she describes at the time of the Prince of Wales’s visit to America in 1860, where their type of deference led to unity. “Americans finally seem to adore the spectacle of Monarchy that reminds them of the nation they are not”, explains Tamarkin, “and yet, offers them a style of state that, in the availability of the images through which it is exerted, they can unite together to love”.³⁴ It is as if having something to defer to, even if it ran against their politics, – in this case the love of “the attributes of England”³⁵ from accent to monarch to education and spirit – had both the ability to bind against it but also to generate deference to it because of the dreamt and deformed understanding of it.

This republican/egalitarian theory of deference is essential in order to understand the American Founding Fathers and, as Tamarkin has shown, stretches well into the nineteenth century, but it also pervades English political thought too. The republican intentions generated

³² Elisa Tamarkin, *Anglophilia: Deference, Devotion, and Antebellum America*, The University of Chicago Press, 2008, xxxiv-400 pages.

³³ *Ibid.*, p. xxix.

³⁴ *Ibid.*, p. 37.

³⁵ *Ibid.*, p. 179.

by republican deference in the seventeenth century have to be squared with what was happening in England at the same time. Harrington was writing when, four years after the publication of *Oceana*, the Restoration of Charles II would bring the Restoration of the House of Lords. How would the English nobility stand without its old feudal mantle? How could such a theory of republican deference be compatible with the existence of a monarchy and a hereditary aristocracy in England? Republican deference cannot be applied to England at the time, and not even later on, as it simply does not correspond to the English mores and to the English past but, as will be studied below, the English had their own path too.

The case of post-revolutionary England: voluntary deference in defence of hierarchy

If the dialectic at the heart of Pocock's analysis of the *Machiavellian Moment* was between "virtue" and "corruption" – and the way he used this language with Harrington is of great help in retrieving the real meaning of republican deference –, another language came to describe how the British political theorists of the end of the eighteenth century had to understand the study of politics. With it, deference also took new shades of meaning.

The other "Revolution" that Georgian Britain (it was not restricted to England) was witnessing – besides the creation of the American Republic in 1776 and the change of Regime in France in 1789 – was that of the development of commercial societies. This shifted the problem slightly away from "corruption" and "virtue" – and how to write a constitution which would protect society from corruption and encourage civic virtue – to "commerce" and "self-interest". Political thinkers such as Adam Smith drew new conclusions from the innate self-centredness of people and of their behaviour in eighteenth century society. Commercial societies were seen to correspond to the natural tendencies of men to self-interest which, paradoxically if left to develop, led to stability in which exchanges thrived. A *laissez-faire* approach, by encouraging self-interest, would promote the common good much better than anything a government could ever do. The role of government was no longer to provide the institutions which would contribute to civic virtue (or religious salvation) but to focus instead on practice and on how to remove the barriers to interest's operation within the frame of the laws. This was a major change in the way of understanding the role of politics. Focusing, like Harrington had done, on the egalitarian access to the land as a means of encouraging republican deference, natural aristocracy and civic virtue, was no longer the only aim. With

the political thinkers of the Scottish enlightenment, Hume and Smith in particular, came another layer in the study of politics, that of “opinion” and “the state of society”.³⁶

In *That Noble Science of Politics*, this is how the three historians of the Sussex School, Stephan Collini, Donald Winch and John Burrow, explain what commerce and the study of the mores of commercial societies brought to late eighteenth century British political theorists:

It gave enhanced status to self-interest as a regulating principle in human affairs at the expense of more cyclical and moralist conceptions of politics based on the dialectic between virtue and corruption – though never completely so as the example of Ferguson shows. It also made such brilliant generalisations as that propounded by Harrington in the seventeenth century, connecting the balance of power in society with the balance of property, seem outmoded, chiefly applicable to an exclusively agrarian society in which landed property was the only form of property with military and political significance. In post-feudal societies, especially those enjoying a measure of ‘free government’, states of opinion had become at least as important as states of property in determining the legitimacy and stability of government. It was precisely with regard to the connections between property, opinion, manners, and justice that Hume, in company with other Scottish writers on jurisprudence, felt he could extend the reasonings not only of Harrington, but of seventeenth-century natural lawyers, Grotius and Pufendorf, as well.

“Extending the reasoning” meant, on the one hand, renewed interest in the ways in which institutions were both framed and worked in the context of commercial societies and, on the other hand, the danger of theorising politics. The work of the framers of the American constitution in 1776 and of the Declaration of the Rights of Man and of the Citizen of 1789 is emblematic of the former, whereas Burke’s *Reflections on the Revolution in France* (1790) is representative of the latter.

Edmund Burke (1729-1797), who is often described as the father of British conservatism, cannot be easily framed.³⁷ He was first and foremost a progressive Whig of the eighteenth century who selected moments of the English past to give credence to his organicist understanding of the British past as a history of liberty. With him came the idea of the gradual evolution of the English constitution, slowly adapting to fit the needs of the moment, conserving the essence of it at every stage and growing with respect for a great past.

³⁶ See: Stefan Collini, Donald Winch and John Burrow, “The Governing Science: Things Political and The Intellectual Historian” in: *That Noble Science of Politics. A Study in Nineteenth-Century Intellectual History*, Cambridge University Press, 1983, pp. 18-9.

³⁷ See the comprehensive article by Iain Hampsher-Monk, “Edmund Burke in the Tory World”, chapter 5, pp. 83-101, in: Jeremy Black (ed), *The Tory World. Deep History and the Tory Theme in British Foreign Policy, 1679-2014*, Farnham, Ashgate, 2015, 412 pages.

The great common lawyers of the seventeenth century before him, such as Sir Matthew Hale or Sir Edward Coke, had already extolled the virtues of the spirit of the English common law but with Burke, Providence was also a key element in this gradual progress. This Whig interpretation of history – at the heart of the Whig historiography³⁸ – blended in rather well with part of the ideas of the Scottish Enlightenment as they focused on the empirical development of society (even if for Hume, the rise of freedom was not the linear form Burke assigned to it, but much more accidental).

However, Burke is also very useful for the understanding of English deference which is not republican in its form. What Pocock defined as classical deference does not fit English mores and this is when the definition of English deference becomes very shaky. The republican Harringtonian rhetoric was set on English soil but its spirit is much more American and is better understood in the work of the Founding Fathers. So where does this leave England? Burke is the thinker who enables us to see why deference – and in this sense it is a hierarchical, voluntary, irrational deference, mostly founded on traditions and customs, which is described – remained in use in the kingdom throughout the nineteenth century.

The historian Richard Bourke, in his long monograph published on Burke in 2015, has described how, for Burke, men were dominated by fear, especially the fear of death.³⁹ At the core of this innate fear lay the desire for religion and for rituals, but as Bourke writes, “while Burke accepted that fear stands at the origin of religious sentiment, he insisted that it is not the source of religious belief.”⁴⁰ What this meant was that the belief in God and the fear of God were distinct and that one could believe in God without necessarily need to fear Him. This is important as, taken into the political sphere, this meant that there could be belief in power without fear of it – and therefore, hierarchical involuntary deference could make way for a hierarchical voluntary form of deference. One did not need to have a tyrant or a beastly Emperor, one could also have a person in power who could transform fear into deference. As Richard Bourke writes relating to Burke’s *Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful* (1757):

It appeared to show that awe and veneration can sustain authority in politics in the absence of unmitigated servility. It also implied that admiration flourishes in a context of deference where power commands respect without the threat of immediate danger. This implication argued against natural histories of government that traced the origins of

³⁸ See: John Burrow, *A Liberal Descent. Victorian Historians and the English Past* (1981), *op.cit.*

³⁹ Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke*, Princeton University Press, 2015, 1001 pages.

⁴⁰ *Ibid.*, p. 148.

subjection solely to gratitude for protection from fear. As Burke saw it, not only did the fear of authority continue to exact obedience but, further, the feeling of submission, could be agreeable to the mind as terror relaxed into the sentiment of respect.⁴¹

With Burke, this deference is not understood in the egalitarian sense of the word but much more in the sense of an irrational and unenlightened form of hierarchical voluntary deference. The distinction is essential as it implies, on the part of the latter, the acceptance of submission for hierarchical reasons (even if it is willingly accepted and not resented whatever the nature of the hierarchy), whereas the former is much more the idea of a treatment of equals, who understand their starting position in society as founded solely on equality, as described above.

Therefore, much more than the emphasis on the equality of the political actors, as in the American case, what is most important is how a certain English tradition transformed subjection to a monarch and how after the revolutions of the seventeenth century, the English kept a love and reverence for the Monarchy, whilst rejecting servility (or hierarchical involuntary deference). Servility could not allow the rise of liberty in a nation as it was illiberal and coercive at its core. Republican/egalitarian deference suited the Americans best whereas the English kept a voluntary form of deference which would not coerce them. The Whig Historiography presents precisely such an image: the English barons refusing the subjection to John Lackland in Runnymede in 1215 had engrained in the Magna Carta the very essence of such a deal based on consent. The further acts of refusal of subjection, such as those of 1649 and 1688, were the very signs that the English nation had a very different understanding of its link to power, not based on fear or purely on gratitude for stability. What Burke describes is something fundamentally English which could be described as conservative deference. It is by looking at what was happening in France after 1789 that Burke came to see this trait of character in the English.

In *Reflections on the Revolution in France* (1790) Burke explained the substance of this English deference in contrast to the French one and what he thought was happening in France. When the French Revolution took place in 1789, Burke saw in it a destruction of a long acquired past which would lead to unforeseen and potentially catastrophic consequences for the French. Burke cut through the deceiving rhetoric of “Liberty, Equality and Fraternity”, as brandished by the French revolutionaries, to denounce what was in effect the replacement

⁴¹ *Ibid.*, p. 149.

of an old regime by another: an “*aristocracy of the rich*”⁴². In the eyes of Burke, the revolutionaries were not selfless philosophers in favour of the rights of the people; they were speculators who would benefit financially from the change and who were opposed to the true spirit of liberty and who sought to replace one form of domination with another, one form of subordination with another.

The most insightful passages remain those on the danger of unleashing the passions of men. Burke shows that the long-restrained envy and despair of the people was to become uncontrollable once let loose. Such heavily meaningful terms as “equality” could be used to cover the most outrageous decisions, giving the people the feeling they had something in theory that they would never enjoy in practice.⁴³

According to Burke, the Revolution had upset the balance in French society which had ruled men: on the one hand, the desire for competition and, on the other hand, the respect for compromise and the respect of the past. Without the latter, the former led to jealousy and resentment. In such a moment, the word “equality” was used to cover attitudes, decisions and crimes which were detrimental to French society and would bring it to its end. The episode of the Terror, which came after Burke’s insightful analysis, was the result of the incapacity of revolutionaries to control their own “creature”. The years of political instability – as France experienced countless changes of regimes in the nineteenth century – have been seen as the direct consequence of this troublesome period, giving credence to Burke’s anti-rationalism and what came to be coined as his conservatism.

Complete equality between people, the way the French wanted to understand it in 1789, was not what Burke believed possible. Richard Bourke writes that for Burke “Inequality, [...], could never be removed; consequently, enlightened politics should aim to make it compatible with reciprocity”.⁴⁴ For Burke, the development of commercial societies was much more able to generate a certain form of equality in practice than the imposition of such an idea as equality in theory by politicians. Asking for complete equality would only lead to resentment: trying to find a compromise between rulers and ruled was the solution. What Burke was talking about was not republican deference because of his rejection of the impossibility of complete equality. He warned against a certain French language, in favour of the rights of men and equality, which disguised the real danger, that of populism. Once such a

⁴² Edmund Burke, *Reflections on the Revolution in France* (1790), p. 283, in: *Select Works of Edmund Burke*, Indianapolis, Liberty Fund, vol. 2, 1999.

⁴³ See the passage in which Burke imagines the reactions of “peasants” to the “rights of men”: Edmund Burke, *Reflections on the Revolution in France* (1790), pp. 336-38, in: *Ibid.*

⁴⁴ Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke*, *op.cit.*, p. 703.

language was unleashed on a population unable to fully understand its meaning, a real dangerous power – unchecked and generally despotic, in the name of the people – could take over unrestrained by the protections fitted to a certain past, i.e. the aristocracy and religion.

Burke's emphasis on a natural aristocracy helps to understand his point of view, as he was opposed to a hereditary aristocracy abusing its privileges. In "A Letter to a Noble Lord", written in 1796 to justify his acceptance of a state pension from the Crown and refute the arguments of his enemies, Burke gave one of the clearest distinction of what he meant by a natural aristocracy. Referring to Lord Keppel (the uncle of the 5th Duke of Bedford, his adversary in the House of Lords), Burke wrote:

He [unlike the 5th Duke of Bedford] valued the old nobility and the new, not as an excuse for inglorious sloth, but as an incitement to virtuous activity. He considered it as a sort of cure for selfishness and a narrow mind; conceiving that a man born in an elevated place, in himself was nothing, but every thing in what went before, and what was to come after him. [...] This nobility forms the chain that connects the ages of a nation, which otherwise (with Mr. Paine) would soon be taught that no one generation can bind another. He felt that no political fabric could be well made without some such order of things as might, through a series of time afford a rational hope of securing unity, coherence, consistency, and stability to the state. [...] He felt, that this nobility, in fact does not exist in wrong of other orders of the state, but by them, and for them.⁴⁵

It is in such natural aristocrats – Burke would have considered himself to be one – who protected liberties and who were different from the 6 natural aristocrats of Harrington precisely because their starting point was not equality. In fact, they did not have a starting point at all, as they were a link between their past and their future – for both of which they had great respect. What Burke is also saying is that power comes with responsibility and that respect for the past goes along with responsibility for the people and their future. Burke defends a conservative form of deference which is not compatible with the egalitarian spirit at work in the republican form of deference described by Harrington. It is not the "revolutionary" ideal of *égalité* that Burke is referring to but the time-honoured spirit of liberty at heart in England and in the spirit of its people, rulers *and* ruled. What Burke is saying in substance is that deep down within the tradition and history of the English people, there is a love of liberty which runs deep in the veins of the nation and that deference to its long-built institutions is the proof of its good. By extension, inequality within society was a

⁴⁵ Edmund Burke, "Letter to a Noble Lord" (1796), pp. 321-2, in : *Further Reflections on the Revolution in France* (edited by Daniel E. Ritchie), Indianapolis, Liberty Fund, 1992, pp. 279-326.

given which had to be accommodated and managed thanks to deference. In the words of Richard Bourke, what the French had forgotten to their peril was that,

all systems of government, in fostering consent, relied on respect for enduring procedures as well as the variable sense of public convenience. This attitude of respect was fed by various elements in human psychology: first, by admiration, and the deference that it inspired; second, by a veneration for the antiquity of past practice; and finally, by an aesthetic sense of reverence for power.⁴⁶

In other words, this type of deference went hand in hand with rejection of subjection, liberty of the subject who had conquered fear and, perhaps most importantly, the possibility of debate and concessions in politics. Such a capacity of discussing and adapting politics in a spirit of liberty and moderation can only work if the governing elite feel obligated to those they govern. In return, the people have to feel a voluntary deference for them, neither enlightened nor rational, but mostly traditional and conservative. This is what Burke was witnessing in the England of the end of the eighteenth century.

As mentioned above, what Edmund Burke is also representative for is precisely such an understanding of British history in Whig terms, as the continual progress of liberty through the common law and the slow but steady evolution of the English constitution thanks to the deference of its subjects. Pocock has shown in *The Ancient constitution and the Feudal Law*⁴⁷ (1957) but especially in the article “Burke and the Ancient constitution – a problem in the History of Ideas”⁴⁸ (1960), that Burke operated a retrieval of the expression “*antient constitution*” to demonstrate that an aristocracy not worthy of having power could be challenged (what happened at the time of the two Revolutions of the seventeenth century). An appeal to an ancient constitution within English society was therefore possible to show the linear progress of English history towards liberty, including by reinterpreting the “revolutions” of the seventeenth century as acts of salvation of the ancient spirit at work.⁴⁹ With Burke, as the common lawyers had done before him, came this emphasis on the liberties of the English people as rooted in the common law and the sacredness of its immemorial status. Pocock reminds us that for Burke:

⁴⁶ Richard Bourke, *Empire and Revolution: The Political Life of Edmund Burke*, *op.cit.*, p. 694.

⁴⁷ J. G. A. Pocock, *The Ancient constitution and the Feudal Law*, Cambridge, Cambridge University Press, 1957, 261 pages.

⁴⁸ J. G. A. Pocock, “Burke and the Ancient constitution – a problem in the History of Ideas”, *The Historical Journal*, vol. 3, n°2, 1960, pp. 125-43.

⁴⁹ See on this point: Franck Lessay, “Burke et la nationalisation de la raison”, *Cahiers de philosophie politique et juridique*, n° 16, centre de publications de l’université de Caen, 1989, pp. 67-82.

By entailing our inheritance of liberties we have established a family settlement, based upon a mortmain; and it is when this is done, not in virtue of the tie of blood solely, that the family becomes an immortal corporation. We have made the State not only a family, but a trust; not so much a biological unity, or the image of one, as an undying *persona ficta*, which secures our liberties by vesting the possession of them in an immortal continuity. And all this has been done by the simple device – the most superb of all legal fictions – of identifying the principles of political liberty with the principles of our law of landed property.⁵⁰

In accordance with such a vision, Burke gives his very own conception of equality. It accepts equality of status to the law of the country (first and foremost) and blends the nation together towards a same ideal: the protection of a common inheritance, which has survived the challenge of time and adapted to fit the needs of its citizens.

In *Reflections on the Revolution in France*, whilst resenting the false use of the term equality – as defined by “the politicians of metaphysics who have opened schools for sophistry, and made establishments for anarchy”⁵¹ – Burke made this remark as to what natural equality could be. “If I might venture to appeal to what is so much out of fashion in Paris”, he noted with paradoxical passion, “I mean, experience, I should tell you, that in my course I have known, and, accordingly, to my measure, co-operated with great men; and I have never yet seen any plan which has not been mended by the observations of those who were much inferior in understanding to the person who took the lead in the business”.⁵² In this passage, Burke is describing the role of the legislator, who in an English context will be guided by many, and by the precedents of many more. “Where the great interests of mankind are concerned through a long succession of generations”, Burke carries on, “that succession ought to be admitted into some share in the councils which are so deeply to affect them”.⁵³ It is in this organic nature of society that the greatest goods of stability and slow reform may be achieved, in which all play a voluntary deferential part for the good of the many. Here, the aristocracy is checked by its duty towards the people, the same way the people also have their part to play within this society. The people – and in these pre-1832 days, most were not voters – had an irrational and unenlightened form of deference which allowed the political system to work with an elite in charge. Nevertheless, 1789 sent shockwaves throughout Europe which

⁵⁰ J. G. A. Pocock, “Burke and the Ancient constitution – a problem in the History of Ideas”, *The Historical Journal*, vol. 3, n°2, 1960, p. 131.

⁵¹ Edmund Burke, *Reflections on the Revolution in France* (1790), p. 338, in: *Select Works of Edmund Burke*, *op. cit.*

⁵² *Ibid.*, p. 275.

⁵³ *Ibid.*, p. 276.

were warning signals that such a form of voluntary irrational deference could not survive in a changing England which had embraced *laissez-faire* and which was a commercial society swept by new demands (which weakened older forms of hierarchy). The end of the eighteenth century marked the beginning of conflict and a change within English society itself.

This is when, with Edmund Burke, the moral tension between “deference” – that of the ‘natural aristocracy’, working for the protection and achievement of liberty – and “influence” – that of the old “hereditary aristocracy” making the people dependent and which does not want their enlightenment – is fully faced. A real aristocracy, that is a “natural” one, would never go against the past and would always secure it, entrusted to protect it but would also look towards the future. This natural aristocracy needed the voluntary deference of society at the time, but their role was to enlighten their people. However, political life in England at the end of the eighteenth century was not an easy world and an hereditary aristocracy, jealous of its power and which felt hardly any obligation towards the people, was still very much alive and used influence to hold on to the voluntary irrational deference of the people that they could better manoeuvre.

The discourse of deference was blurred once more at the time of the debates over Whig parliamentary reform at the end of the eighteenth century and the beginning of the nineteenth century, when “deference” and “influence” could be the tools to manage a society which was not educated enough in the eyes of political thinkers to be given political power. If one does not distinguish the various forms of deference referred to and what they entail, the discourse becomes unintelligible. Influence through the use of patronage could be seen as a way of contributing to a conservative, unenlightened, irrational deferential society to guarantee respect for the governing classes (whether the old aristocracy or the new rising bourgeoisie), at a time of change, but it could only have a short surviving span. It was not coercive but it did not allow the population to rationally accept its leaders and accept that they, as a society, had a role to play too. It could only be used at a period of transition in the evolution of such a political society – as it could trigger the rebellion of the people – whereas the other possibility was to educate the people, to get them to logically understand what their political role was, leading to a voluntary rational form of deference which could be compatible with the evolution of the UK in the nineteenth century.

It is in this tension between what can be perceived as a way of disguising the control of the people through an unenlightened, irrational deference and the need to enlighten the people politically to have a truly English deference founded on a rational perception of one’s

role in political life, that England enters the dawn of the democratic age. With it, new definitions of the term at a time when a new science of politics was being framed, also appeared, adding various layers of definitions to the ways in which deference was used as a concept by political thinkers. It is in the journey from a republican deference in favour of equality to a hierarchical voluntary type of deference, still rooted in the organic nature of the nation and cautious of equality, that the concept truly appears in its full use in the nineteenth century. Unfortunately, it also carries with it a vagueness of use which will sow the seeds of its demise in the twentieth century.

Chapter 2

The Fear of Democracy

The complex and sometimes contradictory patterns of deference at work in late eighteenth and early nineteenth century Britain complicate any narrative depiction of its role. The best one can hope for is an impressionistic picture that can shed light on otherwise dark corners of the political and social landscape. The purpose of the concept(s) of deference discussed in the previous chapter is to provide that clarity. Was hierarchical voluntary irrational deference, as seen in the writings of Burke, still alive in the first half of the nineteenth century? Did it allow British politicians to regulate and moderate the demands of the democratic process, or was it already merely a useful fiction maintained by those in power to control and dominate demands for the suffrage?

Deference in “Unreformed” England¹

Historians have analysed the period on precisely such points and it has led to various ways of describing it. As David Cannadine reminds us in *The Rise and Fall of Class in Britain*² (1999), since the mid 1980's, three historiographical views have co-existed concerning the period from the Glorious Revolution of 1688 to the Great Reform Act of 1832, each implying a corresponding view of the nature and role of deference. One opinion is that the country was nothing more than an hierarchical society still dominated by an aristocracy

¹ This title is adapted from the following article: Frank O’Gorman, “Electoral Deference in ‘Unreformed’ England: 1760-1832”, *The Journal of Modern History*, vol. 56, n°3, Sept. 1984, pp. 391-429.

² David Cannadine, *The Rise and Fall of Class in Britain*, New York, Columbia University Press, 1999, pp. 25-35.

and in which religious orthodoxy held sway.³ In this sense, Burke's voluntary irrational deference fits the case nicely and allows us to understand how the governed could accept such a hierarchy. This "Tory" view is adopted by historians such as J. C. D. Clark who have attempted to demonstrate the survival of a traditional monarchical society in the eighteenth century in opposition to the dominant narrative of Whig Historiography.⁴ The latter, the second competing vision, was that, at around the end of the Stuarts, encouraged by Lockean ideals and the first signs of an industrial revolution, a "bourgeoisie" emerged who pushed the nation forward in a spirit of progress and free-trade. In this case – the story of what was in effect the triumph of classical liberal ideals – hierarchical voluntary rational deference fits the narrative rather well. As many historians have pointed out, the Marxist understanding of this period, which told the story of the rise and domination of a capitalist and individualistic bourgeoisie, does not depart from the Whig vision of the period even while criticizing it. It also leads *a fortiori* to a view of rising hierarchical voluntary rational deference as the hegemonic thought of the dominant bourgeoisie.

However, a third historical revisionist vision emerged in the 1980's, based on new scholarly works such as those of Cannadine himself. In this view, Britain was composed of other nations than England and was at the head of an extending Empire; it was still hierarchical, patriarchal and Anglican, but also innovative, commercial, bureaucratic and expansive. It was in the process of being dominated by the bourgeoisie and faced new political and religious demands both. It was therefore, in the words of Cannadine, "hierarchical, three-layered and polarized"⁵. This story points to the coexistence of hierarchical voluntary rational and irrational deference and shows that the two subtypes of deference were not necessarily opposed. They coexisted in a more nuanced way than either Tory, Whig or Marxist historiography would have one believe.

All three narratives agree that society before the turn of the nineteenth century was still very much dominated by hierarchical voluntary irrational deference. "With very few exceptions, therefore", writes Cannadine, "eighteen-century British politics was *not* concerned with the articulation, assertion, or conflict of collective social identities, beyond the usually unstated but accepted recognition that a hierarchical society was the best of all possible social worlds and that the people at the top of that hierarchy should be left to get on

³ The revisionist analysis of the Tory historian J. C. D. Clark fits in this category. See: J. C. D. Clark, *English Society, 1660–1832. Religion, Ideology and Politics during the Ancien Régime* (1985), Cambridge, Cambridge University Press, 2000, 580 pages.

⁴ *Ibid.*

⁵ David Cannadine, *The Rise and Fall of Class in Britain, op.cit.*, p. 26.

with governing it”⁶. Essentially, Cannadine shows that hierarchical voluntary irrational deference was alive as people “knew their place” and did not discuss it. What remains problematic to define is why people accepted their allotted position in such a way. Cannadine explains it in terms of the vocabulary of “class” and “ranks and orders” but, more precisely, it is deference at play, albeit of two different kinds – voluntary rational and irrational deference. On the one hand, some rationally agreed that it was better to leave someone they trusted to guide them politically (until that trust was forsaken, however); on the other hand, others did not even consider the question of who should guide them politically – either out of subjection or out of indifference – and went along with what had been decided for them. These two types of deference stem from hierarchical voluntary deference but they split to reveal two offshoots which have very different aims: one is conservative, the other much more democratic.

However, it would be ill-advised to accept Cannadine’s understanding of the Georgian period as the only acceptable narrative. If Cannadine is right to point to the hierarchical domination of society, he barely touches upon the fact that individualism was very much the dominant feature of the English character and that it does not sit easily with hierarchical domination. English society and politics showed their ability to take in dissent and to engage with it. From Montesquieu⁷, at the beginning of the eighteenth century, to Dicey⁸, at the end of the nineteenth, “the spirit of liberty” of the English was remarked on by all contemporary foreign observers as that which made them so special in the bigger European picture. How can this fit with Cannadine’s “accepted recognition that a hierarchical society was the best of all possible social worlds and that the people at the top of that hierarchy should be left to get on with governing it”⁹? Essentially, that hierarchical voluntary irrational deference dominated.

In an article on “The Social Calculus: Deference and Defiance in Later Georgian England”¹⁰, John A. Phillips has challenged the idea that deference of any kind was at the core of Georgian society – and here, he seems to describe what is essentially voluntary irrational deference merging into voluntary rational deference. Studying the private journals of a number of minor clergymen in the first half of the nineteenth century, he contends that deference was only a veneer which could crack very rapidly under the pressure of the strong

⁶ Author’s italics. David Cannadine, *The Rise and Fall of Class in Britain*, *op.cit.*, p. 53.

⁷ Charles Louis de Secondat, Baron de Montesquieu, *The Complete Works of M. de Montesquieu*, *op.cit.*, Vol. 1., http://oll.libertyfund.org/titles/837#Montesquieu_0171-01_879, accessed 2 June 2017.

⁸ A. V. Dicey, *Introduction to the Study of the Law of the constitution*, Indianapolis: Liberty Fund, 1885, 8th edition 1914, chapter 4, p. 111.

⁹ David Cannadine, *The Rise and Fall of Class in Britain*, *op.cit.*, p. 53.

¹⁰ Phillips, John A., “The Social Calculus: Deference and Defiance in Later Georgian England”, *Albion: A quarterly Journal Concerned with British Studies*, vol. 21, n°3, Autumn 1989, pp. 426-49.

sense of a “free-born Englishman”¹¹. Most of the English clergymen of the period had to make do with rather strong-willed parishioners on whom they relied for some of their living and who were not in awe of their status as religious leaders. They also had servants who could be defiant and not easily led. Phillips refers to the “illusionary nature of deference”¹². In fact, the “Hanoverian clergymen and others who made up the establishment face[d] an individualistic, conditionally-deferential populace requiring very careful, tactful handling”.¹³ Phillips has a sketchy understanding of the different forms of deference, but this should not obscure the fact that he points to a tension in the historiography of the period according to which the picture of a hierarchical society in England needs to be correctly shaded. The point he shows is that Englishmen, whether servants or parishioners, had a strong sense of their self-worth. They would exhibit a form of hierarchical voluntary rational deference when it suited them, but when pushed for money or asked to do tasks they considered not to be theirs, would assert themselves and resist, either passively or actively. John Phillips relates how the Reverend Samuel May of Roborough, in Devon, was even fined by the Consistorial Court for losing his temper during the Sunday service and pushing the parishioners out of the Church because of their rowdy behaviour (some were drunk, others talked). The very fact that the Court sided with the people did not help his position, showing that he was at all time to be the servant of his parishioners.¹⁴ John Skinner, another clergyman, witnessed the same type of behaviour in Church and was equally shown disrespect for trying to keep peace during service. Dismayed, Skinner wrote in his 1809 diary: “Whilst reading the Prayers, I experienced an open insult from some of the congregation in the gallery, as the people made such constant hawking, in the manner the audience at a theatre expressed disapproval of an actor on the stage”¹⁵. People no longer gave respect to the position of the clergyman but much more to the way in which his function could serve them. Such a reversal of roles which had been traditionally played in former centuries had an undeniably egalitarian flavour. Such simple parsons, on whose private papers Phillips worked, show a deep sense of frustration at not being deferred to and at their financial position being dependent on the good-will of parishioners that they had to please.¹⁶ These clergymen were trapped by a system which had relied on the respect for the sacred but which was changing – so the clergymen had to adapt to

¹¹ *Ibid*, p. 447.

¹² *Ibid.*, p. 448.

¹³ *Ibid.*

¹⁴ *Ibid*, p. 438.

¹⁵ John Skinner’s diary quoted in *Ibid.*

¹⁶ As Phillips reminds us, “Vicars derived their income from the glebe, tithes, and oblations with augmentations from fees and offerings”. See: *Ibid*, p. 433, ft 31.

it, not the other way round. This may serve as a representative example of how deference moved from being irrational – not enlightened and essentially quasi-religious – to a much more rational deference in which citizens would reason and decide whether being deferential was worth it or not. Unlike the USA, created on equality of status from the start, England was essentially hierarchical but was, and had been, moving on towards a more democratic society.

This change within society was taking place at the same time – 1750-1832 – when utilitarianism was emerging in opposition to a contractualist and natural rights understanding of the nature of the links between ruler and ruled. Jeremy Bentham (1748-1832) was the father of utilitarianism, or Benthamism, in his case (to better distinguish it from later variants of the 19th century in the works of John Stuart Mill or Henry Sidgwick). For Bentham, who was first and foremost a legal philosopher, society and politics could be mapped out according to a scientific model. Men were guided by pain and pleasure and this ruled their actions. Happiness was not something abstract but was mainly the sums of all pleasures which could be reduced to a calculation. Therefore, the test of right institutions and the laws of governance should be derived from one main principle, the famous principle of “the greatest happiness of the greatest number”. This was a very straightforward device to try and bring private interest – generally self-orientated – in line with the interest of society as a whole. Such a principle was the founding principle of a utilitarian morality encompassing all fields of life in society, from law to politics. It was a practical attempt to reform the laws, based on deduction and reason. Essentially, from an initial liberal spirit, Benthamism introduced the germs of state intervention to guarantee the Happiness principle and eventually reversed, with the work of John Stuart Mill and the use the Fabians and the New Liberals made of it later on at the turn of the nineteenth century, part of the classical Liberal way of thinking which had dominated Victorian England.

If Burke trusted the organic institutions of the country to produce a system which would inspire respect, Bentham was describing a system where man-made laws based on the principle of utility served the same function. Both were describing a system in which the English people had the means to experience liberty in practice, but Burke relied on the voluntary irrational deference of the people for the preservation of freedom, whilst Bentham argued those who had chosen to give their respect to the system (that is rationally deferential people) could emancipate themselves from the weight of their own history, their religion, and their traditions. If the source of sovereignty was the law and no longer a balance of powers between the monarch and the aristocratic rulers in Parliament, then it meant that the people had to understand and use their reason to create laws which would benefit most of them. The

parishioners described by Phillips were of such a kind, as they had understood their own self-interest and displayed generosity or not according to how their parson behaved towards them. They no longer respected what their Clergymen represented; they showed little respect for the function which could no longer, through tradition and fear of God, rule the people. This was also happening to rulers as their self-affirmed authority relying on voluntary irrational deference was no longer enough for legitimacy: they needed to negotiate with public opinion.

Such a transformation from irrational to rational forms of deference was also witnessed in the electoral behaviour of the men who could vote before the 1832 Reform Act. Prior to 1832, parliamentary constituencies (roughly 558 seats for Britain) were of two kinds: counties and boroughs which mostly voted for two Members of Parliament to represent them in Westminster, regardless of the size of the population in the constituency. Since the Septennial Act of 1716, General Elections took place at least every seven years. They did not lead to a fight between organised parties for the creation of a government as was to become the case in the second half of the nineteenth century. Elections were generally fought to confirm those in power – a ministry whose Ministers were appointed by the monarch. Executive power was still in the hands of the monarch who exercised strong influence but, since 1688, this power was controlled by Parliament. The main role of the House of Commons was to legislate and vote taxes checked by the House of Lords. This was a system which was to evolve towards a democracy throughout the nineteenth century and only truly become one after 1928, with the Representation of the People Act, which allowed the entire population (men and women) above the age of 21 to vote. The pre-1832 voters were all male, and usually had to be in possession of a property worth a certain value. They represented roughly 4% of the adult population at the time (7% after 1832).¹⁷

For a long time, historians defended the idea that most voters pre-1832 were guided by their superiors – mostly landed proprietors. At a time when the vote was not secret – the Ballot Act which introduced secret ballot for parliamentary and municipal elections was only passed in 1872 – male voters who were tenants were seen as being under a hierarchical obligation to vote according to the preference of their masters. This was such a common

¹⁷ On the pre-1832 period see: Frank O’Gorman, “Electoral Deference in ‘Unreformed’ England: 1760-1832”, *The Journal of Modern History*, vol. 56, n°3, Sept. 1984, pp. 391-429 & Richard W. Davis, “Deference and Aristocracy in the Time of the Great Reform Act”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 532-39. For after the post-1832 settlement, see: J. R. Fisher, “The Limits of Deference: Agricultural Communities in a Mid-Nineteenth Century Election Campaign”, *Journal of British Studies*, vol. 21, n°1, Autumn 1981, pp. 90-105; T. J. Nossiter, *Influence, Opinion and Political Idioms in Reformed England: Case studies from the North-East, 1832-74*, Hassocks : Harvester Press, 1975, xii-255 pages; David Cresap Moore, *The Politics of Deference. A Study of the Mid-Nineteenth Century English Political System*, Hassocks, The Harvester Press, 1976, 529 pages.

perception that up to the 1980s – as seen with Cannadine – it was not challenged by historians. Frank O’Gorman refers to it as “one of the most powerful orthodoxies in modern British historiography”.¹⁸ There were attempts in the 1970s, with D. C. Moore’s *The Politics of Deference. A Study of the Mid-Nineteenth Century English Political System* (1976), to show that tenants were not dominated by their landlords, but by the communities in which they lived. However, Moore’s insistence on “Deference Communities” and his desire to show that the aristocracy, followed by the oligarchy in power in the nineteenth century, had done everything possible to carry on enforcing the role of these “Deference communities”, ends up by missing the main idea. The main problem, as Frank O’Gorman shows, is the lack of understanding of the different layers of deference. How can one understand the coexistence of strong-willed people (both voters and parishioners) and the demands for democratic reforms at the beginning of the nineteenth century, if society was only following the decisions of their elite?

There is a fatal flaw in the previous narratives of British political development in the early nineteenth century. There is also a danger in reducing the electoral behaviour to the hierarchical structure of society and of using the term “deference” without breaking it down into hierarchical voluntary rational and irrational deference. It ends up meaning nothing and being this vague word that can be used by everybody to mean “passive respect,” which is also misleading. Moreover, not breaking the term down does not help because it would just mean that the English were a homogenous bovine nation not aware of the changes going on in the USA and France at the time and dully accepting to defer to their leaders without even questioning their own existence. It is much more the case that the Anglican aristocracy and gentry were confronted by a dissenting new class of industrialists and that, in turn, these two were opposed by the non-voting lower classes. The third problem is that by hiding a voting behaviour under the term of “Deference”, there is a Machiavellian undertone already mentioned which tends to show that the elite in power was using “Deference” to keep power and was aware of such power. However, this was a multi-layered question, not only based on the suffrage but mostly on the representations of new interests in Parliament.

The truth lies much more in the folds of this multi-faceted issue. D. C. Moore’s studies of electoral behaviour at the time of the First Reform Act conclude that people were more often influenced than not by their immediate environment and the voting behaviour of their

¹⁸ Frank O’Gorman, “Electoral Deference in ‘Unreformed’ England: 1760-1832”, *The Journal of Modern History*, *op.cit.*, p. 393.

peers.¹⁹ In his words, they were dominated by “Deference Communities”²⁰. However, Moore leaves aside the possibility of an honest landlord willing and able to convince his tenants to vote like him, not out of fear or submission, but out of the use of their reason – because of his sincere and caring behaviour and/or his astute decisions – in a word, because of his capacity to inspire voluntary rational and enlightened deference in his tenants because of the self-interest they could have in doing so. As Frank O’Gorman reminds us: “electoral influence was not simply a right of property [...] it was a moral trust, although not a legal one, involving distinct obligations of service not merely to the voters but to the community as a whole”²¹. This does not mean that the landlord did not see personal benefit in such an attitude nor that, in the end, he could not compel his tenants to vote for him (such behaviour certainly existed) but it means that a certain spirit of compromise or of reciprocity in the interest of both was often at work. In the end, both types of hierarchical voluntary deference (rational and irrational) generated votes in accord with the landlord’s wishes and promoted stable political communities.

Furthermore, O’Gorman’s study of voting behaviour from 1760 to 1832 demonstrates clearly that using “deference”, to mean ‘submissive respect to an elite’ is a mistake. His long article is a study of electoral behaviour in English constituencies: trying to produce representative data about constituencies which had different qualifications for the franchise, which were not of the same size, and not controlled in the same way by the dominating landlords was a challenge, but several conclusions can be drawn that run counter to Moore’s depiction of a society in which deference worked chiefly through brute force or through irrational imitation. O’Gorman draws a distinction between electoral behaviour in the 40 English counties and the 203 English boroughs. In the counties, his data shows that more often than not, the local landlord would use persuasion to get his tenants to vote in the way he wanted. Even more importantly for O’Gorman, “the electoral rituals of canvassing and visitation, parades and processions, treating and entertainments signify the persuasion of equals rather than bullying of subordinates”²². Plainly this was not quasi-religious voluntary irrational deference, nor a simple coercive command and obedience system. This was

¹⁹ David Cresap Moore, “The Other Face of Reform”, *Victorian Studies*, 5, 1961, pp. 7-34; David Cresap Moore, “Concession or Cure: The Sociological Premises of the First Reform Act”, *Historical Journal*, 9, 1966; David Cresap Moore, “Social Structure, Political Structure, and Public Opinion in Mid-Victorian England” in Robert Robson (ed.), *Ideas and Institutions of Victorian Britain*, New York, 1967, p. 36, p. 47.

²⁰ David Cresap Moore, “Concession or Cure: The Sociological Premises of the First Reform Act”, *Historical Journal*, *op.cit.*, p. 59.

²¹ Frank O’Gorman, “Electoral Deference in ‘Unreformed’ England: 1760-1832”, *The Journal of Modern History*, *op.cit.*, p. 396.

²² *Ibid*, p. 402.

reasoned deference taking place in an England in which rulers and ruled understood themselves to be linked by relations of both interest and respect, in which there was still an aristocratic dimension to such links but very much eroded by social changes. What is interesting is how any use of intimidation or arbitrary power by the landlord was generally a self-defeating exercise which would disrupt the well-being of the community and not necessarily lead to the desired result. As has been shown above with the case of clergymen, those in positions of power had to adapt to the desires of those supposedly below them. In reality, apart from small villages in which the community still had some form of authority, most voters in counties used their votes according to their individual preference, contrary to Moore's idea of quasi-unanimous communities. O'Gorman's conclusion is unambiguous: "there never was a 'Golden Age of the Deference Community'. High dissidence and low unanimity rates appear to be integral elements in electoral behavior in the counties in the century before Reform"²³. However, it has to be added that lack of unanimity does not mean that there was no deference at all as, in fact, hierarchical voluntary irrational and especially rational deference for the institutions of the country were very much alive.

In the boroughs, influence and coercion on the part of leaders was even less prominent as most voters (generally craftsmen) were in possession of their tools of activity which allowed them to exercise their freedom. In the end, what O'Gorman defends is "the mutual theory of deference" by which he means that "the degree of electoral unanimity that could be achieved was the natural consequence of a reciprocal and interactive set of relationships in which the social and economic inferiority of one side was matched by a normative system of obligation, paternalism, and service on the other"²⁴. This is one of the best examples of voluntary rational deference in action. The other very useful closing remarks of the article concern the ways in which the "middling orders" – for O'Gorman those who had the suffrage – and the "upper orders" came together, during the pre-1832 Reform Act to defend themselves from the laboring classes. This made the aristocracy in power much more willing to compromise with "the middling voters". This voluntary rational deference – which also meant deference of the aristocracy to the middling classes – is precisely what the Whigs tried to encourage, expand and protect through the Great Reform Act.

²³ *Ibid.*, p. 416. David Eastwood comes to the same conclusion. See: David Eastwood, "Contesting the Politics of Deference: the Rural Electorate, 1820-60" in: Jon Lawrence and Miles Taylor (eds), *Party, State and Society: Electoral Behaviour in Britain since 1820*, Aldershot, Scholar Press, 1997, pp. 27-49.

²⁴ Frank O'Gorman, "Electoral Deference in 'Unreformed' England: 1760-1832", *The Journal of Modern History*, *op.cit.*, p. 425.

It also explains why such events as the Peterloo massacre were the sign of a tension between those who did not have the suffrage and those who had it whilst not being part of the ruling elite (O’Gorman’s “middling orders”) and not just a tension between those who wanted the vote and the elite in power. This is a much more subtle approach to what was happening at the time and moves us away from the Manichean rhetoric of the elite in authority trying to keep control and the people trying to get the suffrage.

In effect, the Great Reform Act of 1832 was a proposal for change as well as a protective tool passed by the Whigs in power precisely because it allowed them to keep control whilst giving in to new demands in an organised way. The alliance of the aristocracy in power with a new generation of voters was based on the idea that the newcomers were essentially men who could grow into the system without endangering it. They were voluntarily deferential first and foremost to the system: they understood their role in it because they had a stake in it and they would be introduced into it by an old guard who would both be able to control and guarantee the extension of the suffrage in such a way. Essentially too, both old and new voters would carry on nurturing and adapting to the new needs of the age. In his defence of the Reform Bill in the House of Commons on March 1, 1831, Lord John Russell reminded the MPs that the role of the new Bill was not “to overturn the institutions of our ancestors” but to “preserve the spirit of those institutions”.²⁵ He then appealed to the aristocracy “to come forward, and, by their conduct on this occasion, to give security to the Throne, stability to Parliament and the constitution, and strength and peace to the country”.²⁶ Those were not futile words as the old class had to make way for the new one, peacefully and in the spirit of the system which had been seen – by the Whigs anyway – to evolve according to the needs of the nation. “To establish the constitution on a firm basis”, Russell concluded:

you must show that you are determined not to be the representatives of a small class, or of a particular interest; but to form a body, who, representing the people, springing from the people, and sympathising with the people, can fairly call on the people to support the future burthens of the country, and to struggle with the future difficulties which it may have to encounter; confident that those who call upon them are ready to join them heart and hand: and are only looking, like themselves, to the glory and welfare of England.²⁷

In other words, the Whigs were trusting the hierarchical voluntary deference of those in power to protect its very essence, i.e. its liberal spirit (seen as greater than any personal interest).

²⁵ Lord John Russell, Ministerial Plan of Parliamentary Reform, *HC Deb 01 March 1831 vol 2 cc1061-151*, <http://hansard.millbanksystems.com/commons/1831/mar/01/ministerial-plan-of-parliamentary-reform> (1085-1086), accessed on 18 October 2016.

²⁶ *Ibid.*, (1087-1088), accessed on 18 October 2016.

²⁷ *Ibid.*

They were also confident that letting into the system a middle-class which understood its value would prevent any form of rebellion which could topple the institutions of the country. Essentially, everyone would benefit from some form of change.

The notion of “voluntary rational deference” thus supports and helps to clarify O’Gorman’s theory of “mutual deference”. His final remarks in his article suggests that this type of deference :

aides our understanding of the voter, his determination to maintain his self-respect, his awareness of the possibilities of voting on terms, his willingness to know his place but to maintain it on the most advantageous terms possible, even to the point of resisting political direction. [...] The mutual theory of deference assists our understanding of the electoral system, of the relationships between patrons and voters, of the control of constituencies, and of the cohesion of interests. Furthermore, it helps us to explain the normative framework within which electoral and political activity occurred and thus the legitimizing processes that underpinned the control of the electoral system by the landed interest.²⁸

Perhaps in part because O’Gorman’s concept of deference was under-theorized, his long 1984 article has not had the impact it deserved, especially as it invalidated the argument of D. C. Moore on the 1832 period in the latter’s massive study of electoral behaviour in the mid-nineteenth century. O’Gorman’s demonstration is lethal to Moore’s approach which continues to be widely cited.²⁹ O’Gorman’s work shows that hierarchical voluntary rational deference was in reality the dominant spirit infusing political life in the years leading up to the Great Reform Act and during the delicate transition from aristocracy to democracy in the Victorian age. It is also proof that political data can be devised and used to see where deference was at work if the right questions are asked.

After 1832: the transition from irrational to rational deference

Where does this leave us at the time of the first Reform Act? In reality, the “free-born Englishman”³⁰ of Phillips and O’Gorman can coexist with Cannadine’s “hierarchical, three-layered and polarized”³¹ society if he is studied alongside the great question of the day, i.e.

²⁸ Frank O’Gorman, “Electoral Deference in ‘Unreformed’ England: 1760-1832”, *The Journal of Modern History*, *op.cit.*, p. 427.

²⁹ Richard W. Davis, however, had already dented D. C. Moore’s work in 1976, see: Richard W. Davis, “Deference and Aristocracy in the Time of the Great Reform Act”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 532-9, pp. 532-3.

³⁰ Phillips, John A., “The Social Calculus: Deference and Defiance in Later Georgian England”, *Albion: A quarterly Journal Concerned with British Studies*, vol. 21, n°3, Autumn 1989, p. 447 & Frank O’Gorman, “Electoral Deference in ‘Unreformed’ England: 1760-1832”, *The Journal of Modern History*, *op.cit.*, p. 427.

³¹ David Cannadine, *The Rise and Fall of Class in Britain*, *op.cit.*, p. 26.

democratic reform. The successful adaptation of the British system to the demands of the day is the great story of the period – especially when compared to what was happening on the Continent at the time concerning the same question. The story of 19th century British politics is the story of how the government was adapted to greater democratisation, which included partially- or non-educated public opinion. The problem for those who already had the suffrage was whether greater political participation after 1832 would endanger long acquired and stable institutions which had amply demonstrated their ability to generate liberty in practice (and not only in theory). Obviously, regardless of Lord John Russell’s appeal to the aristocracy in the wake of the Great Reform Act, there was still a class of aristocrats who wanted to keep power despite the intentions of the terms of freedom. Voluntary deference to the system was not only about the liberty it gave, it was also very much based on the possibility of denying equal access to the suffrage because of the fact that equality was not compatible with deference (either voluntary or involuntary). There was something fundamentally foreign in the demands for equal access to the vote. How could the political system accommodate two rather different kinds of legitimacy and their accompanying roads to power: the voluntary rational deference O’Gorman demonstrates, on the one hand, and new demands which were remote from any type of deference, on the other?

The beginning of the nineteenth century marks a moment when a number of thinkers – Tocqueville and John Stuart Mill are classic examples – understood that the movement towards more equality in society would result in more political equality and in the democratisation of society. Democracy was perceived by such writers as suspicious for letting “the masses” unleash unpredictable political attitudes. There was a fear of something close to animal instincts which could not be restrained with such a regime. Democracy was not considered a system which could be left to work on its own, as it could lead to very bad rulers and endanger society. Therefore, the challenge was to try and understand such a regime to temper its worst excesses.

In December 1835, Alexis de Tocqueville wrote to John Stuart Mill:

It is much less a matter for the friends of democracy to find the means to make the people govern than to make the people choose those most capable of governing, and to give the people enough authority over the latter for the people to be able to direct the whole of their conduct and not the detail of actions or the means of execution. That is the problem. I am deeply persuaded that on its solution depends the future fate of modern nations.³²

³² Tocqueville to Stuart Mill, letter of 3 December 1835, *Correspondance anglaise*, OC, VII, I, pp. 303-4. It can also be found in Alexis de Tocqueville, *Democracy in America*, Liberty Fund, vol. 1, p. 317, ft g.

Tocqueville was pointing to some of the most crucial defects of the democratic political culture he witnessed in America: the inability to choose good rulers and, much worse, a propensity to choose mediocre representatives, with hardly any real experience of politics or desire to do good for goodness's sake. For Tocqueville, this political problem was accompanied by a broader social problem, a danger of the despotism of the majority. Public opinion faced no opposition in a democratic society and as a result the individual found himself constrained to conform to the beliefs of the majority. This could potentially have catastrophic consequences for the country as well as for individual freedom.

John Stuart Mill was inspired by Tocqueville's work on America, and added a new dimension taking into account the English context of transition from an aristocracy to the first stages of democracy. He added a new layer to Tocquevillian fears: if commercial societies brought undeniable progress and generated the desire for political representation (promoting liberty), they also pandered to the shallow desires of individuals. Mill was aware of Adam Smith's understanding of the potential problems within commercial societies but for him, there was a double problem: mediocrity was promoted by both commerce *and* democratic politics, because both were linked to the desire for more equality in society. Mill was really concerned with the viability of commercial societies and how they could sustain both equality and liberty. So his question was really: how to balance the equality of the majority and the private liberty of individuals. His solution could be found in the representation process (to prevent universal suffrage) and in the education of the people.

For some such as Matthew Arnold³³, culture and access to culture was the key to pacifying the possible dangerous tempers of the populace but a compromise was possible between a hierarchical society and a democratic one. In his 1859 essay *Democracy*, Arnold showed how,

In England, democracy has been slow in developing itself, having met with much to withstand it, not only in the worth of the aristocracy, but also in the fine qualities of the common people. The aristocracy has been more in sympathy with the common people than perhaps any other aristocracy. It has rarely given them great umbrage; it has neither been frivolous, so as to provoke their contempt, nor impertinent, so as to provoke their irritation. Above all, it has in general meant to act with justice, according to its own notions of justice. Therefore the feeling of admiring deference to such a class was more deep-rooted in the people of this country, more cordial, and more persistence, than in any people of the Continent. But, besides this, the vigour and high spirit of the English common people bred in them a self-reliance which disposed each man to act individually and independently; and so long as this disposition prevails through a nation

³³ Matthew Arnold, *Culture and Anarchy* (1869), Oxford, Oxford University Press, 2009, 272 pages.

divided into classes, the predominance of an aristocracy, of the class containing the greatest and strongest individuals of the nation, is secure.³⁴

However, Arnold was aware that “the habit and disposition for deference [was] dying out among the lower classes of the English nation” and that, conversely, “the advantages which command deference, that eminent superiority in high feeling, dignity and culture, tend[cd] to diminish among the highest classes”.³⁵ Therefore, in the middle of the century, the point was to find an equilibrium between what had been the advantages of aristocracy – “culture and dignity” – and what the new democracy would give – “readiness for new ideas, and ardour for what ideas it possesses”.³⁶

For others, such as Walter Bagehot³⁷, certain ploys needed to be devised to both control and guide the people at a time when the transition from an aristocracy to a democracy needed to be cleverly orchestrated, in order avoid ending up like the unstable French, who had already suffered many regime changes since the 1789 Revolution. Essentially, those in power and the newly enfranchised, precisely because of their voluntary deference to the constitution, were the guardians of a structure which they believed could not sustain full democratic demands. Tocqueville’s in a very un-French way or Mill’s and Bagehot’s fears were essentially that the very idea of “Democracy” was a problem in itself.

Throughout the nineteenth century, democracy as a regime was not only a political question, but a social and cultural issue related to the mores (to use Tocquevillian language) of the people, more than anything else. Therefore, any understanding of the changes which were taking place throughout the nineteenth century has to come in the light of a social and cultural background in which both hierarchical voluntary irrational and rational deference played an important role. In England, if the great question of the day was “how to educate/control the people to avoid the possible dangers of democracy”, it went hand in hand with the following question, which was nevertheless never framed in such a way, “how to evolve from irrational to rational deference”. In other words, how to get those who had a traditional, conservative, quasi-religious irrational deference for the institutions to an enlightened and reasoned understanding of their role – or future role – in politics. England was not France and using the French and American tools on the English constitution would

³⁴ Matthew Arnold, *Mixed Essays* (1879), London, John Murray, 1903, pp. 17-8.

³⁵ *Ibid.*, p. 19.

³⁶ *Ibid.*, p. 37.

³⁷ See: Walter Bagehot, *The English Constitution*, London, Chapman & Hall, 1867, viii-348 pages and Walter Bagehot, *Physics and Politics or Thoughts on The Application of the Principles of "Natural Selection" and "Inheritance" to Political Society*, London, Henry S. King & Co., 1872, 224 pages (first publication in *The Fortnightly Review*, from 1 Nov. 1867 to 1 Jan. 1872).

have been both a mistake and a rejection of the English past. As Phillips and O’Gorman show, this transition was already very much in progress in the decades before 1832. What was needed post-1832, from a liberal perspective, was to make the two sustain one another until voluntary irrational deference would no longer be needed and a reasoned deference could take over. From a conservative perspective, what was needed was proof that rational deference could be relied on to produce a stable, good and property-fearing government (liberals were more sanguine about this). The fact that aspects of hierarchical voluntary irrational deference have in fact survived up to the twenty-first century is a complicating factor which will be analysed later.

The liberal theory of politics in Victorian Britain was based on a property owning-system that was the standard for political rights. The individual could only participate in political life if he could guarantee, through his suffrage, a form of “stake” in the system. This was a guarantee that he would protect the system, not just for his own interests but for those of the community, and that he would do so responsibly, vested in its fate. The transition from a suffrage-based system to a non-property-owning democracy, which took place from 1832 to 1928, was based on a transformation of this classical liberal standard and on faith that the people would no longer need a real property stake in society to remind them of their individual responsibility. Agreeing to give the right of vote to people who did not have ownership or occupation of property meant a radical political transformation which altered Victorian Liberalism at the end of the nineteenth century. The second important tenet of the Liberal theory of politics was that the expression of citizenship, through active participation in political life once enfranchised, was supposed to bring moral virtue. Through political participation, the individual could both improve his life and that of the community. Closely related, the third tenet was that education had a great part to play in elevating the masses to the status of full voting citizens, not necessarily through formal schooling. Understanding the political system and being able to fully participate in it was to bring out the best in people.

So what really happened in 1832 in terms of deference? If the Great Reform Act is a defining moment in the political history of the nation – and it certainly was – it is so at least in part because it represented a transformation in political mores. In effect, Lord Grey’s Whig government decided that in the three-layered structure described by Cannadine, consisting of the aristocracy, the independent middling orders and the people, faith could be put in the middling orders who had a stake in the nation. It is in this sense that the 1832 Reform Act was

truly a “concession”³⁸ on the part of Lord Grey’s Whig government, because it believed that the aristocracy – the real one in the Burkean sense – would survive. Lord John Russell expressed it, in so many words, defending the Bill in the House of Commons in 1831:

It may be said too, that one great and injurious effect of the measures I propose will be, to destroy the power and privileges of the aristocracy. This I deny. I utterly deny that this plan can have any such effect. Wherever the aristocracy reside, receiving large incomes, performing important duties, relieving the poor by charity, and evincing private worth and public virtue, it is not in human nature that they should not possess a great influence upon public opinion, and have an equal weight in electing persons to serve their country in Parliament. Though such persons may not have the direct nomination of members under this Bill, I contend that they will have as much influence as they ought to have. But if by aristocracy those persons are meant who do not live among the people, who know nothing of the people, and who care nothing for them—who seek honours without merit, places without duty, and pensions without service—for such an aristocracy I have no sympathy; and I think, the sooner its influence is carried away with the corruption on which it has thriven, the better for the country, in which it has repressed so long every wholesome and invigorating influence.³⁹

The new voters were trusted to act responsibly, and candidates were expected to do likewise. In this respect ‘trust but verify’ was a natural response to potential uncertainty about voting behaviour, and public voting was considered an essential part of the system, rather than a flaw. As Richard David underlined, “So long as the vote was seen not as a right but as a public trust, open voting was viewed as another means of ensuring that an elector would act with deliberation and responsibility”.⁴⁰

The supporters of the Great Reform Act in Parliament thought very much along these lines and insisted on the fact that only those who could exercise their vote responsibly should be given it. This double approach – the vote as a trust⁴¹ and that voters had to have the capacity to understand what such a vote meant – was to dominate the political debates concerning enfranchisement throughout the nineteenth century. In *Liberalism in Nineteenth Century Europe. The Political Culture of Limited Suffrage*, Alan Kahan underlines that: “The

³⁸ Richard W. Davis, “Deference and Aristocracy in the Time of the Great Reform Act”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 532-39, p.532.

³⁹ Lord John Russell, Ministerial Plan of Parliamentary Reform, *HC Deb 01 March 1831 vol 2 cc1061-151*, <http://hansard.millbanksystems.com/commons/1831/mar/01/ministerial-plan-of-parliamentary-reform> (1087-88), accessed on 18 October 2016.

⁴⁰ Richard W. Davis, “Deference and Aristocracy in the Time of the Great Reform Act”, *The American Historical Review*, vol. 81, n°3, June 1976, p. 539.

⁴¹ This was Earl Grey’s very word used in Parliament. Quoted by Alan S. Kahan in *Liberalism in Nineteenth Century Europe. The Political Culture of Limited Suffrage*, New York, Palgrave, Macmillan, 2003, p. 24. Kahan emphasizes the prevalence of this rhetoric in liberal ranks.

idea that voting was a trust served to distinguish liberals from conservatives, as well as from democrats who thought that there was *a right to vote*⁴².

Here we can see in action the transitional process from one form of voluntary deference to another. The very idea of “a trust” helped to link the Burkean type of hierarchical voluntary irrational deference, in which the transmission of confidence over generations gave force to the institutions to rational deference, in which those who were given the suffrage would exercise their vote based on their independent judgement of the common good as well as their own self-interests (in the Smithian interpretation of the word). There is both a social and individual meaning to the idea of “trust” as the well-being of society was directly linked to the responsibility of the individual.

Irrational and rational deference coexisted in mid-nineteenth-century England, but what is most important is that there was a broad confidence in the deferential nature, rational or irrational, of the Englishman. The Whigs put their faith not only in the independent and reasoned opinion of the newly enfranchised to choose the right rulers, but *also*, and arguably more importantly, in the willingness of those who had not been given the vote to accept them. “The electorate will recognize its natural leaders”, writes Richard Davis and, then adds, “they will be worthy of being so recognized”.⁴³ This crucial confidence that a deferential approach to English politics would be effective allowed the Whigs to pass the Act. This was to have long-term implications for the rest of the century as the transition from the vote as a “trust” to the vote as a “right” would effectively mean that the advent of democratic equality would not destroy rational deference and the strength it gave to the system.

Plural forms of deference in mid-nineteenth century England

Such a transition was only possible because the institutions of the country were sufficiently open to negotiation and, especially, stable. The territorial and naval domination of the United Kingdom in the first half of the nineteenth century allowed commercial and financial supremacy but it was only a consequence of a constitution which was the buttress of a liberal system. It is the coexistence of both types of voluntary deference, albeit in changing proportions, which allowed a peaceful political transition from pre-1832 society to the reformed Victorian period.

⁴² *Ibid.*, p. 24.

⁴³ Richard W. Davis, “Deference and Aristocracy in the Time of the Great Reform Act”, *The American Historical Review*, *op.cit.*, p. 537.

What happened in Parliamentary government after the Great Reform Act – that is, government by debate during the classical Parliamentary period from 1832 to the birth of the modern parties after 1867 – also happened at lower levels of society. Through changing patterns of deference, the old hierarchy (based on the monarchy, the aristocracy, Anglicanism, and the agricultural communities) and the new commercial society (based on finance, industrialism, and Dissent) found means to accommodate their ideas and beliefs.

The coexistence, even within individuals, of old and new patterns of deference was essential to Anglo-British political success by comparison with most of the rest of Europe in this period. In his essay “The Limits of Deference: Agricultural Communities in a Mid-Nineteenth Century Election Campaign”, J. R. Fisher shows how yeoman farmers, tenant-farmers and tradesmen, if pushed by circumstances (in this case, the period of upheaval after the repeal of the Corn Law), asserted their views, not fearing to challenge the hierarchical structure of society. Once again, what comes out is a spirit of independence, well-rooted in the history of the nation and the foundation for a rational deference to flourish. What is also revealed, in all these micro-analyses of Victorian communities, is the capacity to find a solution through generally peaceful political roads. In the case of Fisher’s study, it came in the form of an Address against Free Trade signed in 1850 by “some twelve hundred farmers and tradesmen in the Newark area”⁴⁴. This was the means to begin a debate on the subject in Parliament, to hear the resentment of those who had suffered from the repeal of the Corn Laws and to try and find certain solutions. Essentially, the Parliamentary system allowed the venting of frustrations through debate.

Throughout the nineteenth century, increasing public debate, including challenging moments such as Chartism, led to moments which, even though they led to massive discontent, also showed that there were means of questioning the system. In the case of the 1839 Chartist petition, if it did not have the result hoped for, the case was nevertheless taken on by the Press, spoken of, and the demands were voiced. These were the signs of a political system which could sustain criticism without falling or reacting violently in retaliation, which is more than can be said about countless other regimes at the time in other parts of Europe, starting with Russia or France. Obviously, this also pinpoints the democratic-averse nature of Parliamentarism as a representative system sustained by voluntary deference (of both types) in which there was very little affection for direct democracy. Public business was carried out by those elected to represent the people because they were able to carry discussions.

⁴⁴ J. R. Fisher, “The Limits of Deference: Agricultural Communities in a Mid-Nineteenth Century Election Campaign”, *Journal of British Studies*, vol. 21, n°1, Autumn 1981, p. 102.

Montesquieu had expressed it in such words a long time before, declaring that “The great advantage of representatives is their capacity of discussing public affairs. For this, the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy”.⁴⁵ Parliamentary sovereignty was not to become popular sovereignty and the English system of governance was made possible by a specifically English sense of deference to the constitution. Deference is not the same thing as stability but it is one of the main causes of stability and a source of legitimacy. It is the force of the English to have protected such a system, so well adapted to their mores, i.e. that of a specific form of deference which gave continued legitimacy to Parliamentary sovereignty even in the face of challenges by expanding equality and, thus, this specifically English form of reasoned and voluntary hierarchical deference also prevented the slide from parliamentary sovereignty to popular sovereignty in the nineteenth century.

Essentially, if the struggle was for more equality at the time, the guardians of the Parliamentary temple did play their role in introducing gradual reform into it until it became fully democratic in the first half of the twentieth century. In the second half of the Victorian age, Britain appeared as an elastic structure relying on the voluntary deference of its champions, whether Liberal or Conservative, to adjust and adapt but always keeping the edifice of the structure safe. Derby and Disraeli’s “leap in the dark” at the time of the second reform act of 1867 could have toppled the system but it is the indication that rational deference could replace irrational deference rather easily and maintain stable governments. The newly enfranchised brought the Liberals back into power in 1868 when they had been expected to thank the Conservatives for the vote. Essentially, these new voters were showing their capacity to understand the system and to use it to promote their own ideas. In so doing, they were also respecting, in a deferential rational way, the very structure which had welcomed them into its fold by working it for the best, and by not imposing popular sovereignty. The one main witness of the age who identified this force with clarity and who came closest to linking it to the English constitution was Walter Bagehot.

⁴⁵ Charles Louis de Secondat, Baron de Montesquieu, *The Complete Works of M. de Montesquieu, op.cit.*, Vol. 1, http://oll.libertyfund.org/titles/837#Montesquieu_0171-01_907, accessed 15 June 2017.

Chapter 3

Walter Bagehot, the “Darwin of Deference”¹

An observer looking at both sides of the channel in the middle of the nineteenth century would have seen a United Kingdom, secure and powerful, on the cusp of the monumental self-celebratory Great Exhibition of 1851. France, on the other hand, was once again about to suffer a coup d'état following a second revolution in 1848. For Walter Bagehot, this contrasting picture was a source of endless questioning which inspired a number of his writings. Why was one country stable enough to experience a certain degree of freedom, whilst the other made freedom one of its main goals and failed repeatedly in its attempts to experience it fully? Deference has a great deal to do with this state of affairs, as Bagehot saw hierarchical voluntary deference for one's institutions as the first prerequisite of a successful political system. This was the starting point for many of Bagehot's ideas, allowing him to look within the mechanics of his own country first before comparing them, mostly to France's. Other countries were also objects of comparison by Bagehot (the USA, India, some other European countries) but never more so than France.

Bagehot is best known as the able constitutionalist who wrote *The English Constitution*² (1867) and as the editor of *The Economist* from 1861 to his death in 1877. It is less known that he was also a banker in charge of his family's bank, an economist, an essayist, a passionate reader, a trained lawyer, and a leading member of the Liberal

¹ This expression is adapted from Geoffrey Best: “The mid-Victorians of course had no historical monopoly of deference. But deference does seem to have been remarkably strong in their time, and Bagehot was its Darwin”. See: Geoffrey Best, *Mid-Victorian Britain 1851-75* (1971), London, Fontana Press, 1985, p. 259.

² Walter Bagehot, *The English Constitution* (1867) in: Norman St John-Stevast (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, pp. 161-409.

intelligentsia of the day. Often referred to as Gladstone’s “spare Chancellor”³ for the economic advice he gave the Liberal Prime Minister, Bagehot was a multi-faceted Victorian who tried to understand the greatness of the English political system and, in doing so, studied what he believed made the English unique as compared to other nations. Bagehot’s fortune and misfortune is that he had an undeniable talent for summarizing ideas in witty sentences which fitted his journalistic style. Unfortunately, his thoughts have more often than not been misquoted precisely because he was easily read, and this was never more so than with regard to the use he made of the concept of deference. His study of comparative politics led him to develop a very powerful understanding of deference. More than any other writer, his work allows us to understand the crab-like ballet of hierarchical voluntary rational and irrational deference in this period, by identifying and discovering them in different parts of the English constitution. His celebrated description of “the dignified parts”⁴ (the Monarchy and the House of Lords) and “the efficient parts”⁵ (The Cabinet and the House of Commons) of the constitution was meant to be part of a larger and even more powerful argument about British politics which linked irrational deference to the dignified parts and rational deference to the efficient parts. Because contemporaries took deference for granted and modern commentators have ignored its importance, his argument has often been blurred, making his thinking unintelligible for twenty-first century readers who generally understand the expression “deference” in the most reduced sense and out of its context, i.e. that of hierarchical respect for a superior, or for something of which they feel in awe.

Referring to Bagehot as “the Darwin of deference” implies, to those who know the history of the theory of evolution, that Bagehot was not necessarily the first to come up with the idea – just like Darwin had not been the first to draw on evolutionary ideas – but it does entail that, like Darwin with natural selection, he did make a breakthrough concerning deference. What was so important about Bagehot’s use of the term? Essentially, he is the only author to use deference in a political capacity and to explain how it is related to and has a role in the English constitution. No other author, before or after him, has ever focused on deference as a device to explain the link between people and regime. Even more importantly, all the studies on deference written in the twentieth century focus on deference as meaning “respect for the opinion of one’s superior” but very few – apart from those mentioned in the

³ Alastair Buchan, *The Spare Chancellor : The Life of Walter Bagehot*, London, Chatto and Windus, 1959, 287 pages.

⁴ Walter Bagehot, *The English Constitution* (1867) in: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, p. 206.

⁵ *Ibid.*

first chapter – recognise the very special definition and role that Bagehot gave to the term. If it is easy to quote *The English Constitution*, or any of the numerous articles that he wrote, as soon as something happens in the news related to the monarchy, it is much more rewarding to delve into what Bagehot really meant when using the idea of deference. With him, deference is no longer a clever quotation, easy to fit in about the English or their monarchy without even thinking about the real meaning associated to it. The term takes on a much more robust meaning which also has constitutional and social implications and which forces one to reconsider the English constitution in the second-half of the nineteenth century.

As befits Bagehot's way of doing, there is no single book in which he described his political or constitutional theory: it must be inferred from the multitude of his writings. Nevertheless, his definition can be clarified in the context of his famous description of English institutions in *The English Constitution*⁶ as well as how they were described in his lesser-known work, *Physics and Politics*⁷ (1872). But both for Bagehot and his contemporaries, the concept of deference was intimately bound up with the idea of progress. For the twenty-first century reader, this is counter-intuitive – we would more naturally associate deference with a static or declining social state. In the difference lies the importance of resurrecting Bagehot's concept, and with it an important aspect of modern British history. In fact, as we will see, Bagehot himself had trouble keeping in mind the progressive potential of constitutional changes, at least as far as the suffrage reform of 1867 was concerned.

In the first half of the nineteenth century, Burkean ideals of peaceful political evolution coexisted with a new political vocabulary of progress. This new vocabulary, the confrontation of different views regarding the roots of political power and the enlightenment discussion of all things political, gave way to a 'science of politics'. As has been noted, "Even in the eighteenth-century [...] there was, among other things, an unresolved tension between the claims of, on the one hand, proceeding deductively from the laws of nature, and, on the other, arguing inductively from the evidence of the historical record".⁸ Walter Bagehot is the very embodiment of this tension, which continued to be evident in the nineteenth century. As a contemporary of John Stuart Mill and Herbert Spencer, he stood even more than both of them at an intellectual crossroads. He was able to look back at the eighteenth century, especially at the Scottish Enlightenment, and use the way in which thinkers the likes of Hume

⁶ *Ibid.*, pp. 161-409.

⁷ Walter Bagehot, *Physics and Politics or Thoughts on the Application of the Principles of "Natural Selection" and "Inheritance" to Political Society* (1872) in: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 7, pp. 13-144.

⁸ Stefan Collini (et al), *That Noble Science of Politics. A Study in Nineteenth-Century Intellectual History*, *op.cit.*, p. 21.

and Smith had rejected the myth of a social contract as the foundation of political power and define his own political theory. He was able to look forwards by using a scientific rhetoric applied to political societies based on a Lamarckian understanding of the heritability of acquired characteristics applied to political societies. Finally, as a good nineteenth-century liberal, he embraced the importance of translating into law the best customs of his country and of using the law as the basis for order and future progress. However, like many nineteenth-century thinkers, Bagehot did not believe that progress was inevitable, and he was all too aware of the dangers of a change of regime. Unlike John Stuart Mill, with whom he nevertheless shared (and from whom he borrowed) a great number of ideas, he was suspicious of the development of the suffrage. He saw democracy as potentially lethal for a country such as mid-Victorian England. His view of politics and his theory of the English constitution were bound up with a view of deference as an essential part of English politics. Deference could help society to progress, as limited suffrage was still limited, but the democratisation process was also supposed to allow the blossoming of stages in which deference would no longer be useful to society.

Walter Bagehot's evolutionary theory

To understand Bagehot's constitutional theory, it is useful to start with his political theory, that is, with the unjustly ignored *Physics and Politics, or Thoughts on the Application of the Principles of "Natural Selection" and "Inheritance" to Political Society*.⁹ The book came out in 1872 but it was first published – like most of Bagehot's works – as a series of articles in *The Fortnightly Review* from November 1867 to January 1872.¹⁰ They caught the attention of a number of thinkers, including Charles Darwin, who mentioned them in the footnotes of *The Descent of Man* (1871).¹¹ The book is still noteworthy in the sense that it was written late in life, after *The English Constitution*, as if Bagehot was retrospectively trying to

⁹ Walter Bagehot, *Physics and Politics or Thoughts on the Application of the Principles of "Natural Selection" and "Inheritance" to Political Society* (1872) in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 7, pp. 13-144.

¹⁰ See *The Fortnightly Review*: "The Pre-Economic Age", Nov. 1867, vol. ii, pp. 519-38; "The Age of Conflict", April 1868, vol. iii, pp. 452-71; "Nation-Making", July 1869, vol. vi, pp. 58-72; "Nation-Making", December 1871, vol. x n.s, pp. 696-717; "Conclusion – The Age of Discussion", Jan. 1872, vol. xi, pp. 46-70. These articles and their book version may be found in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 7, pp.13-144.

¹¹ In *The Descent of Man*, Charles Darwin quotes Bagehot's articles which were to come out later under the title *Physics and Politics*. Darwin writes in footnote: "See a remarkable series of articles on *Physics and Politics* in the *Fortnightly Review*", p. 162 and he mentions Bagehot's work several other times too. See: Charles Darwin. *The Descent of Man and Selection in Relation to Sex*, London, John Murray, 1871, vol. 1, p. 93, p. 162, p. 166, p. 239.

make sense of his constitutional theory in light of his evolutionary understanding of politics. In *Physics and Politics*, Bagehot is trying to find the laws of evolution of political societies to explain why some stagnated or even lost their way, while others thrived. One reason for such a quest, which does not appear in the text but which comes out clearly from the articles he was writing and had written at the time for *The Economist*, is that he was concerned with the situation in France and its repercussions on England. From 1870, when he was writing the last two articles of what would become *Physics and Politics*, up to 1872, when he published the five articles on the subject in book form adding a new concluding chapter, Bagehot published no less than 15 articles on France from the war against Prussia, the institutional changes, the end of the second Empire up to the birth of the Third Republic. A number of useful articles to understand his point of view were published at the time, especially, “The Collapse of Caesarism” (August 1870), “Do the Conditions Requisite for a Stable Government exist in France?” (Sept 1870), “The Politics of France as they should affect her Credit” (June 1871), “The New French Constitution” (Sept 1871) and “Constitutional Tendencies in France” (Sept 1872), all of which reflect his interest in the subject.¹² Over the same period, he was also writing on English institutions, suffrage for women, on the monarchy, on English politicians and on the House of Lords, as if the constant coming and going between the French and English situations allowed him to reflect better on the constitutions of both countries.¹³

As was often the case with Bagehot, France was used as an example of what not to do. By comparing the evolution of France and England in his *Economist* articles, he was making sense of the differences in the political evolution of certain countries and, in turn, this was discernable in his evolutionary reflections in the *Fortnightly Review* articles which were to become *Physics and Politics*. In *Physics and Politics*, he takes the reader all the way back to what he refers to as “the dawn of history”, meaning the first stages of society, to see how men interacted and how they related to power, through the military ages, when order and obedience were drilled into men, up to the age of discussion, where “custom” could give way

¹² See: “The Collapse of Caesarism”, *The Economist*, 20 August 1870, pp. 1028-9; “Do the Conditions Requisite for a Stable Government exist in France?”, *The Economist*, 10 Sept. 1870, pp. 1111-2; “The Politics of France as they should affect her Credit”, *The Economist*, 3 June 1871, pp. 653-4; “The New French Constitution”, *The Economist*, 9 Sept 1871, pp. 1085-6; “Constitutional Tendencies in France”, *The Economist*, 14 Sept. 1872, pp. 1129-30.

¹³ See amongst others: “The Suffrage for Women”, *The Economist*, 7 May 1870, pp. 565-6; “The Residence of the Queen”, *The Economist*, 20 August 1870, pp. 785-6; “English Republicanism”, *The Economist*, 15 April 1871, p. 440; “The Monarchy and the People”, *The Economist*, 22 July 1871, pp. 871-2; “The Constitutional Relations of the Lords and Commons”, *The Economist*, 5 August 1871, pp. 933-4; “The House of Peers”, *The Economist*, 14 Oct. 1871, pp. 1238-9; “Mr Gladstone and the People”, *The Economist*, 4 Nov. 1871, pp. 1330-1; “Lord Derby on the Conservative Situation”, *The Economist*, 13 Jan. 1872, pp. 33-4; “The Thanksgiving”, *The Economist*, 24 Feb. 1872, pp. 227-8.

to “reason”.¹⁴ There is no *a priori* creation of a contract between ruler and ruled but much more of an empirical description grounded on history, anthropology, evolutionary science and sociology. Evidently, there is a tension in his desire to find the mechanistic “laws” of the development of political societies through a pseudo-scientific methodology whilst at the same time believing that politics derives from experience and circumstances.¹⁵ Very early on, as a young man, Bagehot had written an article entitled “Thoughts on Democracy” in which he plainly explained his approach – from which he would not depart in maturity:

There is little use in attempting to deduce the superior advantages of liberal government from long and obscure metaphysical reasonings about the social contract, framed when men were in the fishing and hunting state; for I cannot but think it very doubtful whether anything like the whole mass of mankind were ever in that condition at once, and if they were not, the contract could not have been agreed to by the whole race, and consequently cannot be binding on them.¹⁶

In reality, if Bagehot hoped to find the laws of evolution of societies, he did not find them. Instead, he identified essential stages for political progress and certain attributes of national character adapted to different political regimes. This is why in his conclusion, to *Physics and Politics*, he declared carefully: “I only profess to explain what seem to me the political prerequisites of progress, and especially early progress. I do this the rather because the subject is insufficiently examined, so that even if my views are found to be faulty, the discussion upon them may bring out others which are truer and better”.¹⁷ The link with John Stuart Mill’s desire to always find a “devil’s advocate” to encourage discussion in mid-Victorian England had clearly been taken in by Bagehot as the best way of discovering the truth.¹⁸

Bagehot’s design is to study the situation of the first human beings, as far back as history can record their life and their development, to see how power was transferred from one source of power – initially the patriarch – to others – eventually, a government. Relying

¹⁴ Walter Bagehot, *Physics and Politics* from: Norman St John-Stevas (ed.), *The Collected Works of Walter Bagehot, op.cit.*, p. 23.

¹⁵ See the article written by Ignaas Devisch on how Bagehot’s methodology owes more to Lamarck and Spencer than to the application of Darwin’s scientific methodology to nature: Ignaas Devisch, “The Progress of Society: An Inquiry into and ‘Old-Fashioned’ Thesis of Walter Bagehot”, *British Journal for the History of Philosophy*, 19 (3), 2011, pp. 519-41.

¹⁶ Walter Bagehot, “Thoughts on Democracy”, (date unclear, between 1841 and 1846), in: Norman St John-Stevas (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 14, p. 15.

¹⁷ Walter Bagehot, *Physics and Politics* from: Norman St John-Stevas (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 7, p. 144.

¹⁸ In *On Liberty*, John Stuart Mill writes “Only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth”. John Stuart Mill, *On Liberty* (1859), Indianapolis, Hackett Publishing Company, 1978, p. 46. The reference to the importance of always finding “the most skillful devil’s advocate” is p. 36.

on but also criticizing the works of Sir John Lubbock, Sir Henry Maine and Herbert Spencer, Bagehot builds a narrative of an “ante-political man”¹⁹ who is guided by his passions, who is unstable and unreliable but who is born in a family in which the role of the patriarch is vital. Politics appears when decisions need to be taken for the family. The first absolute necessity of these families is to create what Bagehot calls “a *cake* of custom”²⁰ – meaning a set of rules and customs enforcing obedience. “What you want”, he writes, “is a comprehensive rule binding men together, making them do much the same things, telling them what to expect of each other – fashioning them alike, and keeping them so”.²¹ The second necessity was that such men needed to know and keep their allotted places in the community to enforce constancy. “The net of custom caught men in distinct spots”, explains Bagehot “and kept each where he stood”.²² In this sense, what Bagehot was referring to was hierarchical involuntary deference – a half-innate and coercive deference based on fear and on custom. As he saw it, such a deference was needed in the first stages of society (the family and, later, in the military stages) to impose order and stability. Along with later changes in society, deference would also change and evolve. “Till then”, explains Bagehot,

not equality before the law is necessary but inequality, for what is most wanted is an elevated *élite* who know the law: not a good government seeking the happiness of its subjects, but a dignified and overawing government getting its subjects to obey: not a good law, but a comprehensive law binding all life to one routine. Later are the ages of freedom; first are the ages of servitude.²³

Such an understanding of the evolution of political societies helps to explain why, for example, Bagehot favoured the coup d'état of December 1851 in France by Louis-Napoleon Bonaparte. Even though the author was a very young man at the time, he was in France in the midst of the upheaval and he thought that what France needed most, after losing its way in the aftermath of 1789 and of 1848, was a strong leader who would restore order. Without order, progress was not possible. At the time, the letters he published in *The Inquirer* on the coup d'état were perceived as shocking – the editor was compelled to remind his readers that his publication did not endorse the views presented in the letters.²⁴ However, linked to *Physics*

¹⁹ Walter Bagehot, *Physics and Politics* from: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 7, p. 27.

²⁰ *Ibid.*, p. 32.

²¹ *Ibid.*, p. 31.

²² *Ibid.*, p. 33.

²³ *Ibid.*

²⁴ The editor wrote “The sentiments expressed in this letter render it advisable that we should again declare our own entire dissent from the views of the writer”. See: Walter Bagehot, “Letter I – The Dictatorship of Louis-

and Politics, written more than fifteen years later, they make sense in the author's overall work. There is coherence in Bagehot's system, and he constructs a theory to show that the English constitution was the product of centuries of evolution which had taught the nation, through various stages, how to become free. Freedom was an education in first accepting coercion before moving on to more mature stages. This evolution also gave such communities certain common features through imitation, which provided them, in return, with a national character fitted to a certain type of governance. Bagehot writes that national characters are formed "by the confluence of congenial attractions and accordant detestations"²⁵. Evolution was the key but he insists that "the first thing to acquire is [...] the *legal fibre* – what sort is immaterial; a law first – what kind of law is secondary; a person or set of persons to pay deference to – though who he is, or they are, by comparison scarcely signifies"²⁶. By this, he meant that a steady evolution based on reason could only take place after order. Here, one can already see the importance of the respect for the law of the country – what he refers to as the law in such stages is essentially common customs which are followed and which lead to consequences if not respected. Such voluntary deference given to what was to become in England, the common law, is the foundational core of the English constitution. Bagehot is also very clear in saying that whatever the law and whoever the elite, what really counts is the voluntary deference to institutions which have an ancestral foundation rooted in its people. Such revered institutions produce traditions which are not to be broken, not because of the law, but because they carry the immemorial force of time. These very traditions are the cement of the constitution and deference to them produces in turn the stability of the nation.

While tradition is the stabilizing force, the law can adapt and is really, counter intuitively, the evolutionary force. Here, Bagehot introduces the two levers of the future English constitution: on the one hand, the forces of stability (tradition) and, on the other, the force for gradual change (the law). Both, however, rest on a hierarchical involuntary deference – coercive and illiberal – without which the desire to follow traditions and to accept the yoke of the law are not possible. Law, deference, and progress were closely linked for Bagehot because they allowed the spirit of liberty to light its spark. Freedom comes from the moment when hierarchical involuntary deference moves into voluntary irrational deference, when the ancestral fear of the subordinated is transformed into a tradition of respectful

Napoléon", *The Inquirer*, 8 Jan. in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 4, p. 29.

²⁵ Walter Bagehot, *Physics and Politics* from: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 7, p. 77.

²⁶ *Ibid.*, p. 46.

obedience based on tradition and laws, which then conserve stability through reverence of the past.

If the first communities could be ruled by patriarchs, larger communities, when becoming nations, needed order to be imposed through military means which allowed a number of features to grow: common characteristics in the nation-to-be, imitation of good qualities, deference to the leader(s) and a common legal system. Interestingly, Bagehot does not focus on who retains sovereignty, how it is to be exercised, or anything about how to make people happy. In the 1870's, one could have expected to see references to contractualist and non-contractualist thinkers (even to patriarchalists), to the advocates of commercial society, or to utilitarian rhetoric. This is not the case. Bagehot creates his own theory by explaining that he wants to start from what is known from what he refers to as “the ‘pre-economic age’, when the very assumptions of political economy did not exist, when its precepts would have been ruinous, and when the very contrary precepts were requisite and wise”²⁷. In his search, he finds that it is the structure of the aggregation of families into a community and then a nation which imposes the political regime – and not the other way round. If society is initially very much founded on patriarchal absolute power, Bagehot does not see such a power necessarily transferred to kings. For example, but he notices, again and again, how one of the key aspects for the evolution of political societies is based on “a legal fibre”²⁸. He concludes that it was the desire for the social order created by both traditions and customs which structured communities into stable organisations also able to evolve politically. Deference – necessarily hierarchical – to traditions, to customs merging into law, and to the individuals or groups in charge was the reason for the cohesion of the group by easing acceptance for the ruler and by encouraging loyalty.

Deference, traditions, and law are also linked to religion in the early stages. “Early law”, Bagehot explains in one of the two papers he gave at the Metaphysical Society, “is hardly to be separated from religious ritual: it is more like the tradition of a Church than the enactments of a statute-book. It is a thing immemorial and sacred”²⁹. What he distinguishes here are the ways in which within the traditions and rites of early nations, some became so important that they took force of law (customs). However, this was early law and its role was really to level, control, and calm the first societies to then allow access to other stages.

²⁷ *Ibid.*, p. 23.

²⁸ *Ibid.*, p. 46.

²⁹ Walter Bagehot, “The Metaphysical Basis of Toleration”, *The Contemporary Review*, April 1874, in: Norman St John-Steuas (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 14, p. 62. See also: Catherine Marshall (et al), *The Papers of the Metaphysical Society*, Oxford, Oxford University Press, 2015, vol. 2, pp. 113-24.

Religion for Bagehot was first based on superstition and helped to control the community – “a religion full of omens”³⁰. If able to move “from the age of status to the age of choice”³¹, religion then became “fortifying religions, that is to say, those which lay the plainest stress on the manly parts of morality – upon valour, on truth and industry”³². Already, even if Bagehot does not formulate it explicitly, there were different types of deference at work that fit the stages of religious evolution: if, in the very first stages, involuntary deference dominated, in the later stages of evolution, irrational, and rational voluntary deference would prosper. The link between deference and things spiritual is also important to understand the reverence of the nation for its past and for figures embodying the past such as the monarch.

Throughout *Physics and Politics*, it becomes clear that Bagehot is describing the evolution of England, comparing it to that of other nations, and often generalizing hastily. The force of the English model relied on its common law – which is Bagehot’s “cake of custom” – precisely because, as he saw it, the legal system had evolved with the nation. The common law relied on precedent, and precedent was based on the good customs of the country; if such customs had survived, it proved that they were good. Bagehot reasoned in an evolutionary fashion to show the unbroken spirit of freedom at heart of the English. This very Burkean – to use an older comparison – understanding of such an ancient and self-adjusting system makes Bagehot an heir to the Whig historiography. He feared how easily the good customs of the country embodied in the common law could be destroyed by a rationalist design and this is why deference was still very much needed in the nineteenth century as a source of stability. French ideas of creating a political system based on reason, on theory and starting from ground zero were not only against evolution but potentially dangerous as they destroyed the very fabric of society built over centuries. This was the reason for French institutional instability in the nineteenth century. Bagehot alleged that “Politics must ‘grow’ ; they cannot be suddenly made”³³. Like Edmund Burke, he believed in the strong link – that he described with an organic touch – between the past and the future of a nation. Any attempt to change its system by force was counterproductive. It would immediately condemn the nation to return to the first stages of society where order and coercion were the only means available of retrieving stability. What Bagehot was distinguishing – even more forcefully than John Stuart Mill at the same period – was that freedom once lost would take a very long time to recover,

³⁰ Walter Bagehot, “The Metaphysical Basis of Toleration”, *The Contemporary Review*, April 1874, in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 14, p. 93.

³¹ *Ibid.*, p. 107.

³² *Ibid.*, p. 141.

³³ Walter Bagehot, “The Leadership of the Opposition”, *The Economist*, 14 mars 1874, in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 6, p. 63.

if it was even possible. He did not deny that nations needed at one stage to break the “rule of custom” to be able to evolve fully towards “the rule of choice”, but he warned that such a moment could bring great upheavals, as had been the case in 1789 in France.³⁴ “Such scenes of cruelty and horror as happened in the great French Revolution”, Bagehot notes,

and as happen, more or less, in every great riot, have always been said to bring out a secret and suppressed side of human nature; and we now see that they were the outbreak of inherited passions long repressed by fixed custom, but starting into life as soon as that repression was catastrophically removed, and when sudden choice was given.³⁵

Therefore, Bagehot saw the transitional stage from aristocracy to democracy in the 1860s, in his own country, as an extremely dangerous period which needed to be handled with care, if not with deliberate tactics to insure that freedom would not be lost. He did not trust society, and certainly not what he referred to as “the mass”, to be able to make the transition as peacefully as expected, but he did trust parliamentary government to slowly prepare the grounds for such a change. Only “a government by discussion” could allow a nation to evolve from the age of custom to the age of reason.³⁶ Here, once again, John Stuart Mill’s description of the importance of debate comes to mind as Bagehot explains how discussion elevates men, by inculcating toleration, and ends in the right political decisions being taken. There is also a sense that debates changes belief over time, and thus mores. By government by discussion, Bagehot essentially means a free government which counteracts the inherited over-passionate features of men, but he also means a government able to work with the inherited qualities of such men. In the case of the English, Bagehot refers to “animated moderation”, or “this union of life with measure, of spirit with reasonableness”, which in his eyes had allowed the English to become a great free nation in the nineteenth century.³⁷

The deference to which Bagehot points in *Physics and Politics* also undergoes, like the nation, a process of evolution. From the first description given of the “ante-political” man – who deferred involuntarily and in submission to the rule of the patriarch – to the voluntary deference (partly rational, partly irrational) of the mid-Victorians – who deferred out of tradition or out of choice –, the story Bagehot unfolds is really the story of the evolution of deference and its use in the creation, evolution and preservation of political societies. *Physics and Politics* is not often read in such a way – today it is all too often discarded as, at best, a

³⁴ Walter Bagehot, *Physics and Politics* from: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 7, p. 105.

³⁵ *Ibid.*, p. 105.

³⁶ *Ibid.*, p. 109.

³⁷ *Ibid.*, p. 131.

work of Victorian social evolutionism, or, at worst, as faulty sociology (which it is). Nevertheless, some have seen the uncut diamond in it. For example, a short article written in 1976 on “Walter Bagehot and Deference”, drew attention to the fact that it was certainly the book which gave the most clues as to what the author really meant by the concept of Deference. As this article was published in 1976, precisely when the concept of deference had been discarded as worthless by political scientists, it never achieved the recognition it deserved for highlighting Bagehot’s use of deference and it is seldom quoted.³⁸

What emerges is that deference has a changing nature which only becomes apparent in the later stages when Bagehot considers that, with “animated moderation”, it is one of the characteristics of the English. Interestingly, Spring believes that deference, such as that described by Bagehot, is mainly an English feature. However, *Physics and Politics* also describes all other nations in their infancy. France, to take one example, can be read as a country which started from hierarchical deference and which, in 1789, tried to break free from it, finding itself sitting uncomfortably between a still hierarchically deferential nation and an egalitarian deferential one (which then explains a number of problems at the heart of its system today). In England, conversely, the nation perfected hierarchical voluntary deference, and thus was able to muddle its way through the various adjustment necessary throughout the centuries. In effect, what Walter Bagehot is describing are English political mores which grew in two ways. First, out of initial traditions and customs which imposed, through imitation, respect for the leaders and laws – from hierarchical involuntary to voluntary deference. Second, out of a respect for long-acquired institutions which had sustained the nation over history and generated a spirit of freedom – from hierarchical voluntary irrational to rational deference. Here also lies the reason why various forms of deference, chiefly irrational and rational, still coexisted in the nineteenth century. On the one hand, there was a nation of politically enlightened people who understood and revered the constitution for what it stood for out of rational deference and, on the other hand, there was the rest of the people, who because of tradition, religion, custom or just imitation of others, respected the constitution out of irrational deference. Such a description was a formula for class cooperation as both parts of society were deferential to the institutions but for different reasons.

The problem – linked to a class-war rhetoric – emerged later on, well into the twentieth century, when deference was seen as having died and a category of people were no longer deferential to the institutions. This is when, the language of deference (irrational or

³⁸ David Spring, “Walter Bagehot and Deference”, *American Historical Review*, vol. 81, n° 3, 1976, p. 525.

rational) was denounced as a device for social and political subordination. The undeniable flavour of a “class-war” analysis of society is precisely what Richard Crossman pointed to in his 1963 seminal introduction to Bagehot’s *English Constitution*. Nevertheless, Crossman saw plainly what Bagehot was presenting: there was something educational in the English system. Irrational deference gave the time needed to progress naturally into rational deference. The nature of the English system allowed people to grow through their various stages of enlightenment at their own pace whilst not endangering the system. The cynicism that some thinkers have seen in Bagehot’s work is a misunderstanding of what the author was describing, especially in view of the context in which he was writing. “Bagehot, saw more clearly than anyone that the British ruling class would never tolerate a Machiavelli for long”, writes Crossman, “and that its real strength was not cleverness or clarity of thought, but a sense of tradition which it shared with the common people, and its native ability to know the time for firmness and the time for concession”.³⁹

In *Physics and Politics*, Bagehot does imply that the age of reason might no longer need even rational deference. In some of his essays, he says so openly. For example, in an article written in 1872 concerning deference to the Monarchy, he writes : “That reverence could not doubtless continue among a cultivated population, but then among a cultivated population, a population capable of abstract ideas, it would not be required”.⁴⁰ This does not fit with what Bagehot says about deference being a feature of the natural English character and it is especially doubtful whether the English could ever want to reach a moment when “abstract ideas” – *à la française* – might endanger their antiquarian constitutional edifice. Such ambivalence can also be found in *The English Constitution*. In reality, in a classic liberal attitude⁴¹, Bagehot did not think that a “cultivated population” existed at the time, or might ever exist, at least in the immediate or foreseeable future. What remains is the idea that deference, like all the main features of society, would progress and that the moment would come when the entire population reached a stage of evolution in which rational deference dominated. Then, certainly, institutions would evolve too. In the meantime, much more importantly, the educational spirit of deference would remain the bulwark of the system, teaching the right kind of obedience by seeing the examples of others, but not necessarily teaching how to do without it.

³⁹ Richard Crossman, “Introduction” in: Walter Bagehot, *The English Constitution*, London, Fontana Press, 1993 (1963), p. 32.

⁴⁰ Walter Bagehot, “The Thanksgiving”, *The Economist*, 24 Feb. 1872 in: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, p. 440.

⁴¹ Alan S. Kahan, *Liberalism in Nineteenth Century Europe. The Political Culture of Limited Suffrage*, New York, Palgrave, Macmillan, 2003, pp. 1-15.

The use of deference in political societies

In *the English Constitution*, Bagehot uses the concept of deference to unveil in detail how the system works. It is more than a purely legal work, as he inserts sociological explanations regarding the ways in which the regime is well suited to its deferential national character. But this influential work benefits from being read alongside *Physics and Politics*, especially regarding the use he makes of deference in the two works.

The English Constitution appeared first as a selection of articles in *The Fortnightly Review* from 1865 to 1867, and in the first book edition of 1867, Bagehot cautiously explained :

Our constitution is not based on equality, or on an avowed and graduated adjustment to intelligence and property; but upon certain ancient feelings of deference and a strange approximative mode of representing sense and mind, neither of which must be roughly handled, for if spoiled they can never be remade, and they are the only supports possible of a polity such as ours, in a people such as ours.⁴²

His belief in both the greatness and fragility of the English constitution bears the mark of the context in which the text was written, but it also leaves open the possibility for the *vox populi* to evolve according to its past. The Liberal Bagehot was writing at the time when the Conservative Disraeli was about to have the Second Reform Act passed, and he was alerting the enlightened elite as to the danger of such a hazardous step. The English constitution could bear the upheaval of transition, but such transitions needed to be made for the right reasons. In *The Rape of The Constitution*, Keith Sutherland points out that “like most of his peers, [Bagehot] was opposed to party politicians making opportunistic concessions to democracy that would, in his view, substitute government by ignorance and brute numbers for government by discussion”.⁴³ The whole of *The English Constitution* – including the passages removed from the second edition and its two introductions – has to be read in the light of the Reform Act of 1867, but it also needs to be linked to Bagehot’s experience of what had happened in France after the second Revolution of 1848.

The book stated a number of what Bagehot considered as mistaken views of the English constitution: primarily, as had been advocated since Montesquieu, that there existed a separation of powers and, secondly, that it was a mixed government. Bagehot corrected the

⁴² Walter Bagehot, *The English Constitution*, from: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, pp. 408-9.

⁴³ Keith Sutherland (ed.), *The Rape of the Constitution*, Thoverton, Imprint Academic, 2000, p. 3.

idea of the separation of powers by the idea of the “fusion” of powers between legislative and executive in the body of the Cabinet, which was both the font of the executive and which, as part of the legislative, had to defend and justify its actions in Parliament. Such a system, unlike a presidential government, meant that Cabinet government had the unique ability to solve the great questions of the day through debate (either in Parliament, in Cabinet or in the constituencies). If the Cabinet was the secret of the constitution, Parliamentary government was its playground, for the system encouraged government by discussion – of the very type described in *Physics in Politics*. Unlike France, which had thrown away its past and attempted to reconstruct *ex nihilo*, England was an ancient and noble nation which, through respect of its past, had succeeded in reaching a peaceful transition to democratic government that no other nation, apart from the USA, had achieved. Therefore, it needed to be handled with care and important decisions discussed. Bagehot’s famous description in *The English Constitution* is to be read – anachronistically – along with *Physics and Politics*:

No one can approach to an understanding of the English institutions or of others, which, being the growth of many centuries, exercise a wide sway, over mixed populations, unless he divide them into two classes. [...] First, those which excite and preserve the reverence of the population – the *dignified* parts, if I may so call them ; and next, the *efficient* parts – those by which it, in fact works and rules. There are two great objects which every constitution must attain to be successful, which every old and celebrated one must have wonderfully achieved : every constitution must first *gain* authority then *use* authority ; it must first win the loyalty and confidence of mankind and then employ that homage in the work of the government.⁴⁴

David Spring notices how “Tradition and Reason” in one book came to mirror “the Dignified and Efficient parts” in the other.⁴⁵ Now it also becomes clear that the traditional dignified parts (the House of Lords and the Monarchy) inspired hierarchical voluntary irrational deference in the people, whereas the efficient parts founded on reason inspired rational deference. Yet, if this dichotomy was useful to understand the English constitution in the 1860s it was both misleading and partially flawed. For example, the monarchy could still theoretically exercise powers using the royal prerogative (and can still do so nowadays even if in a much more reduced sense) and the members of the House of Lords were also very much involved in the executive at the time, which could have made them both organs of efficiency. The distinction was just a convenient journalist trick that Bagehot had conjured up to try to

⁴⁴ Walter Bagehot, *The English Constitution*, from: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 206.

⁴⁵ David Spring, “Walter Bagehot and Deference”, *American Historical Review*, vol. 81, n° 3, 1976, p. 529.

make sense of a constitution which was “indeterminate, indistinct and unentrenched”⁴⁶ and not to be found in any constitutional code. This is what he meant when, in the 1867 edition, he wrote : “You must take trouble to understand the plan of an old house before you can make a good scheme for mending it: simple diagrams are very well on an empty site, but not upstairs in a gothic mansion”.⁴⁷ This is what the English constitution really was: a very old Gothic mansion (the rebuilt palace of Westminster), rather obscure, with nooks and crannies, difficult for most people to map out. Bagehot was writing for a certain readership – mainly upper-middle-class liberals – but they too needed a master class about how the system really worked. Bagehot was a great simplifier with the inherent advantages and disadvantages of being such a simplifier. If the organs of efficiency and dignity could not be as clearly separated as he portrayed them to be, neither could the kinds of deference. This is the main source of the confusion regarding his definition of the concept.

How is deference defined in *The English Constitution*, now that its existence has been explained in *Physics and Politics*? If deference was a feature of the English national character, it worked along with common sense. For Bagehot, common sense was interchangeable with “stupidity”.⁴⁸ This is something Bagehot had already identified in comparing the English and the French at the time of the coup d’état in France in 1851: “I fear you will laugh when I tell you what I conceive to be about the most essential moral quality for a free people, whose liberty is to be progressive, permanent, and on a large scale ; it is much stupidity”⁴⁹. He then added boldly: “I need not say that, in real sound stupidity, the English are unrivalled”.⁵⁰ What Bagehot meant was simply that unlike the mercurial French, the English did not dream up ideas which could then pull down their constitutional house: the English went slowly, keeping away from general principles and protecting their past. Deference was in the nature of the English and helped to sustain an essentially representative system in which everyone “knew his place” – from those who ruled and who had a duty to do so properly, to those who were ruled, who were needed to sustain it. Noticeably, even if Bagehot does not say so, there were the usual two types of deference at work here – rational and irrational deference –, which

⁴⁶ This is the 1995 description of Finer, Bogdanor and Rudden to mean that most of the rules are unclear, that the adjective “constitutional” is rather vague and carries no legal weight and that Parliament can make or unmake any laws. See: S. Finer, V. Bogdanor & B. Rudden, *Comparing constitutions*, Oxford, Oxford University Press, p. 40.

⁴⁷ Walter Bagehot, *The English Constitution*, from: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 401.

⁴⁸ See: William Irvine, *Walter Bagehot* (1939), Hamden, Archon Books, 1970, pp. 270-1.

⁴⁹ Walter Bagehot, “Letter III.—On the New Constitution of France, and the Aptitude of the French Character for National Freedom”, *The Inquirer*, 24 Jan. 1852 in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 4, pp. 50-1.

⁵⁰ *Ibid.*

show that the author was also fully including himself in this description too as someone who had an acute understanding of his role in society. Bagehot never made the separation between the two forms of voluntary deference – nor did he ever make the distinction between egalitarian and hierarchical deference but his undefined grasp of deference is the basis for this study which does distinguish different types of deference in England (or Anglo-Britain) at the time and later on. He offered an initial description that could be further refined.

Deference was an aptitude that not many nations, founded on a hierarchical past and aristocratic in nature, could boast to have perfected. “It is evident”, Bagehot writes in *The English Constitution*, “that no difficulty can be greater than that of founding a deferential nation. Respect is tradition: it is given not to what is proved to be good, but to what is known to be old”⁵¹. It was invaluable in the context of mid-Victorian Britain as the democratic transition was taking place, and it was also essential to parliamentary government in allowing the better educated to lead the nation at such a time. “A deferential community”, explains Bagehot, “even though its lowest classes are not intelligent, is far more suited to a Cabinet government than any kind of democratic country, because it is more suited to political excellence”.⁵²

In such a “deferential nation”, the role of the monarch was essential to the strength of the system as the symbol of the State. Bagehot recognized most willingly in *The English Constitution* that the Queen still had a royal prerogative, and that this was an oddity based on the evolution of the system, but that such a prerogative should remain hidden so as not to drag the monarch into the arena of the efficient parts. This is the meaning of one of the most quoted passages of the book: “Above all things our royalty is to be revered, and if you begin to poke about it you cannot reverence it. [...] Its mystery is its life. We must not let daylight upon magic”⁵³. Unfortunately, this passage is often used to show that the quasi-mystic deference for the monarch is a characteristic of the English, but Bagehot was saying that it was a useful device to let the real power – the Cabinet – to be left free to govern efficiently. Deference allowed the government to rule the people in a much more efficient way because deference did not appeal to the people’s “reason” but to their “imagination”⁵⁴. This was all the more so as the monarchy could appeal to the force of religion and use religion’s power to reinforce its own strength. The coronation oath made explicit the mystical

⁵¹ Walter Bagehot, *The English Constitution*, from: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 381.

⁵² *Ibid.*, p. 380.

⁵³ *Ibid.*, p. 243.

⁵⁴ *Ibid.*, p. 381.

link between monarch and nation in the Church of England. For Bagehot, “a constitutional Monarchy has an easy idea too: it has a comprehensible element for the vacant many, as well as complex laws and notions for the inquiring few”.⁵⁵ By this, he meant that what he referred to as either Cabinet government, Parliamentary Government or Government by discussion, was essentially an intellectual aristocracy made of rulers who understood the nobility of their position and who had a central role in the system. This is where cracks in the veneer of Bagehot’s description of deference appear and expose his analysis to criticism.

The limits of Bagehotian deference

Two deferential nations coexisted in the mid-Victorian society of Bagehot and sometimes even merged into one person as explained above – one more intuitively deferential and another more rationally deferential. The main problem is that both *Physics and Politics* and *The English Constitution* display the same uncertainty concerning Bagehot’s confidence in the “masses” and this uncertainty leads to a certain ambiguity in the author’s aims. Initially, Bagehot seems to assume that a process of unimpaired stable evolution will eventually lead to an age of reason. In this new age, deference will no longer be irrational, and it will grow to become a reasoned choice. But at the same time, Bagehot seems to deny such a possibility and relies on a “deferential community”⁵⁶ to protect the parliamentary system. In *The English Constitution*, there is a constant coming and going between different stages of evolution/education in the nation which only really makes sense in light of the evolutionary narrative of *Physics and Politics*. This is the reason why the last stage of evolution – the age of reason – goes hand in hand with Bagehot’s description of the English regime which should, at one stage, no longer need the artifact of the monarchy.

For Bagehot, the English system was only a “disguised republic”⁵⁷ precisely because part of the nation was not sufficiently politically educated to make it a real one – the masses did not understand the real power behind the crown that he claimed to have found – the Cabinet – and still needed the reassuring vision of the Queen. Again, this meant that deference was useful until a certain level of education had been reached. This betrays a distinct lack of clarity in Bagehot’s ideas as he could also see that if most of his contemporaries were still

⁵⁵ *Ibid.*, p. 239.

⁵⁶ *Ibid.*, p. 381.

⁵⁷ In the English constitution, Bagehot declares that “A Republic has insinuated itself beneath the folds of a Monarchy”. *Ibid.*, p. 237. It is also the expression used by Richard Crossman in his classic 1963 introduction to *The English Constitution*. See: Richard Crossman, “Introduction” in: Walter Bagehot, *The English Constitution*, London, Fontana Press, 1993 (1963), pp. 1-57, p.16. See also: Adam Tomkins, “The Republican Monarchy Revisited”, *Constitutional Commentary*, 2003, vol. 19, pp. 737-60.

irrationally deferent, others, like him, were very much rationally deferent to the Prime Minister and Cabinet, as well as to the monarchy. The discrepancy lies in the fact that Bagehot could see that his “disguised republic” would take a long time to be unmasked – if ever – and that irrational deference was useful to it until that happened. It is not clear whether he looked forward to that day, feared it, or thought it would never come. Implicitly, there looms in the distance the idea that with the political education of the nation, momentous changes would take place, but this is never tackled frontally to explain what this undisguised “English Republic” would be. There is also no full explanation as to how deference, which had been born with the nation, would die away without destabilising the nation. It is on such grounds that several writers have accused Bagehot of being manipulative and elitist in his undertaking.

C. H. Sisson in *The Case of Walter Bagehot* (1972) is very critical of Bagehot, whom he sees as using such concepts to prevent the extension of the suffrage, in order to defend his own interests and influence. In this little book which is essentially a long diatribe, Sisson declares “Bagehot of course always made a point of the stupidity of other people, or the mass which need to have deceptions practiced upon it so that those who could see through social and religious pretences could govern the country”.⁵⁸ Other critics have also pointed to Bagehot’s lack of understanding of the situation of the population in the mid-Victorian cities and his lack of awareness of the fact that poverty was rampant, destroying the lives of the poor.⁵⁹ Some of Bagehot’s comments are seen as callous and out-of touch with the realities of the misery brought on by the industrial revolution. Such criticism merely demonstrates that Bagehot was a man of his class, mostly concerned with the way in which to educate the nation as a means for the progress of the whole and who had very much a theoretical understanding of the reality of life of the classes below his own. This also explains his consistent lack of faith as to what the newly enfranchised of 1867 would do with the vote.

What does not make sense, paradoxically, is that if Bagehot was fearful of the mass of uneducated voters, he was still well aware of the attributes of freedom at the heart of English culture and widespread among all classes of the English. He knew that some had a propensity to resist anything imposed. As Dennis Kavanagh points out in his article “The Deferential English: A Comparative Critique” (1971): “An important and neglected strand in the thesis of *The English Constitution* concerns Bagehot’s analysis of the lack of political deference among

⁵⁸ C. H., Sisson, *The Case of Walter Bagehot*, London, Faber & Faber, 1972, p. 137.

⁵⁹ See also other more moderate critics: William, Irvine, *Walter Bagehot*, op.cit., pp. 260-2; David Easton, “Walter Bagehot and Liberal Realism”, *American Political Science Review*, 1949, vol. XVIII, n°1, pp. 17-37.

the population”.⁶⁰ What Kavanagh sees, but does not analyse further, is what he calls the distinction between social and political deference but it is more accurate to break Bagehotian deference down, into irrational and rational deference respectively, because they both concern society as well as politics. Bagehot could see that several types of deference could coexist in one person, just like in the nation. For example, a Member of Parliament could very well rationally give deference to the Prime Minister, but keep a form of irrational deference towards the sacredness of the Monarch; a tradesman could rationally defer to a Member of Parliament but irrationally defer to a Bishop. However, if this is what comes out of reading *The English Constitution*, the distinction between the two types of voluntary deference is implied and never made clear, leading to further confusion. In reality, more often than not, Bagehot describes irrational deference in the nation, but now and again up pops rational deference – such as his own – without ever being fully explained.⁶¹

Bagehot never seems to make up his mind as to whether he can trust the English people, or whether the system is too fragile and needs to be protected from those he considers as “semi-evolved” people. However, if he is so apprehensive, it is mainly because he feels that democracy would destroy deference and that deference is essential in all its various typographies, regardless of the level of education of the population. In effect, he means that deference is one of the essential features of the English constitution, especially so in an era of transition such as the Victorian period. Without deference, parliamentary democracy based on an uncodified constitution cannot function properly, and without it, liberty is no longer guaranteed. In *The English Constitution*, Bagehot warns:

A deferential community in which the bulk of the people are ignorant, is therefore in a state of what is called in mechanics unstable equilibrium. If the equilibrium is once disturbed there is no tendency to return to it, but rather to depart from it. [...] So in communities where the masses are ignorant but respectful, if you once permit the ignorant class to begin to rule you may bid farewell to deference for ever. [...] A democracy will never, save after an awful catastrophe, return what has once been conceded to it, for to do so would be to admit an inferiority in itself, of which, except by some almost unbearable misfortune, it could never be convinced.⁶²

⁶⁰ Dennis Kavanagh, “The Deferential English: A Comparative Critique”, *Government and Opposition*, July 1971, vol. 6, issue 3, pp. 334-5.

⁶¹ This is also why some commentators only analyse one part of Bagehot’s approach to deference. In 2001, J. R. Pole wrote a short essay on the possible American source – Richard Hildreth in *Theory of Politics* (1853) – of Bagehot’s use of deference but, if the source cannot be traced in Bagehot’s works, Pole misunderstands Bagehot’s use of the concept and its relation to other thinkers, such as Matthew Arnold’s essay *Democracy* (1859). In Arnold’s essay, unlike in Hildreth’s work, the term is clearly used. See: J. R. Pole, “Walter Bagehot on Deference: An American Source?”, *American Nineteenth Century History*, Vol. 2, No 2, Summer 2001, pp. 104-9. See also, Matthew Arnold, *Mixed Essays*, *op.cit.*, p. 17, p. 19.

⁶² Walter Bagehot, *The English Constitution*, from: Norman St John-Stevas (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, pp. 381-2.

A free or a liberal Democracy, as mentioned before, is not a power which can work on its own: it has to be sustained by certain political forms which shape it and give it life. What Bagehot is saying is that for the English, democracy takes the shape of parliamentary government and that certain deferential features of this regime are essential to its survival. In such a parliamentary system, the most enlightened need to breathe rational life and force into it. Irrational deference was intrinsic to it too, born with it from a long historical evolution and vital to its transformation in circumstances that would preserve stability and freedom. Deference, like the common law, was seen as potentially able to generate the best in the citizens, thanks to its ability to continually adapt. It was educational in its nature because there was a virtue in customs and habits which gave people the time to make up their own minds, to evolve and reach independent thought, i.e. to become politically responsible as individuals over generations of different experiences. It is in this sense that Bagehot is the Darwin of deference.⁶³

But neither evolution nor Bagehot's view stood still. In the second introduction to *The English Constitution*, written in 1872, Bagehot reflected on the consequences of the 1867 Reform Act. "The deference of the old electors to their betters was the only way in which our old system could be maintained" noted the author, wondering if the foundations of the English constitution had not been undermined.⁶⁴ His conclusion is apprehensive, precisely because, in his eyes, irrational deference itself had been disregarded in the extension of the suffrage. In the 1867 edition, Bagehot had expressed his ideas even more plainly:

We may frame [...] the image of a community, in which the less educated and the less wealthy part of the nation yielded a conscious loyalty to superior knowledge. This would be a deference founded expressly on reason and justified by avowed argument [...] But England is not like either of these countries. We are [...] a deferential nation, but are deferential by imagination, not by reason. The homage of our ignorant classes is paid not to individual things but to general things, not to precise things but to vague things. They are impressed by the great spectacle of English society, and they bow down as a whole and willingly, but they do not reckon their idols, they do not rationalise their religion.⁶⁵

By extending the suffrage to certain categories of voters, the country had pushed into the political arena people who would now directly "rationalize" politics and who, for Bagehot,

⁶³ David Spring, "Walter Bagehot and Deference", *American Historical Review*, vol. 81, n° 3, 1976, pp. 524-31.

⁶⁴ Walter Bagehot, *The English Constitution*, from: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 169.

⁶⁵ *Ibid.*, pp. 401-2.

would not be rationally deferential. They would not have the political education to respect the constitution and its meandering past, no longer looking at it, as they had done in an irrational deference, with its indirect aura of magic. They would not see how this fragile structure was the expression of collective historical will, the moral embodiment of the constitution, as they would just want their “rights” without the duties going with it. They would want to reconstruct it, ignoring, as the French had done in 1789, the organic link between the people, their constitution and their past. In bypassing the stages of evolution during which people were supposed to move out, on their own, from irrational deference into rational deference, they would end up endangering social and political progress. In an article written in 1876 on “Lord Althorp and the Reform Act of 1832”, Bagehot had pointed out the same problem with the Great Reform Act which had destroyed “intellectual deference” – by which he meant, the rational deference of the few – in favour of a category of citizens who replaced the old guard and theorised politics in a mechanical way, regardless of the English past⁶⁶. Here, it could be objected that Bagehot gives very few solutions to nations who want to change regimes: essentially, if they have evolved from a hierarchical structure (a monarchy, an oligarchy, an aristocracy and so on), they must necessarily follow the hierarchical movement of deference, from hierarchical involuntary to voluntary deference and then again from voluntary irrational to rational deference to be able to successfully evolve. Only nations beginning from an equal starting ground can immediately reach rational, independent choice, and there are very few of those. The consequences of such ideas are that the French had chosen the worst possible solution by forcefully attempting to jump from a hierarchical structure to an egalitarian one in 1789, without taking into account that the nation was just unprepared for it in its physical constitution. This fateful mistake was due to the ideas of the Enlightenment which considered politics in theory much more than in practice and which put all its faith in reason. In the eyes of Bagehot, the English, unlike the French, were not deferential because they did not want a revolution but because, first and foremost, they deferred to their constitution (linked to their bodily constitution, i.e. their national character). “Constitutions are not value-neutral representations legal documents, dry as dust and dull as ditchwater”, Adam Tomkins reminds us, “they are living representations of the politics which made them and which consume them”.⁶⁷ Love of one’s constitution – of the living embodiment of one’s past – would necessarily induce deference and both should be linked even if neither was fixed.

⁶⁶ See: Walter Bagehot, “Lord Althorp and the Reform Act of 1832”, *The Fortnightly Review*, Nov. 1876, in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 3, pp. 200-31.

⁶⁷ Adam Tomkins, *Public Law*, Oxford, Oxford University Press, 2003, p. 5.

Obviously, Bagehot's defence of an essentially aristocratic structure in the face of democratisation was an anachronism – even, an inconsistency, in view of his belief in the evolution towards an “age of reason” – but, there is a second Bagehot, not too difficult to find, just glimpsed above with “intellectual deference”, and with far greater belief in the common sense of the English and in the very balance of the institutions.⁶⁸ Even so, it is this constant unsteady coming and going between what appears to be a patronizing and worried Bagehot and a moderate and tolerant one which ends up puzzling those who read him on the subject of deference. But there is a Bagehot of “public opinion”⁶⁹ and oddly enough, he is alive in the very pages of *The English Constitution* when he shows how “Cabinet government educates the nation”⁷⁰. In fact, it was for the elite in power to guide the irrationally deferential newcomers through the idiosyncrasies of the constitution and to inculcate in them the love of its antiquity based on reason – that is, to make them rationally deferential. Only in such a way could the new voters come to revere the constitution and keep the deference for it that had sustained the system. The elite in power had a capital role, as Bagehot explains in the 1872 introduction: “our statesmen have the greatest opportunities they have had for many years, and likewise the greatest duty. They have to guide the new voters in the exercise of the franchise; to guide them quietly, and without saying what they are doing, but still to guide them”.⁷¹ True deference to the English constitution was to protect it from those still unable to exercise power without restraint and without the full understanding of the historical nature of the system – the irrational deferential ones. The role of the elite was to encourage the emergence of responsible citizens who would respect this and who would avoid the temptation to jump straight into an egalitarian structure unsuited to the English. In an essay on Parliament published in 1860, Bagehot had already developed this idea :

There has ever been a structure in English political society: every man has not walked by the light of his own eyes ; the less instructed have not deemed themselves the equals of the more instructed ; the many have subordinated their judgment to that of a few. They have not done so blindly, for there has always been a spirit of discussion in our very air : still they have done so—opinions have always settled down from the higher classes to the lower ; and in that manner, whenever the nation has been called on to decide, a decision that is really national has been formed.⁷²

⁶⁸ See: David Spring, “Walter Bagehot and Deference”, *American Historical Review*, vol. 81, n° 3, 1976, p. 531.

⁶⁹ *Ibid.*

⁷⁰ Walter Bagehot, *The English Constitution*, from: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, p. 216.

⁷¹ *Ibid.*, p. 171.

⁷² Walter Bagehot, “The History of the Unreformed Parliament, and its Lessons”, *The National Review*, Jan. 1860, in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 6, p. 274.

The pivotal role of the old guard was to ease the transition and to do so in the most peaceful way, especially by not allowing debates to fall below certain standards. Bagehot was avowing that deference – the enlightened, rational type – was more to be found in the rulers than in the ruled, who were only guided by an irrational type of deference or, in rare cases, by no deference at all. Bagehot does not mention undeferential people, but it is clear in his fear of seeing the French example replicated cross-channel, that the French were an example of an undeferential people who refused their past and who wanted to ideologically impose new institutions. There were not many such examples, but they did exist. Richard Crossman observed, without seeing that two very different types of deference were at work here : “I am tempted to reverse Bagehot's stereotype and to assert that the secret of our political stability is the deferential attitude of our rulers, and the fact that the astringent scepticism which corrodes reverence for authority is only to be found among the masses on the sidelines of politics”.⁷³ Crossman was describing the English constitution one hundred years later, and perceiving that irrational voluntary deference had all but died out in the 1960s, but he could not categorize – as we can with the benefit of hindsight – what had survived, i.e. rational deference.

The main problem with Bagehot, much more than the different definitions he gives of deference, lies in a thinly veiled rejection of democracy as an intrinsically bad regime. Like Tocqueville and John Stuart Mill before him, he was wary of democracy for democracy's sake because of the mediocrity it could spawn. “Bagehot had an inkling”, wrote Jacques Barzun in 1948, “that democracy, despite its dependence on enlightenment, might increasingly dispossess intellect”.⁷⁴ The full force of Bagehot's contempt was really located here rather than anywhere else, making him an unapologetic and, even at times, pontificating elitist. In his eyes, as he wrote in an essay on Sterne and Thackeray, “It [Democracy] is neither the best nor the highest form which a society can adopt, and it is certainly fatal to that development of individual originality and greatness by which the past progress of the human race has been achieved, and from which alone, it would seem, all future progress is to be anticipated”⁷⁵. This was a warning as to what a full-blown democracy could do to the English nation and to its long acquired characteristics. It was also in this sense that voluntary deference itself, and the stabilising influence it provided, was in danger. If parliamentary government – Bagehot's government by discussion – went hand in hand with deference, how

⁷³ Richard Crossman, “Introduction” in: Walter Bagehot, *The English Constitution*, *op.cit.*, p. 33.

⁷⁴ Jacques Barzun, “Introduction” in: Walter Bagehot, *Physics and Politics or Thoughts on the Application of the principles of 'Natural Selection' and 'Inheritance' to Political Society* (1872), New York, Alfred A Knopf, 1948, p. xxv.

⁷⁵ Walter Bagehot, “Sterne and Thackeray”, *The National Review*, April 1864 in: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 2, p. 308.

would “the old Gothic mansion” of the English constitution evolve without both the rational and irrational forms of deference which were essential to it?

Clearly, Bagehot was wrong: the advent of democracy did not destroy parliamentary government, which has weathered the storms of the various changes the English constitution underwent after Bagehot’s time. In fact, the adaptability of the English constitution – or more precisely, its flexibility in not needing the laws of the constitution to be amended in the ways that codified constitutions need – is certainly its most remarkable ability.⁷⁶ This is precisely what Bagehot had described in his works and at the same time, curiously, he had little faith in its flexibility. It is also his fear of democracy and his belief that democracy would be a permanent bad move for England, to which both liberty and rational deference would succumb, which puts him on the side of the conservatives in the nineteenth century, against his own Liberal side. He did not have faith that the mechanism he had described in the various stages of the past, with evolving laws, would work in the present and especially in the future. Nevertheless, Bagehot provides important intellectual means for analysing the development of nineteenth century English politics and society. The colours of his picture may have been overly dark and he was clearly no prophet, but just as clearly, he was masterful at revealing the internal structure of deference that kept the English state upright when so many others were subject to repeated collapse.

It would also be unwise to ignore what Bagehot says about the intrinsic historical link between parliamentary government and voluntary deference (whether rational or irrational). He helps cut through the mystique of the English constitution and gives certain clues for twenty-first century readers as to why this partially codified structure, made of different sources – some of which are still not written and are based on conventions – is able to recover and adjust in times of crisis. Bagehot’s unique contribution is the recognition that voluntary deference is one of the hidden principles of the English constitution, at the core of its adaptable structure, on a par with A. V. Dicey’s three other fundamental principles, the sovereignty of Parliament, the rule of law and the role of constitutional conventions – as will be seen in the next chapter.⁷⁷ Clearly, deference is not a constitutional principle and can never be one but with Bagehot it takes on the force of the repetition of a behaviour which has grown empirically with the nation and is rooted in the English past. Dicey himself understood how important Bagehot was when he wrote in 1881:

⁷⁶ The same argument could be done in favour of the US Constitution as its provisions are sufficiently general that it has only had 17 amendments after 1791 (when the Bill of Rights was ratified).

⁷⁷ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, *op.cit.*

Bagehot has brought more knowledge of life and originality of mind to the elucidation of the theory and practice of English politics than any man since Burke. He is the only Englishman of first-rate talents who, during the last half-century, has applied the whole force of his mind to the analysis of the mass of laws, maxims, and habits which go to make up the English constitution.⁷⁸

⁷⁸ A. V. Dicey, "Review of *Biographical Studies*", *The Nation*, 16 June 1881, Vol. XXXII, p. 428. See also: Norman St John-Stevás (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 15, pp. 78-81.

Chapter 4

The dilemma(s) of Voluntary Deference in the *fin de siècle*

The vision of the English constitution given by Walter Bagehot perfected what was, essentially, a Whiggish “continuity myth”.¹ A new twist was added, however, since Bagehot succeeded in making such momentous changes as the Act of Union with Ireland in 1801, the Great Reform Act of 1832, the Emancipation Act of 1829 and, even the second Reform Act of 1867 (on which he had his own misgivings), appear as natural evolutions of the system whilst over-simplifying the description of the constitution which would turn his book into a classical account. The main ideas of his work – the organs of dignity and the organs of efficiency, the fusion of the executive and legislative powers and the Cabinet as the “secret” at the heart of the system – were sweeping statements, easy to remember. So was his vision of the role of the monarchy as a particularly successful form of government and as a tool of propaganda for the real executive, which did not fully work the way in which he described it at the time, but which came to resemble it in the twentieth century. Bagehot’s use of, essentially, a blend of rational and irrational deference to explain what was not easily explainable in the working of the system then became itself part of the classic account used after him.

This is the reason why such a reading of the constitution is perceived as “sociological generalizations”². Bagehot presents the constitution in the light of continuity in which every single change is a natural consequence of the environment, its people and is best suited to them, which then becomes itself part of the continuity myth. Deference fits perfectly into such an interpretation, as it can explain the irrational or rational reverence for a perpetually moving structure which pretends to be forever the same. Bogdanor explains that for Bagehot, “the

¹ See: Ferdinand Mount, *The British Constitution Now. Recovery or Decline?*, London: Heinemann, 1992, p. 15.

² Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 20.

principles of the constitution seemed no more than the summation of a pattern of behaviour, the rules of political practice writ large. So the constitution, as [he] understood it, could be used to legitimize almost anything³. Later on in the twentieth century, it would come to hide the domineering power taken on by the Cabinet, i.e. the government. Such an interpretation of the constitution was eventually challenged in the twentieth century, because its misty charm was increasingly used to justify anything, especially the abuse of the executive.⁴

The other great “simplifier” of the English constitution who followed just after Bagehot in the 1880’s and who is also guilty of giving a mostly political and historical account of the constitution was A. V. Dicey.⁵ He is the transitional character between Bagehot’s second half of the Victorian period and the Parliament Act of 1911, which remains one of the most profound changes to have affected the constitution in the twentieth century. If Bagehot’s particular style of journalism could explain the use made of tradition and deference in the constitution, Dicey’s background as a respected Vinerian Professor of English Law at Oxford from 1882 to 1909 did not make him prone to over-embellish constitutional history. Nevertheless, he is guilty of the same reluctance to enlighten the reader to the fragile reality of the uncodified constitution because of being himself caught in the same mystifying web as Bagehot. Dicey unwittingly relies on the same tricks – nostalgia for the past and fear for the future – to ensure the protection of the Anglo-British constitution.

The near sacred fiction of a constitution forever evolving according to the needs of its citizens in a spirit of liberty retains great importance because, for Bagehot and Dicey, it finds its embodiment in Parliament – the centre of everything. Those sitting in the Palace of Westminster command the voluntary deference of the citizens towards Parliament and they themselves become the guardians of the immemorial constitution. Such a strong emphasis on the supremacy of Parliament is also the reason why Bagehot and Dicey, even though their works no longer explain the inner workings of the constitution, have carried on being read to this day. Their remarkable constitutional stories in which the Parliamentarians – and the people through them – are the torch bearers of free institutions is more entertaining to read than any treatise on public law⁶. Interestingly too, and contrary to what both Bagehot and Dicey would have wanted, their depictions eased the transition into the democratic age as the

³ *Ibid.*, p. 20.

⁴ *Ibid.*, p. 21.

⁵ For Mount, Walter Bagehot, A. V. Dicey and Sir Ivor Jennings are the three simplifiers of the English/British Constitution. See: Ferdinand Mount, *The British Constitution Now. Recovery or Decline?*, *op.cit.*, pp. 39-92.

⁶ In all fairness, Adam Tomkins – John Millar Professor of Public Law at the University of Glasgow – has achieved the feat of making his book *Public Law* remarkably entertaining, useful and accessible to the layman. See: Adam Tomkins, *Public Law*, Oxford, Oxford University Press, 2003, ix-231 pages.

elitist torch bearers had to transmit the flame to the people who would become the new Parliamentarians in the House of Commons first, and, later on, in the twentieth century, in the House of Lords.

If Bagehot's account (except on the monarchy) gradually lost most of its immediate validity throughout the twentieth century, Dicey's description of the constitution as resting on the sovereignty of Parliament, the rule of law and on constitutional conventions, was the unquestioned statement of English Public law until the 1970's (the reasons why will be the subject of chapter 6 in Part 2).⁷ In essence, Dicey perfected Bagehot's description of the English constitution at a time when the country was moving from the Victorian period into the Edwardian age, from an aristocratic structure to a fully democratic one (that they were both wary of). While Bagehot gave a politico-sociological view of the constitution, Dicey focused on the constitutional law, but both made the same mistakes of not focusing on the constitutional principles which would limit the power of the government of the day. As such, they both remained on the surface – however essential –, trapped in the net of what was essentially a political description of the constitution.⁸ They did not feel the need to venture into the much more complicated and rewarding territory of a legal description (this was even more surprising in view of Dicey's credentials). Nevertheless, it is precisely because they did not want to give the courts a role in constitutional law (public law) that they both needed to rely on a certain "something"⁹ which would naturally limit the power of those in office and those out of it. Bagehot gave such an instrument the name of deference – that we have seen to be mainly voluntary irrational deference – and Dicey gave it no name at all, but his defence of the common law is rationally deferential and his use of constitutional conventions relies on irrational deference. Without stating it in so many words, voluntary deference was the "something" at the core of Dicey's system, which was used as an element of self-restraint or self-censorship, depending on either rational or irrational deference.

Another question has to be considered: as the democratic process was imposing itself, would deference survive, in any form? Was rational deference, at least, not needed to buttress the system once irrational deference had been exposed for what it was – just a traditional custom of revering one's institutional past? The period of the 1880's into the twentieth century gives certain clues as to how rational deference became both a weapon to protect the constitution and the attribute of those who were least expected to foster the system, the new

⁷ See: Adam Tomkins, *Public Law*, *op.cit.*, p. 223.

⁸ Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 15.

⁹ Dicey's word. A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, *op.cit.*, p. 296.

voters and those who represented them. With the advent of democracy, contrary to some of Bagehot's misplaced fears, rational deference became one of the instruments of continuity and change. Even more surprisingly, as it was not a normative principle able to enforce political accountability on those in power (which should be the task of a codified constitution), the rational deference of the new voters and their new representatives was able to weather the storm of 1911. In so doing, the power of the aristocratic elite who purported to be the historical guardians of the constitution was also limited.

The possibly unrelated declines of classic liberalism and patrician¹⁰ England

The great Liberal victory at the General Election of 1880 made William Gladstone Prime Minister from 1880 to 1886, and his second ministry introduced widespread social and political reforms which would have a snowballing effect in removing the traditional landowning class still in power. The final episode of the changes which took place in the 1880s is the Parliament Act of 1911, which was a direct consequence of the refusal of the landowning elite in the Lords to pass David Lloyd George's People's Budget of 1909 and accept the New Liberal principles it carried. The final confrontation between the Upper and the Lower Houses between 1909 and 1911 remains the great moment when the Lords were forced to subordinate their power to that of the Commons and, paradoxically, to accept the dignified role Bagehot had assigned them in the nineteenth century.

By and large, the replacement of the patrician class in such a transitional period should really have sealed the end of deference. David Cannadine makes such an orthodox case, suggesting that "the widening of the suffrage in 1884-5, and the emasculation of the House of Lords in 1910-11, meant that the politics of deference had definitely ended and that the politics of demos had emphatically arrived".¹¹ The end of deference in England would thus parallel, chronologically speaking, the end of the "politics of the notables" in France and Germany. How could irrational deference survive in any country which was removing the old traditional structures and opening itself up to mass democracy? Was there still a use for voluntary deference when what was being built was something new, very remote from the old ways of thinking? By analysing the political culture and class structures of these years, it is possible to identify how and where deference, at least in England, survived.

¹⁰ See David Cannadine's decisive work on the fall of the British Patricians : David Cannadine, *The Decline and Fall of the British Aristocracy* (1990), New York, Vintage Books, 1999, xv-813 pages.

¹¹ David Cannadine, *The Decline and Fall of the British Aristocracy*, *op.cit.*, pp. 38-9.

Deference in the *fin de siècle* remains essentially English, even if the debates over Home Rule in Ireland in the 1880s highlighted – along with other episodes of conflict with the landowning dominant elites in Wales and in Scotland – great divisions within the confines of the Union. Even if the Third Reform Act of 1884-5¹² imposed a same electoral system to the whole of the United Kingdom, the story of deference is still an anglocentric (even chauvinistic) story at this stage. Bagehot and Dicey in their works were referring essentially to England, and they couched their ideas in liberal conservative language – Burkean Old Whig for Bagehot and Unionist for Dicey. However, times were changing rapidly. After the 1867 Second Reform Act, party politics had transformed classical parliamentary government and, after the Third Reform Act of 1884-5, which further extended the suffrage, the constituencies were redistributed, opening Parliament up to a new type of politician.

As explained, Bagehot and his dualistic classic understanding of the constitution blurred much more than it described in detail the real mechanisms of the system. He had been writing for a society which was still, in many ways, patrician, but at the end of the nineteenth century, the traditional sources of legitimacy were suffering an erosion from which they would never recover. The dilemma at the end of the Victorian period was how to accommodate new political demands for more equality in an essentially aristocratic social structure which shunned anything too rationalized. The logic of the constitutional structure – based essentially on incremental moves, on unwritten conventions, on a natural aristocracy and on an a mainly irrational deferential nation – meant that the formalization of institutional power towards more equality in the twentieth century would have to find a way of not killing deference altogether because of its continuing utility.

Bagehot, as seen in the previous chapter, had thought that voluntary deference would ease the transition at the time of the extension of the suffrage in 1867, but he remained worried that the customary way of doing things would necessarily give way to new sources of legitimacy which would ask for tangible, if not written, guarantees of their rights, which might then kill deference for the constitution altogether (like the jump straight into an egalitarian structure that the French had badly mastered). The useful tension which existed in the system between order and evolution, between the language of authority and the capacity for debate, was based on a very tenuous equilibrium which demanded constant adjustment between the demands of the people and the reality of an elite in power. Issues were dealt with

¹² The Third Reform Act comprises the Franchise Act of 1884, which extended to the Counties the decisions taken for the Boroughs in 1867 and the Redistribution of Seats Act of 1885 which redistributed seats according to a new redrawing of the boundaries of the constituencies, which greatly affected the power of the landowning elite.

on an individual basis. Classical parliamentary government was still working until the 1870s, and public policy was not yet the work of the organised party machines which started developing in the same decade. Until then, the political agenda had been largely fixed by a landowning aristocracy in power – challenged by a growing and influential industrial class –, who were still able to control the terms of the debate and dominate the country. As Cannadine reminds us: “Until the 1870s, power, prestige, and property were thus exceptionally highly correlated in the patrician elite of the British Isles”¹³. The introduction of what was increasingly becoming a full democracy after 1884¹⁴ would give the same rights to all and, in so doing, force politics to organise itself around such new rights. The demands for more representation of those who wanted a stake in the governance of the country – without owning its land and feeling the responsibility for it – could no longer be pushed aside. There was also a correlation between democratic reform and the agricultural crisis which hit Europe in the 1880s as cheaper food came from abroad and eroded the resources of the landowning aristocracy. Clearly, the “Power, prestige and property” of the elite were on the wane.

Dicey and the guiding principles of the political constitution

If Bagehot focused very much on the link between society and politics, Dicey concentrated much more on law and public policy. Read together, their works offer a complementary understanding of both the principles of the constitution and how the system was supported by its unwritten conventions. On a political front, their classical liberal perspective was also already assailed by many other types of thought, from Marxism to New Liberalism.

Bagehot died in 1877 and even if, in his second introduction to *The English Constitution* in 1872, he had reluctantly come to accept that ‘the leap in the dark’ of 1867 had not fundamentally transformed the structure of the constitution and that the populace had not taken over the country, his death came too early for him to see the changes after 1884-5. Dicey was writing in the last part of the nineteenth century and at the beginning of the twentieth. This was the time when the desire for Home Rule in Ireland in the 1880s split Gladstone’s Liberal party and took the Liberal Unionists towards the Conservatives, and when the demands for greater equality in the face of harsh social conditions lead to active Trade Unions and eventually to the creation of the Labour Party in 1906. Unlike Bagehot, Dicey had

¹³ David Cannadine, *The Decline and Fall of the British Aristocracy*, *op.cit.*, p. 18.

¹⁴ About 63% of the whole adult male population over the age of 21 was given the suffrage.

time to change and modify his ideas according to what was happening in the Kingdom and in the Empire, making him, for example, a staunch advocate of Union against Home Rule and going against his natural party, the Liberals, to side with the Conservatives, in defending the idea that parliamentary sovereignty needed a strong United Kingdom. Yet, can Bagehot's deferential Englishman still be found in Dicey's writings?

Introduction to the Study of the Law of the Constitution (1885)¹⁵ remains the groundbreaking work for which Dicey is best known, laying out the main constitutional principles of the British constitution, or, more appropriately, what came to be seen as another classical understanding of the constitution. As already mentioned, Dicey decides to concentrate on constitutional law, but in reality he ends up focusing on Parliament. There is nothing much in Dicey – nor in Bagehot – on the civil service, local government, parties or even, crucially, on the judiciary. The three diceyan pillars of the constitution are the sovereignty of Parliament, the rule of law, and constitutional conventions.

By laying down the principle that Parliament was sovereign – meaning that nothing nor anybody was superior to it – Dicey was showing the virtues of an uncodified constitution rooted in history but not bound by it. Dicey's starting point in *The Law of the Constitution* was to go against any Whiggish interpretation of the constitution as well as to question Blackstone's description of the law, but no sooner does he explain this, than he is himself extolling the virtues of continuity and change. This is especially noticeable in his very restricted definition of the rule of law which means three things for him: no one is above the law, all men are equally subjected to the law of the realm, and that the law is built on individual cases. There is no place here for a constitutional sense of the limitations of government and for the courts to intervene to regulate the powers of the State. Such a definition cemented the idea that the common law was the very soul of the system as it struck equally the State and its citizens. This is how Dicey cleverly imposed a time freeze in the public and private law divide in England (he also uses France as his counter example) until the 1970's.¹⁶ Dicey explains:

We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts; whereas under

¹⁵ A. V. Dicey, *Introduction to the Study of the Law of the constitution* (1885), Indianapolis: Liberty Fund, 1982, based on the 8th edition 1915, cxlviii-435 pages.

¹⁶ See: Adam Tomkins, *Public Law*, *op.cit.*, pp. 21-3.

many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution.¹⁷

This meant that the system of common law rights was inductively deduced from decisions made by the courts and that the laws of individual cases had more force than any basic human rights written in a Bill of Rights. It was a bold assertion, having great faith in the system to self-regulate itself. Who was to put a brake on the State, for instance, if it decided to pass legislation which went against the basic human rights of the people? Such a belief could only work if citizens as well as political actors were voluntarily deferential (rationally or irrationally) to the common law. It is also because judges themselves were influenced by Dicey's interpretation and were rationally deferential that the "continuity myth" carried on well into the twentieth century.

Yet, more than anywhere, it is in the last pillar of the Diceyan constitution – the constitutional conventions – that voluntary deference breathes into the system. In the last two chapters of *The Law of the Constitution*, Dicey focuses on those constitutional practices that he sees as making up "the constitutional morality of the day"¹⁸. Here, Dicey was even more dangerously leaning into Bagehotian territory and focusing on a sociologico-political explanation. For him, constitutional conventions were respected if they were truly useful, if not they could be easily disobeyed and discarded. He writes:

Nor is it doubtful that any one who searches through the pages of Hansard will find [...] instances in which constitutional maxims of long standing and high repute have been set at nought. The uncertain character of the deference paid to the conventions of the constitution is concealed under the current phraseology, which treats the successful violation of a constitutional rule as a proof that the maxim was not in reality part of the constitution. If a habit or precept which can be set at nought is thereby shown not to be a portion of constitutional morality, it naturally follows that no true constitutional rule is ever disobeyed.¹⁹

In this roundabout way, Dicey was pointing out that a "true constitutional rule" would always be deferred to. But on what grounds? He was puzzled by the fact that some conventions were followed religiously and took on the force of law, whilst others were just discarded without a second glance. The conventions which followed were essentially "rules for determining the

¹⁷ A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (1905), edited and with an introduction by Richard VandeWetering, Indianapolis, Liberty Fund, 2008, p. 115.

¹⁸ A. V. Dicey, *Introduction to the Study of the Law of the constitution*, *op.cit.*, p. 280.

¹⁹ *Ibid.*, pp. 293-4.

exercise of the prerogative”²⁰, i.e. the common law powers exercised by the monarch or his ministers in his name. This point is important because Dicey reduced the scope of conventions and was later criticised by the constitutionalist Jennings for doing so.²¹ But he also widened Blackstone’s seventeenth century definition of the royal prerogative as “the name for the residue of discretionary power left at any moments in the hands of the Crown”²². That Dicey did not try to be more precise about these residual powers and their scope added to the lack of clarity of the definition and gave little to nothing for the courts to review such powers in the future.²³ In effect, he was undermining his own definition of the rule of law as the executive had much more scope to abuse power. For Dicey, what mattered is that the exercise of prerogative powers was ruled by convention.

Such constitutional conventions regulating the use of the prerogative powers were respected by ministers because “the breach of these principles and of these conventions will almost immediately bring the offender into conflict with the Courts and the law of the land”²⁴. Thus, what Dicey meant was that the executive was not only made to respect the conventions of the constitution because of the force of opinion (he considers this, too) but especially because of the fear of the law of the land. This was the magic self-check on the conventions regulating the exercise of the ill-defined prerogative powers. “The one essential principle of the constitution”, he concludes, “is obedience by all persons to the deliberately expressed will of the House of Commons in the first instance, and ultimately to the will of the nation as expressed through Parliament”.²⁵ And he added, “The conventional code of political morality is, as already pointed out, merely a body of maxims meant to secure respect for this principle”²⁶. So, for Dicey, conventions related to prerogative powers were as good as laws. This was important because the point was how to check prerogative powers which gave the Crown rather large powers. The rule of law was in danger of being undermined but Dicey, without realising it, relied on deference. “Obedience” to unwritten rules of the constitution can only make sense if ministers feel the full weight of the past in the conventions – as the supreme and oldest expression of the collective will of the people – and defer to them

²⁰ *Ibid.*, p. 285.

²¹ See: “But they [the conventions] are much more than that”. Sir Ivor Jennings, *The Law and the Constitution* (1933), London, University of London Press, 1955, p. 86.

²² A. V. Dicey, *Introduction to the Study of the Law of the constitution*, *op.cit.*, p. 282. Sir William Blackstone, *Commentaries on the Laws of England*, London, 1765, I, p. 232.

²³ The executive in the United Kingdom acts with legal authority based on either statute law or on prerogative powers. The problem with the later is that they are ill-defined and can lead to very little checks in courts, thereby undermining the rule of law. See Adam Tomkins, *Public Law*, *op.cit.*, pp. 81-3.

²⁴ A. V. Dicey, *Introduction to the Study of the Law of the constitution*, *op.cit.*, p. 297.

²⁵ *Ibid.*, p. 304.

²⁶ *Ibid.*

willingly or/and if they fear being punished by the voters if they do not do so, as deference works both on the side of the ruler and of the ruled. Bagehot had seen this clearly, not Dicey.²⁷ They both saw that the constitution was conventional, but Bagehot explained why and how. It is because such customary rules embody the immemorial sense of liberty of the English that they acquire force of law, and not simply because there was fear of the law. Conventions were the necessary third pillar to stabilize the Diceyan edifice but, as Bagehot had seen, without voluntary deference to them, the sovereignty of Parliament and Dicey's narrow definition of the rule of law, could not have worked as a whole. For example, such conventions imposed – without legal force – the political accountability of the Cabinet to Parliament. Conventions were and are the rigid element of the constitution even though they are not written, because the force of their longevity gives them the quasi stamp of sacredness. They are respected – even though nothing compels people to follow them – precisely because they represent “a long history of unbroken observance”. It is here, in the very definition of what a convention is, in the fact that the English could have moved away from them by rationally choosing not to defer to them, that voluntary deference (both rational and irrational as it can be both) is seen. Dicey only uses twice the word deference in *The Law of the constitution* – as a substitute for respect – but without Bagehot's perceptive spotting of deference, a piece of the constitutional jigsaw would be missing. At the turn of the century, in an uncodified structure such as England's constitution, founded on the sovereignty of Parliament, the rule of law and constitutional conventions, voluntary deference (both rational and irrational) was really at the heart of the third pillar, adding stability to the edifice.

If in *The Law of the constitution*, Dicey on the spirit of liberty as protected by Parliament, he also focused on the spirit of liberty within the nation. Less often mentioned regarding Dicey's work are his 1905 *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, which offer insight into his type of Benthamite *laissez-faire* liberalism in the Edwardian period.²⁸ Dicey analysed how public opinion had shaped part of the legislation of the country in the previous century and how Individualism²⁹ was giving way to Collectivism which had, in his opinion, “different, if not

²⁷ See Tomkins' comparison between Bagehot and Dicey in: Adam Tomkins, “The Republican Monarchy Revisited”, *Constitutional Commentary*, 2003, vol. 19, pp. 742-7.

²⁸ A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, *op.cit.*, <http://oll.libertyfund.org/titles/2119>, accessed 10 August 2016.

²⁹ Following Stefan Collini in *Liberalism & Sociology*, I have chosen to keep the capital letters for “Individualism” and “Capitalism”, as was done at the time. See: Stefan Collini, *Liberalism & Sociology. L. T. Hobhouse and Political Argument in England 1880-1914* (1979), Cambridge, Cambridge University Press, 2009, p. 13.

absolutely inconsistent, ways of regarding the relation between man and the State”.³⁰ For one so intent on defending the spirit of liberty in the constitution (i.e. in Parliament representing the nation), wanting equality was a profound mistake. Before the 1906 birth of the Labour Party, social egalitarian ideals were promoted by a growing number of factions, from trade unionists to Fabians along with the New Liberals, who believed that the State had a duty to promote a minimum of welfare. Dicey saw that Utilitarianism had been the architect of its own downfall. If pushed to its logical conclusion of reaching the greatest happiness of the greatest number, it led to state intervention to promote the general welfare. However for Dicey, the difference between Individualism and Collectivism was essentially that *laissez-faire* liberalism focused on the duty and responsibility of the free individual Englishman, who would always appeal to his ancient freedoms to protect his liberty from the intrusion by the State whereas Collectivism focused on equality. Dicey, like Bagehot, saw the constitution as echoing the immemorial rights of the English. The English did not, unlike the French and the Americans, vest their freedoms in the rights written in a codified document. The individual had to understand this before being able to exercise political power and, once in power, had a duty to guard the constitution from any encroachments on fundamental liberties. In such a view, deference – rational and irrational – was an integral part of the whole because parliamentary government was the natural political organisation of a deferential nation. The Members of Parliament were elected as the representatives of the nation and took decisions for the people they represented. It was expected, in such an organisation even more so than in a constitutional regime, that the voters should be voluntarily deferential to Parliament because they were the ones who chose their representatives and everything was founded on trust and faith in one another.

This is also why, the law – the common law – was based on individual cases and their interpretation by individual judges who normally had an acute understanding of the ancient liberties of the English. Dicey does not use the expression, but deferential attitudes – voluntary rational on the part of those involved in the political game and mostly irrational on those who did not yet have an interest in it – were pivotal to such a type of liberalism. Deference protected freedom from a collective ideal, which, for Dicey, could never respect individualities. Egalitarian ideals which levelled society were often detrimental to private ideals which went against such levelling. Deference regulated egalitarian and liberal demands through the rational understanding of the common good by those enlightened enough to

³⁰ *Ibid*, pp. 212-3.

understand it but also, by the irrational following of tradition, in others. Deference was the glue in a system which was not formalized, founded on a class structure in which political codes were transmitted by forebears or kin. This is precisely what was being attacked at the turn of the century. For Dicey, Collectivism was extremely dangerous to both the system and the people of his country and, like Bagehot, he defended reduced access to the suffrage on such grounds. However, what Dicey could not see was that most of his ideas were already very nearly outdated.

In reality, Dicey's epilogue to Bagehot's mid-Victorian fears about democracy is nostalgic and betrays the concerns of a mostly Anglo-centric, paternalistic class regarding changes in the structure of society. From the time of Bagehot's use of deference to its use in the beginning of the twentieth century, something peculiar happens. Several forms of deference continued to coexist. Deference became a catchword to describe essentially an orthodox, loyal and traditionalist electorate which would sustain the Conservative Party in the twentieth century. In reality, however, deference was present in all parties. Linking voluntary deference (rational or irrational) solely to an essentially middle class, and then working-class, conservative electorate does not allow to see that the New Liberal and Labour electorates of the first half of the twentieth century also did not reject what was essentially a feature of the constitution conducive to stability. Deference proved stronger than Bagehot and Dicey's fears of democracy. Class conflict was tempered by a voluntary deference that continued to cut across social and political lines, though not without social and political characteristics which varied with party affiliation.

Traditionalism, Conservatism and deference

In all logic, if one sticks to the definition of deference as meaning respect for a superior, New Liberals and Labour followers should have been less deferential to the system than Conservative and Liberal Unionists. A number of works (written mostly in the 1960's and the 1970's) have focused on the link between the Conservative Party and its deferential electorate going back to the beginning of the twentieth century.³¹ For example, writing about the Tory lower-class voters in the 1950s, David Cannadine reminds us that "The 'deferential voter' who supported the Conservatives was neither deviant nor novel: he or she was the

³¹ See: Bob Jessop, *Traditionalism, Conservatism and British Political Culture* (1974), London, Routledge revivals, 2011, 287 pages; R. T. McKenzie and A. Silver, *Angels in Marble. Working-Class Conservatives in Urban England 1958-1960*, London: Heinemann, 1968, xi-295 pages.

direct descendant of earlier generations of countless ordinary people who had habitually seen British society in traditional, hierarchical terms”³². Here, deference is mostly taken to mean hierarchical voluntary irrational deference, as the voter does not even question his traditional support for the Conservative Party – it is something he does out of habit.

However, there are several problems in perceiving deference in such a way which lead to a number of questions. If non-Tory voters were not deferential in any way, then why did they not reject the traditional structures of the institutions which promoted hierarchy and a certain type of class once in power? Even more so, at the turn of the century – when a new party was created to represent the working classes – why was the Labour idea of the collective good grounded on having representatives in Parliament who would represent them within a system they did not question? In the European context of the time, new voters had other types of regime to copy if they had wanted to. The answer is simple: if they did not reject the system altogether, it was precisely because they *were* deferential to it – but in this case, in a rational way. They understood that a parliamentary monarchy could evolve and be transformed from within, as the Third Reform Act had shown. The growth of a new class of politicians, who slowly removed the mostly Conservative land-owning aristocracy from power after the Third Reform Act, happened with the help of Liberal grandees such as Gladstone, who saw – along with others – that adapting was better than risking social stability and that not addressing the plight of one’s people was also no longer acceptable.

It would be incorrect, however, to say that such deference could be found everywhere, as it was certainly not felt by some Labour members and by those who supported the Communists or Republican radicalism, but this was on the fringe of political culture at the time.³³ The New Liberals and the Labour Party were parliamentary parties of a new type, very much attuned to the changes needed to make the lives of the poor, the sick, the unemployed and the crippled more acceptable, but who did so thanks to a political structure suited to such a change. The environment of the 1880s to 1911 allowed such an expression to flower precisely because the deference-based system was sufficiently trusted. A new type of professional politician, far from misunderstanding the respect for the historical constitution, became the active defender of what it meant. In the new ways of seeing the relation between the people and the State, what was never questioned was the very nature of the system, based

³² David Cannadine, *Class in Britain* (1998), London, Penguin books, 2000, p. 158.

³³ See : Mark Bevir, “Republicanism, Socialism, and Democracy: The Origins of the Radical left” in David Nash & Antony Taylor (ed.), *Republicanism in Victorian Society*, Stroud, Sutton Publishing, 2000, pp. 73-90.

on parliamentary representation and deference to it. Whatever the political side, this was the compass of the nation resting on the deferential character of its people.

The first bureaucratic inquiries into the territorial domination of the aristocracy in the 1870's and in the 1880's were to further seal the end of the old elite and show how the State was to be valued for its ability to tax the rich and reform. This was the Diceyan rule of law in action, that no man was above the law and that all were subject to the law of the land, guaranteeing an absence of arbitrary power – even though, as we are about to see, Dicey's unionist stance sometimes led him far away from what he had expressed in *The Law of the Constitution*.³⁴ In short, the political and constitutional system gave the new voters the means to express their demands without resorting to revolution. Such rational voluntary deference is expressed in their acceptance of the traditional structures, including their love of the monarchy, which was a symbol of their loyalty to their past. Were this not the case, as the country was becoming a Democracy based on the people, how could the people have carried on accepting the monarch as the embodiment of a democratic State? Clearly, deference was just as much at the heart of Labour as it was of Conservatism. From its creation in 1906, the Labour Party was a parliamentary party which legitimated the system by accepting the rules of the game, from the distribution of peerages to the conventions of Parliament.³⁵

However, the path leading from Gladstone's first radical reforms in the 1880s to the full-blown constitutional crisis of 1911 was strewn with moments which intensified the growing tensions between, on the one hand, radical Liberals and what was to become the Labour Party, and on the other hand, the Conservative Party and Liberal unionists. Crucially for the understanding of deference, both sides were fighting to keep the constitution on their side. Because of its political nature – as Bagehot and Dicey had described it – the constitution was malleable and meant different things to different people. This imprecise interpretation of the constitution led to a constitutional crisis at the beginning of the twentieth century. From our perspective, what is most striking about the crisis is that it revealed the continuing reliance on deference by both sides of the controversy.

A fight for the Constitution

The constitutional battle which took place around the Parliament Act of 1911 is noteworthy precisely because at its core was the question of how to create a minimal social

³⁴ See : A. V. Dicey, *Introduction to the Study of the Law of the constitution*, *op.cit.*, pp. 107-22.

³⁵ Bob Jessop, *Traditionalism, Conservatism and British Political Culture* (1974), London, Routledge revivals, 2011, 287 pages.

safety net guaranteed by the State. But the crisis of 1911 also unfolded because of two other main questions: the extension of the suffrage in 1884-85 and the question of Home Rule for Ireland (which it had started in 1886 when Gladstone had tried to give some sort of parliamentary independence to the Irish). Eventually, it ended with the question about who had the power to carry the wishes of the people if elections gave no clear majorities (as was the case in the two general elections of 1910), and the House of Lords rejected the Government's budget. To summarise, the fight between the mostly individualist Unionist Conservatives/Liberals and the much more collective New Liberals was a fight on a grand scale into which two Kings – Edward VII and George V – as well as countless politicians were dragged leading to a constitutional crisis on a par with the one which had taken place in 1832. The crisis lingered on from the great Liberal victory of 1906 to 1911 and continued with the unresolved question of Irish Home Rule until well after WWI.³⁶ Essentially, the period from 1906 to the start of WWI is when the constitution was put to the test³⁷.

From 1880 to WWI, each political side fought with the best weapons they had. The Unionists (Liberal and Conservative) wanted to conserve the unity of the United Kingdom which they considered to be paramount, while also refusing social reforms which would dent some of their privileges.³⁸ The New Liberals and the new elected Labour fought, initially on moral grounds, and then, with the mandate given by the people at the general election of 1906, to bring in sweeping social reforms, even if the two general elections of 1910 left them with much less leeway.³⁹ The Irish nationalists in Parliament, especially after 1906, were in a position to play kingmakers.

As for the Conservative Party from 1880 to 1911, it was still the party of the great landowners who dominated the House of Lords, and through active and clever political machinery – such as The Primrose League, set up in 1883 –, it became an organised party, also reflecting the needs of popular voters who had voted for Conservative representatives in the House of Commons. It is certainly one of the great triumphs of the Conservative Party to

³⁶ See: G. H. L. Le May, *The Victorian Constitution. Conventions, Usages and Contingencies*, London, Duckworth, 1979, pp. 189-219.

³⁷ Even if the Parliament Act of 1911 removed the right of veto of the Lords except on Bills to extend the life of Parliament. The predicament of the independence for Ireland was an open sore which was only partially solved (if at all) after the partition of Ireland in 1921.

³⁸ The Liberal Unionist party created in 1886 after it broke away from Gladstone's Liberal party in reaction to his defence of Home Rule for Ireland, merged with the Conservative Party in May 1912.

³⁹ The House of Commons of 1906 had 670 seats at the time which were shared between 400 Liberals, 157 Conservative Party and Liberal Unionists, 83 Irish Nationalists and 29 Labour Representation Committee MPs. Of the 400 Liberal MPs, 220 were newcomers to the House of Commons. See: Lawrence Goldman, 'The general election of 1906', *Oxford Dictionary of National Biography*, Oxford University Press. <http://www.oxforddnb.com/view/theme/95348>, accessed 18 January 2017.

have been able to bring together different classes around a common set of values (the Monarchy, the Church of England, the Union and the Empire) on which they thrived. The great Tory challenger to Gladstone's Liberalism was Lord Salisbury, who was Prime Minister from 1885 to 1886, from 1886 to 1892 and then again from 1895 to 1902 (leaving power to Arthur Balfour, his nephew, up to 1905).⁴⁰ This political success was in large part due to Lord Salisbury's own ability as a politician, but some of the populist ideas he defended backfired on the Conservative Party at the General Election of 1906 and were the signs of a corrosive streak in politicians which was to have consequences on irrational and rational voluntary deference in the twentieth century.⁴¹

Like Dicey, Lord Salisbury was a fierce opponent of the march of democracy, as the last article he wrote for the *Quarterly Review*, boldly entitled "Disintegration" and published in January of 1883, demonstrates. He saw democracy as a capital mistake that he partially blamed on the great Whig aristocrats of the time, whom he considered as traitors to their past. The article is a feudal defence of the antiquity of the constitution, warning against great upheavals ahead. *The Spectator* dated 20 October 1883 reacted to it in the following terms: "this lament, this dirge over our degeneracy, this uplifting of the voice as of one who sees a great woe approaching, comes from a man whose first wish is that, amidst this shattered constitution and these decaying institutions, this Democratic House of Commons, which has departed so far from the purity of old traditions, would, just, elect him Premier"⁴². True enough, Salisbury was surprisingly quick to accept the changes and to adapt to them. He was pragmatic, with a good understanding of the interests of his own landowning aristocratic class and of how irrational deference in the nation could be used to protect the rule of the Upper House. As he was forced to accept the end of the domination of the traditional elite in the Lower House after 1885, he attempted something bold: i.e., to rebrand the House of Lords as the real protector of Democracy using the "the referendal theory".⁴³ In *The House of Lords and Ideological Politics: Lord Salisbury's Referendal Theory and the Conservative Party, 1846-1922*, Corinne Comstock Weston defines it as follows:

According to the referendal theory, the House of Lords had a duty to refer disputed legislation to the electorate when the House of Commons, in the Lords' judgment, lacked a mandate for the measure in question. That is, the Lords' political barometer

⁴⁰ See: David Steele, *Lord Salisbury. A Political Biography*, London, UCL Press, 1999, xv-455 pages.

⁴¹ This odd tendency on the part of clever Tory leaders bears resemblance to David Cameron's decision to call for a referendum on Brexit in the twenty-first century.

⁴² "Disintegration", *The Spectator*, 20 October 1883, p.6. <http://archive.spectator.co.uk/article/20th-october-1883/5/-disintegration>, accessed 15 August 2016.

⁴³ See: Corinne Comstock Weston, *The House of Lords and Ideological Politics: Lord Salisbury's Referendal Theory and the Conservative Party, 1846-1922*, Philadelphia, American Philosophical Society, 1995, 242 pages.

was not the Commons, as Gladstone contended, but the nation at large. If this proposition prevailed, the Lords could freely exercise an independent legislative veto in an age of expanding democracy⁴⁴.

Salisbury's approach was very clever as it pandered to the irrational deference of voters by appealing to their innate sense of tradition, but in real terms, his decision was no more than a bold political trick to keep power away from a democratically elected House of Commons. He was promoting what was essentially a paternalistic structure which was to dazzle the populace into believing that the real democrats were the hereditary Lords and not the Commons, who paradoxically had been elected to their seats. It was also appealing to an ancient tradition, whereby the nobility was best placed and historically suited to defend its people against the encroachments of power, not in this case, by an arbitrary monarch, but instead the House of Commons. Finally, it was a way of opposing parliamentary sovereignty – which was representative – and popular sovereignty, by appealing directly to the nation through a new election to arbitrate who should win between the Commons and the Lords. This did not correspond to the spirit of the constitution. It also turned the constitution upside-down by making the Lords the champions of the people.

Salisbury succeeded in convincing the new electorate to vote for the Conservatives in July 1886⁴⁵ and to reject Gladstone's plan for Home Rule in Ireland, but such a way of understanding the role of the Lords had its limits and would itself be rejected after the confrontation at the time of the Parliament Act of 1911. Also, the House of Lords was itself undergoing change as "between 1886 and 1914 some two hundred people entered the ranks of the hereditary peerage for the first time"⁴⁶.

The referendal theory, which had been audaciously used as a tool to retain power by the Conservatives, endangered the stability of the constitution, by opposing two Houses which were supposed to work together and complement each other. It also demonstrated that a House of Lords mostly dominated by one party, in this case, the Tories, was a mistake, and the limits of such a system were to be fully exposed at the time of the 1909 budget, when the Lords refused to consent to it. Nevertheless, even in such a crisis, both parties, albeit in opposing ways, relied on voluntary deference, whether in promoting deference to the Lords or alternatively by showing deference to the system's flexible nature. It was the traditional deferential game of give and take between continuity and change, even if the rhetoric of the

⁴⁴ *Ibid.*, p. 1.

⁴⁵ There had been a Conservative minority government from June to December 1885.

⁴⁶ David Cannadine, *The Decline and Fall of the British Aristocracy*, *op.cit.*, p. 196.

time sometimes obscured the underlying reality. The Lords were not the only upholders of the system. The Liberal and the Labour representatives and the newly enfranchised were just as much the defenders of the constitution as they were – if not the truer ones – after 1906.⁴⁷ If irrational deference was still breathing in the transitional structure of the democratic process, and allowed full suffrage to emerge gradually, rational deference was blossoming in the new ideas of the period. The new Members of Parliament elected to the House of Commons did not come to it with a desire to pull down the old Gothic mansion; they worked with it. If they had been animated by a strong sense of change on the grounds of equality or by fury at the excesses of the elite – like the revolutionary Bolsheviks in 1917 – they would not have played the constitutional game and would have rejected it altogether. Many Unionists, like Dicey himself, failed to see that the newcomers believed first and foremost in the constitution.⁴⁸ In fact, the people and their new representatives in Parliament were more deferential – rationally this time – than their “betters” had expected them to be.

Reforming the State, retaining deference

If the battle over Home Rule had been ongoing since 1886, the real confrontation between the Liberal government, elected with a strong majority in 1906, and the Conservative Party and Liberal Unionists really took place over the People’s Budget in 1909.⁴⁹ From 1906 to 1909, the Lords consistently tried to prevent the passing of a number of Liberal Bills they were opposed to, thus proving that they refused to accept the mandate the Liberal government had been given by the people. Their reasons were couched in a vocabulary which presented them as the consistent guardians of the constitution over unruly voters who did not know what they were doing. In 1907, Balfour – in the same terms as his uncle, Lord Salisbury⁵⁰ –

⁴⁷ The new majority in Parliament, albeit reduced, was made up of the Liberals (who had lost a great number of seats), the Labour Party and the Irish nationalists (this was to have great consequences on the Partition of Ireland to come in the next decade).

⁴⁸ His opposition to the extension of the suffrage as well as to female vote was expressed in no uncertain terms in his three anti-Home Rule books and in *Letters to a Friend on Votes for Women* (1909). See: A. V. Dicey, *A Fool’s paradise, being a constitutionalist’s criticism of the Home Rule Bill of 1912*, London: J. Murray, 1913, x-132 pages; A. V. Dicey, *A Leap in the Dark; or, our New Constitution*, London, J. Murray, 1893, xii-239 pages; A. V. Dicey, *England’s Case against Home Rule*, London, J. Murray, 1886, viii-311 pages; A. V. Dicey, *Letters to a Friend on Votes for Women*, London, J. Murray, 1909, vii-93 pages.

⁴⁹ Sir Henry Campbell-Bannerman was Liberal PM from 1905 to 1908, replaced by Herbert Asquith from 1908 to 1916. David Lloyd George, who served as Chancellor of the Exchequer (1908-1916) was Prime Minister from (1916-1922).

⁵⁰ Robert Gascoyne-Cecil, 3rd Marquess of Salisbury, was Arthur James Balfour’s uncle, and his nephew (later Lord Balfour) succeeded him as Prime Minister in 1902 (up to 1905). This is where the expression “Bob’s your uncle” – meaning “Political arrangements have been made, so everything will go as planned” – most certainly comes from. See: Richard. C. S. Trahair, *From Aristotelian to Reaganomics: A Dictionary of Eponyms with Biographies in the Social Sciences*, Westport and London, Greenwood Press, 1994, p. 72.

declared in Manchester that “The power which the House of Lords has, and which it undoubtedly ought to exercise is not to prevent the people of this country having the laws they wish to have, but to see that the laws are not [...] the hasty and ill-considered offspring of one passionate election”.⁵¹ Essentially, like the “qualified majorities” constitutional changes usually require in regimes with a written constitution, the Lords could be deferred to, to know what was right for the nation and they did exercise their veto on a number of Liberal bills (from plural voting, education or licensing hours). However, the patience of the House of Commons started running out after the Education Bill was rejected by the Lords in December 1906. A debate in the House of Commons in 1907 about whether the Lords’ veto could be transformed into a suspensory one led to strong language being used. The Lords were playing a constitutional game which was tearing Parliament asunder and much worse, they were not respectful of the constitution. The Liberal John Simon declared:

Does anybody suggest that an intelligent foreigner who was brought to look at the British Constitution as a new thing, [...], would not be absolutely aghast at our calling ourselves a democracy? Is there any second Chamber on the Continent that can exhibit such an amazing and astounding constitution as the House of Lords? It is for that reason that the vast mass of the people of this country can see no justification in theory or in practice for the House of Lords. Anybody would think from the line of argument adopted on the other side that if the check which that House exercises over this House was removed, we should go headlong to destruction.⁵²

Others, such as the Labour MP Arthur Henderson, even proposed an amendment to get rid of the House of Lords altogether. This was rejected but his desire to get rid of the Lords was grounded on specific reasons that he expressed thus: “We want to put an end, not only to the hereditary principle, but to the life of any Chamber which is irresponsible, which is not responsible to the nation”.⁵³ Had the Upper House played according to the rules of the game, abolition would not have been asked for. What was shocking for the MPs was the hypocrisy of a class which believed to know better and which expected to be irrationally deferred to. In the debates, one can see the free spirited Englishman at work in the House of Commons. The suspensory veto was adopted, but the House of Lords did not amend its ways and the two Houses clashed over the Budget of 1909. Some Liberal legislation was passed in the interval – such as the Old Age Pensions Act of 1908 – but the rejection of David Lloyd George’s budget

⁵¹ Quoted in: Blanche Dugdale, *Arthur James Balfour*, London, Hutchinson, 1936, vol. II, p. 24.

⁵² John Simon, <http://hansard.millbanksystems.com/commons/1907/jun/26/house-of-lords>, col. 1445-1446, accessed 17 January 2017.

⁵³ Arthur Henderson, <http://hansard.millbanksystems.com/commons/1907/jun/25/house-of-lords>, col.1197, accessed 17 January 2017.

in November 1909 made it clear that the uncodified constitution was being used by two sides, who could make it say what each wanted. What is specifically English about this fight is that each side was subtly appealing to the voluntary deference of the electorate on distinct grounds, each knowing that they could either rely on irrational deference (the Lord) or on a rational one (the Commons).

Lloyd George was one of the leading New Liberal reformers of the beginning of the century. He came from a poor Welsh background and was very unlike the class of politicians who had come before him. He refused political codes, rose from nothing, and became a lawyer whose strong sense of injustice concerning the plight of the aged, the sick and the unemployed helped him to forge his career. That his name is now also often remembered for his role in the split of the Liberal Party after 1916, the cash for peerages and knighthoods scandal in 1922, and his unfortunate meeting with Adolf Hitler in 1936, cannot fully overshadow what he accomplished as Chancellor of the Exchequer.

His Liberalism was of a new form, one which believed that financing welfare could rest upon land and income taxes, even if this meant full-blown confrontation with the landowning class still dominating the Upper House. As he explained in his Limehouse Speech of 30 July 1909, “No country, however rich, can permanently afford to have quartered upon its revenue a class which declines to do the duty which it was called upon to perform since the beginning”⁵⁴. From the perspective of deference, what is significant about this is that in a less deferential culture, it would have been Lloyd George who could have led the fight to abolish the monarchy. But in his case, the lack of irrational deference was grounded on a very rational deference to the constitution, even if it had an undeniably populist whiff. Thus, in arguing against the Lords, he denounced and mocked the Tory Peers who saw themselves as the great defenders of the constitution :

But still this is the great constitutional party, and if there is one thing more than another better established about the British constitution it is this, that the Commons, and the Commons alone, have the complete control of the supply and ways and means; and what our fathers established through centuries of struggle and strife even of bloodshed we are not going to be traitors to. Who talks about altering and meddling with the constitution? The constitutional party, the great constitutional party. As long as the constitution gave rank and possession and power to the Lords it was not to be interfered with. As long as it secured even their sports from intrusion and made interference with them a crime; as long as the constitution enforced royalties and ground rents and fees and premiums and fines, and all the black retinue of exaction; as long as it showered

⁵⁴ David Lloyd George, “Limehouse Speech”, 30 July 1909, Parliamentary Archives, LG/C/33/2/11. <http://www.parliament.uk/about/livingheritage/evolutionofparliament/houseoflords/parliamentacts/collections/limehouse/image-3/>, accessed 15 August 2016.

writs and summonses and injunctions and distresses and warrants to enforce them, then the constitution was inviolate. It was sacred. It was something that was put in the same category as religion, that no man should with rude hands touch, something that the chivalry of the nation ought to range itself in defence of. But the moment the constitution looks round; the moment the constitution begins to discover that there are millions of people outside park gates who need attention, then the constitution is to be torn to pieces⁵⁵.

This passage shows how deeply this ancient constitution was considered as worthy of deference, on the grounds that it had the ability to protect the people from arbitrary designs on them. It portrays the Peers as a class without nobility, shamelessly willing, at the first signs of changes, to wipe out the past to protect their own interest. It shows how the rhetoric of deference to the constitution could be used to empower a new class of politicians whose deference for the system was to be trusted by the new voters.

In November 1909, the Lord Chancellor pressed the point that the Lords were not respecting the conventions of the constitution – Dicey’s third pillar of the constitution – and their lack of respect for such ancient customs meant, as a class, the Lords were irresponsible. Answering the Marquess of Lansdowne who spoke to reject the Finance Bill on the grounds that it was essentially too socialist, Lord Loreburn declared:

Now, my Lords, the noble Marquess assumed that it was within the rights of this House, unquestionably and indubitably, to reject the Finance Bill of the year. If I am asked whether you can do it lawfully, according to law, I answer undeniably yes; and the best test of that is that a Court of law would not give effect to any tax which had been refused by the House of Lords and was not ultimately embodied in an Act of Parliament. But if I am asked whether this House can do it constitutionally, I say—in my opinion, no. And the difference between what can be done according to law and what can be done in accordance with the Constitution under which we live is notorious and fundamental. The law definitely fixes rules. What would happen if all the estates of the Realm were to carry out in freedom all the powers which the law entrusts to them? The Crown has enormous powers, and by the Constitution some of them for centuries have not been used. My Lords, it is not to the letter of the law itself that those who wish to govern this country as this country has been governed in the past must look. They must look also and even more to custom, usage, convention—call it whatever you please—which by inveterate practice had so modified the hard law itself that we are governed more by custom in this country in great matters than we are even by the law.⁵⁶

Now, this was using Dicey’s *Law of the Constitution* against Dicey’s own Unionist friends and showing, at the same time, that his interpretation had been right. What happened next is

⁵⁵ Herbert Du Parcq (ed), *Life of David Lloyd George*, London, Caxton Publishing Company, 1912, vol. IV (speeches), p. 696.

⁵⁶ Lord Loreburn, <http://hansard.millbanksystems.com/lords/1909/nov/22/finance-bill-1>, col. 751, accessed 15 August 2016.

well documented as Edward VII asked for a general election to put the Finance Bill to the mandate of the people. The first general election of January 1910 was as inconclusive as the second of December 1910, with a majority of less than a handful for the Liberals each time.⁵⁷ It was unclear what needed to be done in such a situation. This left Edward VII, and after his death in May 1910, the much less experienced George V, with a burden. What was to be done if the Lords carried on rejecting the Finance Bill? The new King was forced to place himself on the side of the government even if the two general elections of 1910 had not given clear majorities. Harold Nicolson, in his biography of King George V, notes how the King had been made to read Bagehot's *The English Constitution* as part of his training and how he had dutifully written as a note for himself that "the existence of the Crown serves to *disguise* change and therefore to deprive it of the evil consequences of revolution".⁵⁸ Even though George V was put in a very difficult position in a democratic age – he was compelled to give his consent (initially secretly) to create a vast number of Liberal Peers to pass the Financial Bill if the Lords still refused the result of the population's will in 1910 –, he ended up being the upholder of the English constitution to avoid a crisis between the peers and the people.⁵⁹ The Parliament Act of 1911 removed the Lords' power to reject money Bills and their absolute veto on other public Bills (replacing it by a power of delay of one month for money bills and two years for other types of legislation⁶⁰). It also reduced the life of Parliament from seven to five years. The only veto the Lords retained was to prevent the House of Commons from extending the duration of its own life – which remains a constitutional safeguard. The Lords were never to regain the position they had had before 1911. As David Cannadine concludes: "the belief in their innate superiority, in their collective political wisdom, in their unique position as the responsible hereditary custodians of the national interest, was gone for ever"⁶¹.

⁵⁷ The General Election of January-February 1910 brought back to power 274 Liberals, 272 Unionists, 82 Irish Nationalists and 40 Labour MPS. The General Election of December 1910 brought back to power 271 Liberals, 272 Unionists, 84 Irish Nationalists and 42 Labour MPS. For the results, see: <http://www.politicsresources.net/area/uk/edates.htm>, accessed 15 Jan. 2017.

⁵⁸ Harold Nicolson, *King George V. His Life and Reign*, London, Constable, 1952, p.62.

⁵⁹ Peter Hennessy in *The Hidden Wiring. Unearthing the British Constitution* (1995) inserted a picture of a page of the future King George V's notebook showing how he wrote down and underlined the passages of Bagehot's famous work. He underlined especially the three powers of the Crown as Bagehot expressed them in *The English Constitution*: "the right to be consulted, the right to encourage, the right to warn". In the case of the crisis of 1909-1911, George V certainly acted according to these rights, giving them force and setting the mark for future monarchs. See: Peter Hennessy, *The Hidden Wiring. Unearthing the British Constitution* (1995), London, Indigo, 1996, inserted between pp. 86-7. See also: Walter Bagehot, *The English Constitution* (1867) in: Norman St John-Stevas (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 253.

⁶⁰ The 1949 Parliament Act amended that of 1911 and limited the power of delay to one year instead of two.

⁶¹ David Cannadine, *The Decline and Fall of the British Aristocracy*, *op.cit.*, p. 53.

The preamble of the Parliament Act of 1911 makes this very clear: “It is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis”.⁶² For the Lords, this meant that a Damoclean sword was hanging over their heads as to their future and had further stripped their power away.⁶³ Obviously, their problem was now with the Home Rule Bill that they could no longer prevent, but could only delay for two years. The last resort of the Lords was to appeal to the King and to his royal prerogative not to assent to the Bill. Once more, the two sides were using the conventions of the constitution to make them say what they wanted. Again, too, deference to the constitution was used by both sides to resist changes and, the King was appealed to, as a constitutional referee with no guide book to enlighten him.

On the Unionists’s side, Balfour considered that refusing assent to a Bill by a monarch (which had last been used by Queen Anne in 1707 to the Scotch Militia Bill) was a prerogative which could be revived, whereas the Prime Minister, Asquith, could see that such a use of the royal prerogative would be very damaging to the monarchy. The King was being dragged again into party politics because the Parliament Act of 1911 had removed the balance of the Lords. This meant that he was the only link between his people and the House of Commons in a case such as the Home Rule question. “Never has a British sovereign in more recent times”, he lamented, “been placed in such an odious and mortifying position”.⁶⁴ He decided that the only solution was to appeal to the people once again, but Asquith refused on the grounds that this would undermine parliamentary sovereignty.⁶⁵ Each side was playing the deferential card but it was clear too that the constitution could be made to say what anybody wanted.

Interestingly, A.V. Dicey’s staunch defense of the Union led him, together with the majority of Unionist Conservatives and Liberals in the House of Lords, to defend a view of the constitution which was rather opposed to his grand view of Parliament as the expression of the will of the people presented in *The Law of the Constitution*. Suddenly, when faced with the possibility of Home Rule for Ireland and the breakup of the Union, any move to defend the constitution – including going against the government of the day – was deemed acceptable. Dicey’s three anti-Home Rule pamphlets make surprising reading for those used

⁶² See: <http://www.parliament.uk/about/living-heritage/evolutionofparliament/houseoflords/parliamentacts/from-the-parliamentary-collections-the-parliament-act/parliament-act-1911/page-2/>, accessed 17 January 2017.

⁶³ G. H. L. Le May, *The Victorian Constitution. Conventions, Usages and Contingencies*, *op.cit.*, pp. 214-5.

⁶⁴ From the Royal Archives, quoted in : *Ibid.*, p. 218.

⁶⁵ *Ibid.*, p. 217.

to *The Law of the Constitution*.⁶⁶ It becomes clear that sovereignty of Parliament, as the metaphorical expression of the wishes of the nation, really means that Parliament – more precisely the old guardians of the temple in the Lords – know best. “The spirit of institutions is as important as their form”, writes Dicey in his second book against Home Rule, “and the spirit of English Parliamentary government has always been a spirit of unity”.⁶⁷ Therefore, anything should be done to preserve the Union because Home Rule would introduce changes in the constitution, unforeseen and opposed to its nature, potentially revolutionary.⁶⁸ For Dicey, only a rationally deferential class could see this and had the duty to fight as “patriots”⁶⁹, with all means available, to keep the unity of the Kingdom. Obviously, after the two inconclusive elections of 1910, Dicey felt that the Liberal government in power lacked the mandate to carry out sweeping reforms. In the last pamphlet, reflecting on the Home Rule Bill of 1912 and after the loss of the power of the Lords in 1911, he continued encouraging the Unionists to prevent the Home Rule Bill from becoming Act by asking for a general election, or if refused, by rejecting the Act on the grounds that it would lack constitutional authority.⁷⁰ Coming from Dicey, this makes odd reading – rational deference to the constitution could also be read in many ways. His views, shared by a number of politicians and peers, were the signs of the profound structural changes within society and politics which were taking place throughout the period. For Dicey what was the breakup of the cherished Union dominated by England was, for others, the right to rule themselves and change their conditions. If the unionists were trying to prevent a revolution on the grounds of deference to the constitution, for the government, it was the Lords who were not deferential and who had brought on their own revolution, to copy the words of David Lloyd George at the time.⁷¹ In the end, the start of WWI prevented the government from passing the Act as planned and postponed it to 1920 when the Government of Ireland Act created two Home Rule Parliaments and led to the partition of Ireland in 1922.

There is something of the passing of the deferential baton in the events which led to the Parliament Act of 1911. Balfour lost to the Liberal government of the day, but deference did not lose. Rather, it simply changed shape from an irrational nature to a much more

⁶⁶ See: A. V. Dicey, *A Fool's paradise, being a constitutionalist's criticism of the Home Rule Bill of 1912*, *op.cit.*; A. V. Dicey, *A Leap in the Dark; or, our New Constitution*, *op.cit.*; A. V. Dicey, *England's Case against Home Rule*, *op.cit.*

⁶⁷ A. V. Dicey, *A Leap in the Dark; or, our New Constitution*, *op.cit.*, p. 6.

⁶⁸ *Ibid.*, pp. 202-3.

⁶⁹ A. V. Dicey, *A Fool's paradise, being a constitutionalist's criticism of the Home Rule Bill of 1912*, *op.cit.*, p. 110.

⁷⁰ *Ibid.*

⁷¹ Herbert Du Parcq (ed), *Life of David Lloyd George*, *op.cit.*, vol. IV, p. 696

rational one. Balfour came to understand the change in the 1927 introduction to the re-edition of Bagehot's *The English Constitution*: "it is evident that our whole political machinery presupposes a people so fundamentally at one that they can safely afford to bicker: and so sure of their own moderation that they are not dangerously disturbed by the never ending din of political conflict"⁷². There is an unmistakable Burkean touch to such an organicist understanding of the system, but Balfour pin-points something obvious, which is that if the new voters and their representatives in Parliament had not agreed with the structure, they would have dropped it. Instead of that, they kept the House of Lords – with the Damoclean preamble which would fall a long time later in 1999 – and avoided an open revolution. British history is littered with moments which had been revolutionary in all but name and which were the proof that great political changes did take place when needed, helped by deference to its past. Clearly too, the English "react" rather than "act" concerning such political upheavals but their force is always to have done so by appealing to a golden age and to the retrieving of the imagined liberties they used to have – in so doing showing rational deference to their past.

The story of deference in the twentieth century, after WWI, is about how rational respect for the uncodified constitution became severely undermined. There is no doubt that the conduct of politicians, mass parties, the advent of a multicultural society, and the institutional changes which took place over the course of the century were responsible for its transformation. Paradoxically, it is also the very flexible nature of the constitution, with the latitude it authorized by allowing the emergence of all-powerful governments, which has undermined the rational deferential nature of the English in the twentieth century but, remarkably, has not fully killed it.

⁷² Lord Balfour, "Introduction" (1927) in Walter Bagehot, *The English Constitution* (1867), Oxford, Oxford University Press, 1974, p. xxiv.

Part 2:

Deference in the Democratic Age – A User's Guide

Chapter 5

The challenges to voluntary deference (1911-1945)

From the beginning of WWI to the end of WWII, only thirty years passed but, in that period, Britain was to see two daunting world wars and their consequences on the nation, a fourth Reform Act in 1918 which made the country a full democracy (women and men over the age of 21 were all given the suffrage after 1928), the breaking up of the union and the creation of Northern Ireland, the birth of the Commonwealth, a world financial crisis, general social unrest and an abdication. If the main problem in the previous period had been to adjust the democratizing process to the rule of the patricians in power, this new period was about how WWI accelerated the demands for social progress which were met after the end of WWII. The other question of the day was how to combine unregulated capitalism and the demands for more equality that democracy had brought, whilst dealing with an international financial crisis and growing tensions on the international scene. Voluntary deference to an old constitutional structure came to be denounced by some as outdated whilst for others, it remained a stabilising influence in times of upheavals.

The new generation of post-WWI Labour politicians saw much better than their forebears that inequality was ingrained in the system, but their desire for power led them to be wary of being considered as too revolutionary. Therefore, there were tensions within the Labour Party between progressive moderates, who wanted to establish the party as a potential governing force, and the left-wing, who saw inequality as a structural consequence of parliamentary government which could be corrected in two ways, either through a regulation of capitalism or through a rethinking of the system itself. The Labour politicians coexisted with the previous generation of Liberals, men such as David Lloyd George – by then, Prime Minister of a conservative coalition from 1916 to 1922 – who had operated with the system without questioning its structure. By the 1920's, new Labour politicians represented the

working-classes in a much more visible way than had been the case previously. They were gradually securing a greater share of the popular vote, casting themselves as the alternative to a dying Liberal Party. Twice in the inter-war period – in 1924 and in 1929-1931 – they got power with the help of the Liberals, and twice they were forced to tone down their radical socialist programme as they were a minority government. The disagreements between those in the party who wanted to follow a reforming programme in favour of the working classes and those who believed in caution and balanced budgets (such as Philip Snowden, twice Chancellor of the Exchequer during these years) were to tear the Labour Party asunder in 1931, as the world depression of 1929 shook the stability of the English currency.

Voluntary deference was questioned by such men – especially those on the far left but also left-wing intellectuals. The Fabian Harold Laski, for example, denounced the fact that the British “politically democratic government” was not “the expression of a democratic society”.¹ For Laski, this meant that there was “a contradiction between our political democracy and the hierarchical character of our social system”.² Thus, the voluntary deferential structure of the nation began to shift at that time with, on the one hand, those who were rationally voluntarily deferential to the constitution and, on the other hand, those who were not deferential any longer and questioned the deferential structure itself in an appeal for more equality. The democratic ideal of equality, combined with the individualistic moral ideal of autonomy, equated voluntary deference with servitude. Deference was about to be seriously reconsidered on the grounds of what a liberal-democratic structure meant – either the defense of liberty or the quest for more equality.

The celebrated unity of the system around the Diceyan trinity of the sovereignty of Parliament, the rule of law and the use of conventions – to which voluntary deference should be added to give it its full expression – came to be questioned on the very basis of its foundation: liberty and the rights of property. The dichotomy between Individualism and Collectivism, which had many philosophical and political expressions in the previous period, was transcended by a radical feeling, among left-wing intellectuals and politicians, that the problem was the Victorian system itself. Those in favour of a democratic ideal of equality could not accept that new British political democracy rested essentially on a property structure founded to defend the rights of private property – itself linked to a certain understanding of liberty grounded on the philosophical ideas of the seventeenth century. Such a liberty meant

¹ Harold J. Laski, *Parliamentary Government in England* (1938), London, George Allen & Unwin Ltd., 1945, p. 38.

² *Ibid.*

an absence of interference from any form of arbitrary power. The Victorian constitutional mentality was a consequence of such an understanding of freedom in which the scope of the state had been deliberately reduced.

Questioning the unity at the heart of the system, as Laski was doing, was littered with dangers. If discussion was encouraged and if government by debate was the means of expression of the Commons, dismembering Mr. Punch's old "play box" and to codify the constitution, in a democratic attempt to make it more understandable for the newcomers, was not a palatable option for those in power.³ It entailed explaining how, after 1688, parliamentary government had been built on the defence of individual property and the ideals of liberty and how, what sustained it – essentially order and deference to the constitution on aristocratic grounds – was an impediment to equality and to a form of state more suited to the democratic changing times. This also meant that the system orchestrated through the structured organisation of the state – the monarchy, education, religion and even some organs of the press – the very domination of a governing class which cemented its position through the management of those they were educating into it. Laski was aware of this. For him, this was essentially a class-structured system in which hierarchical voluntary deference allowed every part of the structure to work together. As seen in the previous chapter, Bagehot did not analyse the constitution in terms of class-structure, since he viewed deference as the consequence of a national character based on a past which had forged certain characteristics into the English. However, after the fourth Reform Act of 1918, the previous organisation of society did raise fundamental questions as to whether even rational deference could survive in a democracy and if the constitution itself did not need serious rethinking. Interestingly, one of the ways out for left-wing followers was to use the leeway allowed by the Victorian descriptions of the constitution itself. By putting so much emphasis on the role of Parliament as the main source of sovereignty, Bagehot and especially Dicey had unwittingly given the keys of the house to the government in power. The constitutional historian, Vernon Bogdanor, referring to the end of the twentieth century, explained that "The *legal* doctrine of the sovereignty of Parliament has thus come to legitimize a *political* doctrine, the doctrine that a government enjoying an overall majority in the House of Commons should enjoy virtually

³ There is a well-known amusing 1865 cover from *Punch*, in which a delighted old Mr Punch is seen taking his toys out of a play box in the shape of the Palace of Westminster after the opening of Parliament. The puppets are those of Gladstone and Disraeli and other political figures of the time. The caption reads "Our Play Box. Mr Punch's Delight at Finding his Dear Old Puppets where he left them in July". It is also the cover chosen for T. A. Jenkins, *Parliament, Party and Politics in Victorian Britain*, Manchester and New York, Manchester University Press, 1996, cover page.

unlimited power. What the governing party enacts thus becomes, ipso facto, constitutional”.⁴ This was already happening post WWI, albeit in a less clearer way than later on. One way of making the system evolve according to the needs of society was to get hold of the executive – i.e. of power. What the Labour Party was faced with, as they led their first governments in the 1920’s⁵, was the fact that voluntary deference sustained the liberal structure of the constitution. Changing the system by introducing a much more egalitarian one would mean changing the character of society – if this was even possible.

Thus, the opposition between the aims of liberty and those of equality were to shape this inter-war period. They were also to shape what was being written about the constitution at the time as a Fabian, Sir Ivor Jennings, tried to find a compromise between the ideals of equality, justice and liberty in an attempt to reconsider the Victorian constitution of Bagehot and Dicey. The period was fraught with elements of tension and what deference represented was very much at the heart of it.

Remarkably though, the 1914 to 1945 period was able to overcome a number of crises which could have easily brought the entire system down. This is where deference can be found and seen at work, from the arrival of the first Labour governments in power, the setting up of a national coalition to deal with the economic crisis from 1931 to 1935 to the abdication crisis of 1936 – and also the two world wars. The questions concerning more equality in society and how the uncodified constitution rested on mythical liberties not enshrined into rights were to come back, again and again, especially after WWII, as yet another war would make it impossible not to give more welfare to those who had so much suffered during the conflict. That the Anglo-British Constitution muddled through such periods of difficulty is testimony to its degree of flexibility, but it remains interesting to see how it weathered the storms. It is no less remarkable to see that hierarchical voluntary rational deference coexisted with democracy in those years when it should theoretically have died away – along with voluntary irrational deference too – and that deference helped Britain get through what was essentially another unstable period, but, this time, for other reasons than in the previous age.

⁴ Vernon Bogdanor, *The New British Constitution, op.cit.*, p. 15. The bold characters are those of the author.

⁵ The first minority Labour government led by Ramsay MacDonald was formed in January up to October 1924 with the help of the Liberals. The second Labour government, also a minority government, was formed in 1929 up to 1931. From 1931 to 1935, Ramsay MacDonald was reappointed as head of a national coalition to deal with the economic crisis.

The rise in the power of the executive

In his 1963 introduction to Bagehot's *English Constitution*, the Labour thinker Richard Crossman pointed out how power had shifted from the Cabinet to the Prime Minister when the National Coalition was formed in 1931 to deal with the consequences of the financial crisis. He also helpfully explains, using Lord Morrison's experience, how, decisions until 1931 had been taken collectively in cabinet government in an old-fashioned way that was no longer suited to the situation.⁶ As the economic crisis hit the country, a much more ordered and direct way of taking decisions rapidly was needed. From then on, and especially at the time of WWII, Prime Ministers would take on increasing power leading to other types of problems. This was a first dent in Bagehot's efficient secret, i.e. the role of Cabinet.

The second great change which happened after WWI and which also increased the power of the Prime Minister, was the growth of a united and centralized bureaucracy.⁷ The advent of full democracy, the organisation of mass parties and the need for a civil service which would put into place the decisions of the state at a central and local levels, all gave the office of the Prime Minister considerable power as the person at the top of the political pyramid. The rapid growth of what would later come to be known as Prime Ministerial government (later on, in the 1970's), bolstered by the rapid expansion of the civil service, challenged the old version of the constitution but this was not to be fully perceived for a long time.⁸ Of course, this also meant that the character and behaviour of the person in power mattered very much. Rational deference was only to be given to those who deserved it. Cabinet government, as presented by Bagehot, had been the expression of a form of governance in which a responsible elite, very aware of its ancestral role in society, governed collectively for the common good in a spirit of liberty. Prime Ministerial government was founded on a different understanding of the organisation of power and depended on a much more personal link between the people and their Prime Minister, as will be seen with Baldwin and especially with Churchill. Rational deference was also affected by such changes as it was difficult to defer to a passing political figure who represented only a section of society. This is where the monarch as the main upholder of deference played an essential role of guardian of the structure, as will be analysed further on. Counter-intuitively, it can be argued that the

⁶ Richard Crossman, "Introduction" in: Walter Bagehot, *The English Constitution*, London, Fontana Press, 1993 (1963), pp. 48-9.

⁷ *Ibid.*, pp. 50-1.

⁸ John P. Mackintosh, *The British Cabinet*, London, Stevens and Sons Limited, 1962, xi-546 pages. Lord Hailsham, *The Dilemma of Democracy. Diagnosis and Prescription*, London, Collins, 1978, 238 pages.

twentieth-century monarch is actually more important to the structure of the British Constitution than the nineteenth-century one.

Politics after the passing of the Parliament Act of 1911 was dominated, first, by the renewed demands for Irish Home Rule – the Easter Rising of 1916 being another proof of the necessity to find a solution – and, by the reality of WWI: both left long-lasting marks on the nation. The situation with Ireland was only partially solved in 1922, with a partition according to which 6 counties in Northern Ireland remained within the Union and 22 counties in the rest of the island broke away, thus leading to the creation of the Irish Free State (which would become the Republic of Ireland in 1949). There was certainly no deference – in whatever form – among the Irish Catholics who wanted to break free, but there was rational deference shown by the Protestant Unionists of Northern Ireland who viewed themselves as part of the Kingdom and whose allegiance went to the Crown and to what it represented. The unprecedented escalation of violence which took place in Northern Ireland over the twentieth century only helps shed light upon the opposition between two categories of citizens who either sided with a liberal anglocentric and pragmatic understanding of the powers of the state or with a much more egalitarian/republican vision of life as a nation. As for the consequences of WWI on the United Kingdom, they were as numerous as those of the Irish Question, starting from the rethinking of the organisation of the world after the Treaty of Versailles in 1919 to the creation of the Commonwealth of Nations embodied in the Statute of Westminster of 1931 which was to eventually mark the end of the British Empire. Politically speaking, as mentioned above, it led to the passing of the 1918 Fourth Reform Act which recognized the war efforts of the nation's men and women and brought the final element needed for the transformation of party politics.

The Liberal understanding of the constitution as extolled by Bagehot and Dicey was now severally assailed by two different enemies that WWI had brought about: on the one hand, the idea that Liberty should be equated with social security, on the other hand, that the state should take on more powers as it was based upon democracy and greater demands for equality. The previous chapter has attempted to show how such ideas were already alive in the previous period, especially those concerning welfare, but it was the war which truly exposed the need for the state to focus on the welfare of its citizens (both their well-being and their security), extending the scope of intervention of the Government. Even the notion of voluntary rational deference became difficult to reconcile with the egalitarian rhetoric which dominated the post-WWI period. Rational deference was the expression of the liberal spirit of

the Englishman which corresponded to his historical constitution and to acceptance of an hierarchical order; it was very remote from an egalitarian starting point.

For the new Labour MPs who came into power in the 1920's, it was not enough to say that the constitution was based on a spirit of liberty; what mattered was being able to exercise such freedoms to realise oneself. Being free meant being able to look at how citizens experienced such freedoms in practice. Obviously, the freedom consistent with voluntary deference was different, as it was based on the ability of the person to rationally or intuitively understand what was better for him and to accept the system (and the limitations it placed upon him) both out of love of its antiquarian qualities and because of it generated greater qualities of civility. In accepting the system's limitations to his autonomy, the person did exercise a form of self-censorship. Such an understanding of the role of citizens in society in which everyone one had a place was now challenged as the ideas of the British idealists, for example, had shown that what mattered was the realization of the essence of one's nature and that men's nature could only be realized in society for the public good. Freedom was no longer about the absence of interference from an arbitrary power – which left “self-realisation” as a private matter –, it was much more about society's duty to make the person “realised”, in the sense of achieving the best version of themselves for themselves, but also for the good of society at large.⁹ Laski was not an idealist but he had believed in the self-realisation of men as their means to achieve independence in society. “The minds of citizens”, he writes,

must be active minds. They must be given the habit of thought. They must be given the avenues through which thought can act. They must be accustomed to the exercise of will and conscience if they are to be alert to the duties implied in their function as citizens. Liberty consists in nothing so much as the encouragement of the will based on the instructed conscience of humble men.¹⁰

The role of the government would now be very different if it was to help the self-realisation of the person through education. But in the writings of left-wing intellectuals such as Laski, freedom was understood in an egalitarian manner that excluded any form of dependence and so was radically opposed to any form of deference, including a rational one. Being able to live in society as a free citizen was to be independent and to be able to make autonomous choices. This was going back to what Pocock had described about the rise of egalitarian deference in the seventeenth century, which was republican in nature and which was very difficult to

⁹ This, in itself, was not a “new” vision and goes as far as Plato.

¹⁰ Harold J. Laski, *A Grammar of Politics*, *op.cit.*, pp. 143-4.

achieve in a society in which citizens had not started as equals (as in the USA for example). Interestingly though, Laski and his like-minded colleagues refused to see that rational deference was not incompatible with such a belief in self-realization as they equated deference with submission. In truth, voluntary rational deference was really the best expression of such a belief as it was suited to a long-ingrained habit of respect for good rulers and respect for oneself which encouraged independence of spirit. Nevertheless, starting from the 1920's, an increasing number of thinkers alongside Laski perceived that there was an imbalance between what the Victorian constitution defended and how the ideas of the nation had changed since the end of the nineteenth century. The battle around the Parliament Act of 1911, the advent of the war, the demands for recognition of a number of different people (Irish, colonial nations, women and English working classes), came knocking on the door of a Parliament which still worked according to old ways, which were precisely organised to control the expression of passions. Order and deference went hand in hand in Bagehot's analysis, but were not adapted to demands which were exposing the system for what those like Laski believed it was: the constitutional organisation of aristocratic conservative institutions.

Dicey's explanation of the constitution also rested on the conventions of the Constitution – the unwritten rules of conduct of the system – which themselves rested on voluntary deference. “Classical Liberal deference” was really the backbone of English liberties and the sweeping changes in the nature of politicians and the scope of their powers after 1911 was a first challenge to the system. Clearly, the whole edifice rested on the faith the nation had in the constitution and in not questioning it. It also became obvious that Dicey's very restricted definition of the rule of law which was to guarantee liberty – whilst the authority of the constitution was vested in Parliament – was seriously compromised by the rise of power of the Cabinet and especially of the Prime Minister, whose discretionary powers – most of which were found in the Royal Prerogative – went unchecked. Thus, what had been the backbone of the structure – the fact that the law of the Constitution was the outcome of the rights of the English, even though they were not defined as such in a codified document and were generally retrieved by appealing to “historic milestones”¹¹ – was being eroded and even, in some areas, turned upside down. Such a legal interpretation of the law was trusted to be in favour of liberty, but what happened in 1917 tells another story.

¹¹ This is Lord Bingham's expression. See: Tom Bingham, *The Rule of Law*, London, Penguin Global, 2010, p. 10.

The case *R v. Halliday, ex parte Zadig* [1917] concerned Arthur Zadig, a naturalized British subject of German origin, who complained of having been interned by a regulation (14B) made under the 1914 Defence of the Realm Consolidation Act.¹² For him, the regulation was *ultra vires*, i. e. beyond the powers given to the Minister by the statute, and thus should be considered as an excess of power exercised over him. Zadig's appeal failed on the grounds that although the regulation was *intra vires*, it was also made during a time of national crisis, and the judiciary chose not to decide against precedent and to deny historical personal liberties on the grounds of security. It also showed that the judiciary could be subordinated to the executive out of deference. In such a case, the whole fragile equilibrium of the constitution which rested on the Parliament enacting the law, on the judiciary guarding the liberal spirit of the law, and on the people trusting the system through deference, was in great danger of being dominated by the executive. Clearly, in a time of national emergency, as the war was raging and the threat of Bolshevism loomed high, personal liberties could be sacrificed and the executive given more power, helped by a sympathetic judiciary. Nevertheless, if powers had to be delegated to the executive in such times then there was a danger, within the system itself, of an arbitrary use of them. One of the judges in the case, Lord Shaw of Dunfermline, made this very clear, arguing that interpretation of the law was not made from scratch: it had a background – the British Constitution – on which interpretation needed to take ground. He considered that the regulation which allowed the internment of Arthur Zadig without his breaching the law was an attack on Zadig's liberties and an abuse of power. Lord Shaw declared "once you have abandoned the line of safety which I have sketched – namely, confining regulations to rules of conduct to be obeyed with safety or punished after trial for the breach – once that is abandoned, how far may you not go?"¹³. He dissented on the grounds that this was a violence made to the historical constitution but the case went against his opinion. Interestingly, in his 1925 edition to *English Political Institutions*, J.A.R. Marriott declared that "we passed through the ordeal of a great war with a minimum infringement of those safeguards for personal liberty of which Englishmen have been justly tenacious"¹⁴. In reality, the Zadig case was not "negligible" and was the proof that the old constitution really did mean what the government of the day wanted it to mean – at the expense of the private liberties of citizens. Remaining deferential in such a

¹² *R. v Halliday, ex p. Zadig*, [1917] 260 AC.

¹³ *R. v Halliday, ex p. Zadig*, [1917] 260 AC, pp. 292-3.

¹⁴ J. A. R. Marriott, *English Political Institutions. An Introductory Study* (1910), Oxford, Clarendon Press, 1925, pp. xlii-iii.

case could be either foolish or plainly dangerous but only a few understood and denounced the system on such grounds.

Thus, equating liberty with security meant that the British Constitution was taking a turn which was, in essence, contrary to its principle feature: balance between the various powers. Such a desire for security rested on the intervention of the executive to provide it. Dicey's restricted definition of the rule of law had been simple as it allowed an elasticity needed to give breathing space to liberties through the different powers. It was also sensible as he was aware of the clash of principles in the law of the constitution: either Parliament is sovereign because it enacts the laws, or the judiciary is, because to interpret without resorting to the history of the Constitution is, in effect, to legislate. This fragile balance was only possible if every "body" of the constitution played its part. Once faith in the system was questioned, as Lord Shaw of Dunfermline had said: "How far may you not go"? Obviously, this was not a case, nor a question, which trickled down into every single household at breakfast to question the existence of the British Constitution in 1917, but this was the first step in a process which would have repercussions in the twentieth century and which would later severely challenge the voluntary deference given to the uncodified constitution by citizens.

As stated above, if liberty means security, then the state has got to intervene to guarantee it and can easily abuse such power. With *R v. Halliday, ex parte Zadig* [1917], the system could show itself to be inflexible in a time of crisis. It also brought into light the fact that if basic human rights were going to be trampled, such as arbitrary detention, it might be better to have them written down, but the culture of the country was based on debate much more than on a blunt rationality of the process of imposing rights. Nevertheless, some thinkers such as Laski started considering the advantages of a codified document as a consequence of such decisions, as we will see below. The twentieth century has been a march towards recognising basic human rights at the expense of a voluntary deference in good faith to the system. Already, the liberal and pragmatic Victorian understanding of the British Constitution was shifting.

Politicians and the constitution

The changes in the political structure of the country carried on after WWI. In 1918, a new constituency branch structure for the Labour Party was created which organised local party efforts under its guidance. The period also witnessed the birth of the Communist Party of Great Britain in 1920 and, in 1931, the New Party founded by Mosley, renamed the British Union of Fascists in 1932. The professional politician replaced the former close-knit set of the landowning aristocracy, who knew the codes, but the newcomers made the same mistakes, except this time, they did so in the limelight. Democracy had removed the layers of veils shielding from too much scrutiny the efficient parts of the constitution. The new Members of Parliament had lesser financial means and greater vulnerability. Some became a prey for the new Members of the House of Lords who were very often unbridled capitalists. “Hence the run of major financial scandals” writes David Cannadine, “which rocked British public life between the 1890’s and the 1930’s, a sure sign that the old standards were under threat. Hence, also, the growth of a new, plutocratic and irresponsible press, which further undermined the autonomy and eroded the decency of public life”.¹⁵ Voluntary deference took another tumble with the first visible financial wrongdoings concerning politicians. In all fairness, the political corruption of those in power was not new – the actions of Robert Walpole and his friends in the eighteenth century were on a same scale – but in the inter-war period, as the gap between office holder and voter narrowed, it became more important than ever that the behaviour of those in power be beyond reproach to maintain deference in a democratic age.

One of the best known perpetrators of one such scandal was David Lloyd George, who can be singled-out in this case because he had never hidden his dislike for the House of Lords and the privileges it held.¹⁶ Remarkably, for a man who had shown populist rational deference to the system at the time of the battle with the Lords over the People’s Budget, during his tenure as Prime Minister (1916-1922) he unabashedly decided to sell honours and titles to raise money for his cause. His position was rather awkward as he was the Liberal leader of a coalition with the Conservatives, which the Liberals led by Asquith were not part of. Lloyd George was a Prime Minister without a party and he was very much exposed as a result. He neither had the funds of the Liberal Party, nor those of the Conservative one, which forced him to find his own funding and the selling of titles was one way to do that. The consequence

¹⁵ David Cannadine, *The Decline and Fall of the British Aristocracy*, *op.cit.*, p. 298.

¹⁶ See chapter 7: “The ‘Corruption of Public Life’” in: *ibid.*, pp. 297-340.

of this decision was that men who had no understanding of the intricate details of the system were put into the Lords and whose motives were often other than a sense of duty to country. Lloyd George does not seem to have understood the great injury he was doing to the constitution, for he viewed a hereditary class of undeserving Lords was no better than the new class of capitalist plutocrats. The difference was essentially that however their great faults – the aristocracy were themselves descendants of families who had greatly benefitted from their privileged positions for centuries and who still did –, the former sustained the system by the deference they gave it, whilst the latter were mostly in it for their own personal interest in their new position and they were individuals in whom deference had not been infused. The other problem was that Lloyd George was trampling on the unwritten convention that the Prime Minister should not abuse his position and propose to the House of Lords men who were not worthy of such an honour either for political or public reasons. In other words, the Prime Minister was not given any rules to follow except that he was trusted to be deferential to the constitution. This, Lloyd George certainly did not do, and he gave a blow to the dignity of the role of the Prime Minister and to the system all at once. He was left to carry on until 1922 – even though there were challenges from the Lords, especially from Lord Salisbury (the son of the former Prime Minister and first cousin of Arthur Balfour) – when his July honour's list was deemed unacceptable. Interestingly, it is the Conservative Party, the King, and the press who started denouncing what they saw as an abuse of privilege and who led to the end to such actions and to Lloyd George's Premiership in 1922.¹⁷ What is even more remarkable is that it was through the renewed demands of the grassroots of the Conservative Party over their opposition to the Prime Minister's foreign policy in Turkey and also because of the honours scandal that the Conservatives MPs assembled at the Carlton Club on 19 October 1922 decided to remove their participation in the coalition which effectively toppled Lloyd George.¹⁸ Voluntary deference to the protection of the system was set in motion when needed.

This episode is not so much about the scandal – Lloyd George was not the first nor the last to use honours to his own advantage and he never gave the money back (effectively, they were bribes). It was much more about the fact that it took place very publicly, with satirical cartoons published in *Punch* and articles in the press which took to the public the undignified actions of a Prime Minister who was supposed to have been the people's champion, who had risen from a poor background to become Prime Minister and who, eventually, was no better

¹⁷ On George V's reaction to David Lloyd George's Honours Lists, see: Kenneth Rose, *George V*, London, Weidenfeld and Nicolson, 1983, p. 250.

¹⁸ See: Michael Kinnear, *The Fall of Lloyd George. The Political Crisis of 1922*, London and Basingstoke, Palgrave Macmillan, 1973, pp. 120-35.

than the patricians who had led the nation previously. This episode was swiftly followed by the embarrassing story revealed by the *Evening Standard*, that Lloyd George had been given a substantial amount of money for his memoir by an American publisher. His biographer Roy Hattersley reveals that, for all intents and purposes, “Lloyd George had been offered the chance to make a fortune out of the war in which so many men had died. The public outcry far exceeded the expressions of shock and horror which were provoked by the ‘honours scandal’”.¹⁹ That Lloyd George then decided to donate the money to charity did not change the fact that he did not give dignity to his position the way rational deference to the system should have guided him to do so. Retrospectively, such actions also tarnished his eloquent 1910 speech about the abuse of privileges of the landowning lords and tainted the whole of his actions past and those to come. Worse still, he accepted a title himself, becoming Earl Lloyd George of Dwyfor in 1944. Knowing how little he valued such honours, this was to be the final blot on his legacy, only matched by the meeting with Hitler in 1936 at Berchtesgaden and his views on marriage (he kept two households during his lifetime).²⁰ Lloyd George is not the only politician of this period to have resorted to corrupt means and adopted authoritative ways once in power – and most certainly not the last – but he is a perfect example of how voluntary deference to the rulers came to be questioned later. Lloyd George had denounced the hypocrisy of the elite at the time of the People’s Budget, defended those in distress and built a strong reputation for his steady judgment during WWI, but he then threw all this goodwill away by succumbing to the influence of power and losing his ethical compass. His actions further damaged deference.

Here again, is another dent to voluntary deference. This time it touched the voluntary deference that the people were to give their elected representatives in the Commons and their selected ones in the Lords. It also exposed the abuses that a Prime Minister could perpetrate, claiming for himself the privileges of the royal prerogative (this would come back regularly throughout the twentieth century). Lloyd George was removed from power by those who were still deferential to the system, but the injury done was not to be undone. Slowly, through the accumulation of such moments, voluntary deference to the system was to be eroded. The uncodified British Constitution was shown to be faulty: essentially based on incremental moves, historical interpretations of ancient texts, relying on the common sense and the voluntary deference of men. Maybe, after all, there was a certain naivety in having far too

¹⁹ Roy Hattersley, *David Lloyd George: The Great Outsider*, Little, Brown and Company, 2010, pp. 559-76.

²⁰ See: Travis L. Crosby, *The Unknown David Lloyd George: A Statesman in Conflict*, London and New York, I. B. Tauris, 2014, p. 369.

much faith in the system and not seeing that human frailties could undo it. What had served the system previously – the undemocratic structure of society shrouded in a certain type of mystery and relying on deference – now needed to be reconsidered.

Liberty, Equality and the Fabian view

Since 1911, Parliament has essentially found itself in a position of legitimating the power of the executive much more than legislating *per se*. The role of Parliament was nominally to scrutinize and amend legislation, to represent the electorate and to be the instance of debate but as seen above, what came to matter in real terms was government and, as a result, those in power, especially the Prime Minister. To get power, party machines and party discipline were needed and grew to create mass parties representing two sides of the political spectrum. By the 1920's, the Conservative Party was now the party of the establishment, mainly defending a classical liberal understanding of liberty, and the Labour Party was bent on defending equality, better working conditions, and justice. The two views were ideologically opposed, and their opposition extended to their distinct understanding of deference to the constitution. The first view was still founded on voluntary deference, while the second one was moving away from it.

With the ideas of equality came those of the rejection of domination – that of owners of factories over workers, to that of the state over citizens, who saw voluntary deference as a form of obedience to be eliminated. For left-wing intellectuals, voluntary deference was difficult to reconcile with the idea of a notion of freedom that gave place of privilege to equality, as irrational deference was either the product of customs which perpetuated social conformism or, in the case of rational deference, self-censorship. For any Labour or Fabian left-wing intellectual, part of the problem with politics resided in the means of getting power to change society, and therefore of getting access to power through elections. The other problem was how to change, without a revolution, the nature of the system which perpetrated the old Victorian deferential reality.

Laski understood this problem particularly well, and struggled with it throughout his lifetime. He expressed what he saw as the essential questions conflicting with the old constitution and the changes in the world at large in the 1920's and 1930's in a wealth of books, papers and pamphlets until his death in 1950. Laski was also an intellectual greatly involved in the politics of his day as a member of the Labour Party and, later, as a Marxist in

the 1930's. His *A Grammar of Politics* (1925) especially, remains helpful to understand how socialism could reconcile the ideals of freedom and those of equality at a time when nationalisms were growing and endangering the future. The “central principles” he wanted to defend were:

The necessarily federal character of society; the incompatibility of the sovereign State with that economic world-order so painfully struggling to be born; the antithesis between individual property rights in the essential means of production and the fulfillment of the democratic idea; the thesis that liberty is a concept devoid of real meaning except in the context of equality; the refusal to regard law as valid merely in terms of the formal authority from which it emanates; the argument that in any society, even when based on equal and universal suffrage, the existence of serious economic inequalities biases the incidence of government in favour of the rich.²¹

This was very different from what Bagehot and Dicey had believed and from how they presented their constitution. With Laski – who interpreted such ideas the other way round – society was not based on a separation between those who understood the system and those who needed dignified parts to dazzle them. Rather, *laissez faire* had dangerous implications; the individual property rights on which liberty was founded could not work with a collective ideal of the essential means of production; liberty was a positive notion²²; courts should have a public law role to control Parliament; and structural inequality was unfair. Such a view of society was in complete opposition to a system based on voluntary deference and, as a result, to the bulwark of the old constitution. Voluntary deference was acceptance of a historical situation and prevented questioning the very nature of the system because what mattered first was love of liberty, much less than equality. This was precisely the problem as democracy had given citizens the right to be full actors of the political process with the means to create their own standards. Laski uses strong opinions against voluntary deference, even if he does not give it a name:

Men who see others selected to govern by a principle other than their own choice, tend over a period, to believe that these have come to govern by nature. They will lose both the will and the power to act for themselves. They will learn to think that institutions made by their ancestors are the necessary foundations of the State. They will think it their duty to accept where, in truth, it is their duty to inquire. Whenever men accept, their habits, sooner or later, come to be formed at the will of others. They lose the ability to realise their own good. Their personality lies at the disposal of others whose

²¹ Harold J. Laski, *A Grammar of Politics*, *op.cit.*, p. ii.

²² “By Liberty, I mean the eager maintenance of that atmosphere in which men have the opportunity to be their best selves”. *Ibid.*, p. 142.

action is not instinct, at least inherently, with a desire for the good of all; for those who desire the good of all begin by the abolition of special privilege.²³

Laski was denouncing a structure of society which did not encourage citizens to be free agents and, much worse, which maintained citizens in the belief that such an organisation was for their greatest good. The whole idea of voluntary deference then becomes a source of domination – essentially economic, according to Laski through to Marxism – for those in power. The aristocratic domination was an impediment to both the self-realisation of the person and to the ability to become a full citizen, able to participate in political life through which men can develop the essence of their being (a very Aristotelian understanding of the life of men in society). As just seen, however, ‘those in power’ were changing, being replaced by newcomers, and so what could have been seen as the criticism of the old patrician elite became mainly the criticism of a structure which generated the same types of inequalities, regardless of the people in power. If a man like Lloyd George, who had risen out of poverty to defend the rise of New Liberalism, had lost his way in the 1920’s, Laski believed it was because there was something in the system itself of a corrupting nature. As Laski saw it, if the office of Prime Minister was important, it was truly the perpetuation of the old system through the other branches of power which were more of a problem. “It is vital to realize”, Laski wrote, this time in *Parliamentary Government in England* (1938), “that all the pivotal positions in the judiciary, the civil service, the defense forces, the police, are occupied by members of the governing class. The rules and habits in which they have confidence are those which do not disturb the social order they dominate”.²⁴ Being deferential to such a system was perpetrating a hierarchical structure of society which hardly had the means to promote egalitarian ideals. Voluntary deference itself was part of the problem but Laski believed that it could easily be abandoned if citizens did not get what they needed out of it. “Men, [...], will respect the British Constitution so long as they respect what it does”, he declared, “and their respect will be a function of its ability to satisfy their established expectations. Once it begins to fail in this, they begin to doubt the validity of its form”.²⁵ So the real predicament was voluntary deference to a structure based on an institutional defense of the constitution as it had developed since 1688, but not necessarily a rejection of the system altogether which could adapt (as will be seen, the case of the monarchy is interesting).

²³ *Ibid.*, pp. 149-50.

²⁴ Harold Laski, *Parliamentary Government in England*, *op.cit.*, p. 23.

²⁵ *Ibid.*, p. 29.

Laski was denouncing an organisation – a constitution – of power which could not allow men to be both free and equal. He was not against a strong executive as such, he saw it as an effective instrument to enforce socialist decisions, but much more against the old organisation of society within the system, which perpetuated deference and obedience. His solution was decentralization of power and the participation of all citizens in the system – at their own level – but this entailed that citizens understood their role in society as such and were able to make responsible decisions.²⁶ Laski was attempting to combine his Fabian ideals with parliamentary democracy. However, as he amended *A Grammar of Politics* in several new editions in 1930, 1934 and 1938, he was wary of how the rhetoric of equality was used in an international context to bolster nationalism and the domination of dictators at the expense of freedom. He could see that the English Constitution had very few constitutional safeguards against the abuse of executive power. Therefore, Laski's difficult task was to keep the fragile balance between defending what he considered as essential – the need for social changes – without endangering what he was forced to admit were “the fundamental liberties of Englishmen”²⁷. He was considering the same questions as Bagehot and as Dicey but because he found himself in a very different context, with different political actors and in a democratic setting, he was able to give new answers.

Laski could also see clearly that WWI had brought on the possibility for the state to abuse its power on the grounds of maintaining security for its citizens. If having a strong executive could be useful for a Labour government to bring in social reforms, any concentration of power in the hands of the executive – helped by a growing bureaucracy – had the potential to be detrimental to liberty in the state. Thus, allegiance to the state should only come with the possibility of questioning its power. Voluntary deference could only transform citizens into un-free citizens – in the sense of being the self-censored citizens of the arbitrary will of those who governed them. Obedience was not to be expected by the state. Quite the opposite: it was for the state to become the will of the people. But, interestingly, Laski's socialism was also rooted in the idea that for the citizen to be able to be an active participant in the life of society and therefore able to scrutinize the state, citizens had to consider themselves as the equals of those in power. As a consequence, self-respect and self-belief went hand in hand with a certain amount of economic equality. A person could not be free as a citizen without a certain equality of circumstances among citizens. In the English past, the freedom of some had “been built upon the unfreedom of others” for Laski. Equality, in his

²⁶ Harold Laski, *A Grammar of Politics*, *op.cit.*, pp. 171-2.

²⁷ Harold Laski, *Parliamentary Government in England*, *op.cit.*, p. 57.

opinion, involved “rendering to each man his own by giving him what enables him to be a man”.²⁸ “This is what is meant by justice” he insisted²⁹. Laski’s approach was much more than purely socialist in undertaking: it questioned the core of the system for perpetuating such differences and for having wired inequality into citizens through the Victorian constitution, underpinned by voluntary deference. What he called the “acquisitive society”³⁰ had made the constitution its tool and expected the old constitution to go unquestioned. The acquisitive society “are Bagehot’s ‘better class’”, denounces Laski, “they expect to receive, it should be added that they largely do receive, respect and deference from their inferiors”.³¹ Such a quotation is testimony to the broad survival of a certain understanding of deference – a rather reduced understanding – well into the 1930s. For Laski, voluntary deference was equated with servile obedience, and this was a disservice to both society and the system, as it perpetrated inequalities, jealousy and irresponsibility in men.

Laski wanted to reach equality even though the starting point for England was not the same as the United States for example. Explaining the need for the nationalizations of the essential means of production of the nation, Laski pin-pointed how the workers of such industries were un-free and the architects of their own enslavement because they did not have access to “the source of authority”³². Equality could only be reached in a hierarchical structure if an equality of position could be reached – it would not be an equal starting position but it would be as good as.

If the Victorian constitution was rooted on a view of liberty which was based on a defence of private ownership of property of and on property rights, it was then obvious that institutions were not neutral. Bagehotian government by discussion resting on voluntary deference had preserved a political order in which those in power could rely on such deference but for Laski, social and economic democracy needed new constitutional perspectives. If government wanted to encourage the blossoming of citizenship and responsibility in men through a certain type of equality, then the system itself required a transformation. “We need to avoid the unlimited authority of Parliament, on the one hand,” wrote Laski, “and the unique inaccessibility of the American Constitution to amendment on the other”. He continued,

²⁸ Harold Laski, *A Grammar of Politics*, *op.cit.*, p. 160.

²⁹ *Ibid.*

³⁰ Harold Laski, *Parliamentary Government in England*, *op.cit.*, p. 40.

³¹ *Ibid.*, p. 41.

³² Harold Laski, *A Grammar of Politics*, *op.cit.*, p. 164.

A written Constitution which may be amended by a two-thirds majority of the legislature supplies an adequate *via media*. It secures the electorate against the danger that its liberties may be invaded. It prevents the judiciary from exercising more than a limited control over the political sphere. It leaves room for the making of such necessary changes as have a convinced public opinion on their side.³³

There it was: a “written” constitution would be the possibility of safeguarding liberties better than the old uncodified structure. This was perhaps the first call for an end to deference by a British political theorist since Thomas Paine. Seeing what was happening in Europe in the 1930’s, Laski believed that a codified document was better than none to protect citizens, as the conventions of Parliament could be used to mean anything in the hands of the government of the day. He concluded that “Liberty is, in any case, a sufficiently fragile thing for it to be wise to make its suppression less easy than it has become in recent times”.³⁴ For ideological reasons, however, Laski refused to see that voluntary deference was useful and was suited to the English national character; thus, he failed to not take into account how politics, history and people were interwoven into the constitution.

A Fabian who differed from Laski in seeing the historical link between the nation and the constitution was the constitutionalist and prolific writer Sir Ivor Jennings. Even though they have often been linked because they were both friends and colleagues at the London School of Economics, Jennings was much more aware that the constitution was the result of the deferential nature of the English. In this sense, they were very different – Jennings never followed Laski into Marxism³⁵. They give alternative versions of the conflicts within the ideas of left-wing intellectuals concerning democratic Britain. Jennings could see that the English Constitution was a “walking path”³⁶ which could be made to bend to the will of the government of the day all too easily – even more so in times of crisis. His focus was thus much more on the new democratic nature of the system and the need to create an active control on the government in place.

For Laski, Jennings’ work was mainly a welcome “decisive change in the legal approach to fundamental problems”³⁷. Jennings was certainly the writer who did most in the 1930’s to reinterpret and complete the Victorian understanding of the Constitution. His *Law*

³³ *Ibid.*, p. 305.

³⁴ *Ibid.*, p. 305.

³⁵ Bradley notes that “Laski’s views on constitutional matters came close to those of Jennings, but Laski’s were based on a commitment to Marxist theory which Jennings never shared”. See: Anthony W. Bradley, “Sir William Ivor Jennings, A Centennial Paper”, *Modern Law Review*, 2004, volume 67 (5), p. 718.

³⁶ The French constitutionalist Emile Boutmy described the British Constitution with this wonderful and poetic expression: “un chemin qui marche”. Emile Boutmy, *Etude de droit constitutionnel. France-Angleterre-Etats-Unis*, Paris, Armand Collin, 1885, p. 2.

³⁷ Harold Laski, *A Grammar of Politics*, *op.cit.*, p. iv.

and the Constitution (1933) was the Fabian criticism of Dicey's Unionist *Law of the Constitution*, with a title that spoke for itself in distinguishing, unlike Dicey, the law and the constitution. However, the book did very little to move out of a purely descriptive account of the constitution. A constitutional reflection, on the grounds touched upon by Laski above, was not common and was too revolutionary to be accepted, in the 1930's, but Jennings was certainly the first to bring in new elements to establish a private and public law divide.

In this sense, Jennings is both a follower and challenger of the Victorian constitutionalists. He walks in Bagehot's footsteps because, like a political scientist, he looks at where power can be found in the state. Hence, the numerous descriptive works he published on the institutions such as *Cabinet Government* (1936), *Parliament* (1939), *Local Government in the Modern Constitution* (1933), *the Queen's Government* (1954) and *Party Politics* (1961). He is also a challenger because of his consistent rebuke of Dicey's refusal to separate civil and administrative law – Dicey trusted the common law to apply to both. Jennings was determined to show that despite Dicey's belief to the contrary, there was an administrative law in the constitution. This was to have great significance in the 1970's. Thus, Jennings is at a constitutional crossroads between the Whig Victorian interpretation of the constitution and a much more modern interpretation based on the legality of the constitution. Furthermore, his ability to see that what were supposed to be the great pillars of the constitution were really made of clay which could be remodeled at will by a strong executive also help to explain why he defended a legal system which would be able to challenge the power of the state. At a time when the Labour Party was not yet a force to govern on its own, his ideas were challenging a conservative establishment that he saw as controlling the state.

Jennings is still perceived as a follower of Bagehot and Dicey, as one of "the three great simplifiers of the constitution"³⁸. It is certainly true that there is a charming romantic ability in his works to put the constitution within the reach of everyone. In *The British Constitution* (1941) especially, Jennings makes statements about British liberties that Bagehot or Dicey could easily have made such as "that liberty is a consequence not of laws and institutions but of an attitude of mind"³⁹. However, Jennings brings in a new way of

³⁸ Ferdinand Mount, *The British Constitution Now. Recovery or Decline?*, *op.cit.*, pp. 39-92. See also: Vernon Bogdanor, *The New British Constitution*, *op. cit.*, p. 272.

³⁹ Sir Ivor Jennings, *The British Constitution* (1941), Cambridge, Cambridge University Press, 1968, p. 203.

understanding the link between power and people, particularly in his understanding of the conventions of the constitution.⁴⁰

Dicey had focused on the conventions, particularly those related to the royal prerogative. The deference given to such conventions was born out of respect for their ancestral value. Considering the royal prerogative only was a rather reduced understanding of the scope of conventions, and Jennings's rebuttal of Dicey introduces a much larger understanding. Jennings establishes a test to see whether a rule is a constitutional convention based on three questions: "first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule?"⁴¹ Following this test, which is still valid, a public lawyer like Tomkins defines a convention as "a practice which enjoys a long history of unbroken observance, in respect of which there is a strong sense of obligation, and which forms an integral part of the constitutional order"⁴². A convention does not violate any law if it is not respected, but it acquires the force of law because of the political repercussions it would have if not respected. Thus with Jennings's test, a convention is as good as a law. One could even add that it is more powerful than a law because a law can be changed at will by Parliament, whereas a convention cannot be and will only evolve or even die out through slow incremental changes. Deference, as Bagehot had seen, is what supported conventions: all agreed to abide by them, even though none were compelled by law to do so. Therefore, what Jennings was doing by considering that conventions had a much larger scope than Dicey's restricted understanding of convention as the royal prerogative only, was to reinforce the idea that deference was at the heart of the system. Jennings's celebrated description of conventions as "the flesh which clothes the dry bones of law"⁴³ is both poetic and perceptive as, in effect, conventions allowed the system to work without a codified constitution which would rationally define some of the most important workings of the system. Such a system could only work because of the deference given to it by those in power and those out of power who trusted their representatives. Indeed, where Jennings follows Laski is in his belief that Dicey's sovereignty of Parliament only means that the people are sovereign. "It is now recognised", he wrote, "that fundamental changes of policy must not be effected unless they have been in issue at a

⁴⁰ For a comparison between Dicey and Jennings, see: Antoine Meslin, « L'œuvre d'Ivor Jennings, publiciste anglais du XXe siècle », *Jus politicum*, n°7, 2012, 82 pages. <http://juspolicum.com/uploads/pdf/Jennings-Meslin-3.pdf>, accessed 26 January 2017.

⁴¹ Sir Ivor Jennings, *The Law and the Constitution* (1933), London, University of London Press, 1955 (based on the 4th edition), p. 135.

⁴² Adam Tomkins, *Public Law*, *op.cit.*, p. 13.

⁴³ Sir Ivor Jennings, *The Law and the Constitution*, *op.cit.*, p. 80.

general election”⁴⁴ This was as good as a new convention and brought in a tension between the principle of sovereignty of Parliament and that of popular sovereignty which was to have consequences throughout the rest of the century.

Fundamentally, the Diceyan trinity of the constitution was modified by Jennings, who introduced democratic elements within his description of the constitution and for whom the law was the true guarantee of liberties. In a system which gave great scope of powers to the executive, the holders of powers were controlled by the courts. “The Crown and its officials have vast powers”, Jennings recognized, “but those powers are closely defined by law”.⁴⁵ The law was a much better protection than a codified constitution because the judges’ impartiality was the guarantee of powers not being exceeded. “Even a written Constitution”, he summarises, “is but a slight check – [...] – and the foundation of our democratic system rests not so much on law as on the intention of the British people to resist by all the means in its power attacks upon the liberties which it has won”⁴⁶. The second part of this quotation focuses on the “something” in the free Englishmen of times past, who would defer to what was old and sacred, but who would question what was wrong and against their independence. Deference was not what Laski thought it was. It was not servile obedience, it was a special characteristic of the English that Jennings recognized, like others before him. Rational voluntary deference to institutions was only the expression of people who valued their freedom beyond anything else and who believed in them as long as their freedom was respected.

Unlike Laski’s class vision of the constitution, Jennings ends up defending the national character of the English on such grounds. “It is clear”, he asserts, “that the source of our liberty is not in laws or institutions, but in the spirit of a free people”.⁴⁷ These people are free because they are deferential. He concludes:

The truth is that ‘the most common and least privileged of the people’ have generally been conservative, while the ‘conciliatory upper class’ has sometimes been, on American standards, quite radical. Thus arises the astonishing homogeneity of our political opinions, to which Bagehot drew attention and which the developments of a century have not affected. If it is necessary for democracy that the country should be rent by fierce conflict between the privileged and the under-privileged, we have not a democracy. But that kind of democracy is to be found neither in our books nor in our

⁴⁴ *Ibid.*, p. 162.

⁴⁵ Sir Ivor Jennings, *The Queen’s Government* (1954), Harmondsworth, Penguin Books, 1964, p. 151.

⁴⁶ Sir Ivor Jennings, *The British Constitution, op.cit.*, p. 11.

⁴⁷ *Ibid.*, p. 209.

experience. Democracy, as we understand it, means that the people must be free, the free choose the rulers, and the rulers govern according to the wishes of the people”.⁴⁸

Jennings raises the real problem that his friend Laski had touched upon: what does it mean to be free in a democracy? Is it equality or is it hierarchical voluntary deference? Both have different aims: the first essentially focuses on theoretical rights; the second considers that freedom should be non-interference from arbitrary power and slow incremental moves based on precedent to secure liberty. Essentially, there is an English understanding of liberty based on the essence of its people and their history and on the interpretation of the common law using precedent by judges. Therefore, an essentially descriptive narrative of the English constitution was the only way to write about the constitution, at odds with the general normative works of constitutional theory which could be found in other countries of the world, especially France or the USA. Jennings does not question the constitutional edifice; he just gives it more “flesh” by depicting it in even more details than his Victorian forebears and by making it fit for democratic times.

In the end, Jennings does not give an answer to how the overwhelming power of the government can be curbed, nor does he consider how the edifice is attached to the deferential spirit of its people. He gives an essentially historical description of the constitution. But what happens when deference is eroded by the abuse of power, the control of the executive, and the dominance of party politics? How can deference become apathy in a constitutional system which relies on parliamentary government and, thus, on the indirect political participation of the nation? None of these questions are dealt with by Jennings and, because Laski comes to them through the prism of his Marxist class-war rhetoric, the link between English deference and the constitution is never fully tackled.

Bagehot’s fusion of powers (the Cabinet being both part of the Legislative and part of the Executive) and Dicey’s restricted meaning of the rule of law meant that there were few constitutional safeguards – apart from voluntary deference – to oppose a strong executive (the elected one in Westminster and the non-elected one in the hands of the civil servants in Whitehall). Jennings saw the move towards an elective dictatorship. He writes very clear-sightedly that “the task of adapting the laws and the system of government to meet the demands of electors and the changes brought about by the economic development has fallen to Parliament”⁴⁹. By Parliament, he meant that it was the government in power which was in charge of changes, leading in turn to new forms of problems between law and liberty. “The

⁴⁸ *Ibid.*, p. 211.

⁴⁹ Sir Ivor Jennings, *The Queen’s Government*, *op.cit.*, p. 28.

problem has been to find out where law should end and liberty begin”.⁵⁰ Yet, he gives no solutions apart from the appeal to the free spirit of the English and to a strong belief in the impartiality of judges.

Ultimately, there is a discrepancy in Jennings’ work as, on the one hand, he believes in the democratic changes and reaching greater equality through a Labour government whereas, on the other hand, he refuses to see that such a belief in equality means accepting giving more power for the executive to intervene in the welfare of the people (well-being and security), as opposed to the historical liberal structure of the constitution. Therefore, he is constantly sitting on a constitutional fence, neither seeing that the promotion of equality means rethinking the very structure of the constitution (as Laski had done), nor fully accepting that liberties can be put in danger by an overbearing executive. His belief in the judges as the guardians of the structure had also taken a severe blow with the 1917 *Zadig* case, and it was important not to be blinded by the so-called impartiality of judges who were also men of their time and of their class. As for the people’s sole will being expressed in the representative nature of Parliament, there, too, was a naïve belief that the government of the day would not abuse its power. Jennings ends up being as deferential to the constitution as his Victorian forebears. He considers the spirit of liberty of the English as found in their constitution to be as compatible with the democratic spirit which was modifying it. Others, especially in the judicial branch, were much less convinced by such a rose-tinted vision of the constitution.

The role of the judiciary

The followers of a Liberal and Labour social agenda who to use the power of the executive to forward their ideas were often opposed by a conservative judiciary which interpreted the common law in a restrictive way. Laski, much more than Jennings, saw that if most of the branches of the system were reluctant to promote equality, the same was the case with the judiciary. “The need is great”, he insisted, “for a far profounder understanding by the judges that the historic philosophy of the common law is in considerable part unsuited by its inherent individualism to the necessary implications of a collectivist age”.⁵¹ Therefore, for Laski, at every level of the system, radical democratic policies were stifled by a long-lasting deferential attitude by the actors of the state to the constitution. He was denouncing the conservative role of the courts and of judges he saw as being far from impartial.

⁵⁰ *Ibid.*, pp. 28-9.

⁵¹ Harold Laski, *Parliamentary Government in England*, *op.cit.*, p. 370.

Interestingly, Laski was denouncing the lack of constitutional safeguards in the constitution against the potential abuse of power by a conservative judiciary, but also by the legislative and, especially, by an all-powerful executive. His attack was rather useful to the judges themselves, some of whom could see and resented the increase in the power of the executive. But how was this to change in a system in which the rule of law as Dicey had understood it applied to all but never held the state into account? “The problem with this”, summarises Tomkins, “is that the State exercises unique power, and if a legal system is to be effective in regulating the power of the State, the law is going to need unique laws to apply to the State”.⁵² In those days, government was only accountable to Parliament and to the electorate, and neither had the means to do anything much if government abused its powers. Some judges could see that the increase in the activity of the civil service and bureaucratic regulations led to a constant encroachment on English liberties on the part of the executive. Such an opinion was defended by the Lord Chief Justice of the day, Lord Hewart of Bury, who drew attention to what was happening to the constitution. It was abused precisely because of the essentially descriptive rendition it had been given in the Victorian heyday.

Consequently, if left-wing intellectuals could complain about the class structure of society as ingrained in the constitution and detrimental to the promotion of social ideals, the conservatives complained about how the Victorian constitutional mentality had served the rise of the executive at the expense of liberties. This was reminiscent of the traditional eighteenth century Country Party complaints in modified circumstances. In his 1929 pamphlet, *The New Despotism*⁵³, Lord Hewart denounced the rise in the scope of the powers of government. He saw that it was time for the courts to be the defenders of the constitution and to develop a sense of a legal constitution to protect citizens against the “despotic” discretionary power of the executive. This was quite incongruous, coming from the judge who had represented the government’s side in the *Zadig* case.⁵⁴ Nevertheless, Lord Hewart denounced what he saw as the sovereignty of Parliament – by which he meant the power of the executive – being used against the rule of law to abuse the constitution. His main contention was that discretionary powers given to ministers escaped the reach of the courts. The problem in his words was that “there is now, and for some years past has been, a persistent influence at work which, whatever the motives or the intentions that support it may be thought to be, undoubtedly has the effect of placing a large and increasing field of departmental authority and activity beyond

⁵² Adam Tomkins, *Public Law*, *op.cit.*, p. 23.

⁵³ Lord Hewart of Bury, *The New Despotism*, London, Ernest Benn Limited, 1929, vii-308 pages.

⁵⁴ Martin Loughlin, *The British Constitution. A Very Short Introduction*, Oxford, Oxford University Press, 2013, p. 96.

the reach of the ordinary law”.⁵⁵ Lord Hewart was a man of his time and of his class; he was defending a certain vision of the constitution on the grounds which suited him. For Laski, such partiality needed to be exposed: “overwhelmingly, our system makes the successful lawyer a man who has spent the major part of his life in serving the interests of property. He comes, therefore, almost unconsciously, to accept the assumptions of the economic system in being, and to adopt, without examination, the legal doctrines evolved for the protection of those assumptions”.⁵⁶ Whatever their sides and the agendas they defended, Hewart and Laski were both pointing out that there was something rotten in the Victorian constitutional outlook – either because it gave too much power to the executive part of Parliament to intervene in their understanding of the welfare of citizens or because it reproduced a conservative judiciary which could not be trusted – and that better safeguards should be set into place to make the government of the day accountable to the people. This showed two things: firstly, that deference was still in place and, secondly, that it had less power than it used to have.

In the end, there was no violent rupture but flaws were exposed, such as the need to develop principles of public law, the need to curb the growing power of the executive, and the need to consider the scope of the conventions of the constitution (especially, those related to the use of the royal prerogative). These questions were to be dealt with a long time later, starting in the 1960’s, after the upheavals of WWII had given way to a more stable period which would allow such constitutional issues to be clearly seen and considered. Deference to the system was not yet questioned the way it would come to be, but what happened in the inter-war period was the proof that its opponents misunderstood deference as blind obedience and an anathema to democracy, and not as a regulating force of the constitution. Nonetheless, at the time, the one great unifier of the system which played a part in keeping the edifice working effectively was the monarchy. Even someone like Laski was forced to recognise its powerful influence.

The monarchy

As the country had become a democracy, the Crown should have lost its appeal but, in truth, it was paradoxically reinforced as a symbol of state. In all logic, as Bagehot had made clear, voluntary deference to the dignified parts of the constitution should have died away with the advent of democracy but the opposite happened. There are three main reasons for the

⁵⁵ Lord Hewart of Bury, *The New Despotism*, *op. cit.*, p. 11.

⁵⁶ Harold Laski, *Parliamentary Government in England*, *op. cit.*, p. 372.

monarchy to have succeeded such a feat: first, the introduction of democracy itself reshuffled the political game, making Labour the second party in power and giving the monarch a role to play in welcoming the newcomers into the establishment; second, the character of George V himself who morphed into the bagehotian monarch *par excellence*; third, the exceptional circumstances that the institution of monarchy was forced to face at the time of the abdication crisis of 1936 which, in the end, worked in its favour. Deference, like liberty, is best witnessed when it is exercised. The reactions when George V had to receive his first Labour Prime Minister and Ministers in 1924 as well as his personal role in the setting up of the 1931 National Government give certain clues as to how voluntary deference was operational. The abdication of Edward VIII, though, remains the great constitutional crisis of the twentieth century and gives even more insight into how deference upheld the constitution as a force for good.

The dawn of democracy should have removed the necessity for the theatrical separation between organs of dignity and organs of efficiency. As just seen, however, deference was something else: it was compatible with democracy in practice as long as British society was deferential, which it was up to a certain point in time. Deference was at the core of the old constitution which was being questioned but not yet transformed as it would be at the end of the twentieth century by the new constitutional settlements of Blair's New Labour. Laski, who had an essentially egalitarian view of democracy was nevertheless compelled to conclude that "the Monarchy, to put it bluntly, has been sold to the democracy as a symbol of itself; and so nearly universal has been the chorus of eulogy which has accompanied the process of sale that the rare voices of dissent have hardly been heard".⁵⁷ Laski's bitter quotation was the realisation that the monarchy was one of the most powerful sources of deference, one which sealed the hierarchical structure and the nation's mores. Its very existence was the embodiment of a way of thinking, of living and of being which was rather contrary to an egalitarian-republican structure of power.

In such circumstances, the monarchy had to embrace neutrality – at least, openly – in order to ensure its survival.⁵⁸ This was rather difficult as already seen at the time of the two constitutional crises which rocked politics over the passing of the People's Budget and that of the Home Rule Bill just before WWI. George V, as a young inexperienced monarch, complained at the time of the Parliament Bill that he had been taken advantage of by his advisors and that his father would not have been as compliant as he had been forced to be in

⁵⁷ Harold Laski, *Parliamentary Government in England*, *op.cit.*, p. 392.

⁵⁸ *Ibid.*, p. 430.

promising to create new peers.⁵⁹ Such moments sealed the idea that the King could use most of his powers of persuasion and advice at will in private, but that neutrality in public should be respected at all costs. The monarchy's public voice was necessarily subordinated to what the government of the day said. If dragged into the political arena, the monarchy would not survive and nor would deference to it.

Nevertheless, the scope of the royal prerogative left the monarch with considerable powers, some of which could still be used by the monarch himself without referring to his Ministers. Bagehot successfully fixed into the nation's psyche, up to this day, that the three rights of the monarch are "to be consulted, to encourage and to warn"⁶⁰, and he did add that a wise monarch would need no others, but he did not venture into detailing the personal prerogative powers left in the monarch's bag of tricks. As reminded by Tomkins regarding the present Queen, "there remain four major prerogative powers which continue to be exercised by the monarch herself, and not by her Ministers. These are: the appointment of the Prime Minister, the dissolution of Parliament, the dismissal of the government, and the granting of royal assent to legislation"⁶¹. These are not small powers and they were to be used by George V throughout his reign, sometimes on the advice of his ministers (as whether or not he should give his assent to the Home Rule Bill), sometimes on his own volition, as in the case of his intervention to set up a National Government in 1931. Of course, such powers are legal and regulated by convention but this is precisely the problem: the scope of the prerogative (whether exercised by the monarch personally or by the executive in his name) are not clear and therefore legal accountability is difficult to enforce. In a democracy, to have a bubble of residual powers which remain unchecked is in the nature of executive power but, for some, it ends up meaning that the principle of the rule of law does not apply to all – and therefore that the Diceyan principles of the constitution are very shaky. As explained in the previous chapter, only deference to the principles of the constitution, and especially to conventions, allow the vague rule of law to be accepted. In effect, the rule of law is difficult to apply to the prerogative powers of the Crown, precisely because they are badly defined, and the only real check is the self-restraint of the monarch and the ministers in their use of it out of deference for the constitution. Such an act of trust on the part of the citizens for their leaders was to be

⁵⁹ "The King gave way to unusual, if not unprecedented, ministerial pressure; it would not be unreasonable to call this an act of coercion. He agreed to give a secret guarantee to create peers. It was a decision that he was to regret for the rest of his life". See: G. H. L. Le May, *The Victorian Constitution. Conventions, Usages and Contingencies*, *op.cit.*, p. 207.

⁶⁰ Walter Bagehot, *The English Constitution* (1867) in: Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot*, *op.cit.*, vol. 5, p. 253.

⁶¹ Adam Tomkins, *Public Law*, *op.cit.*, p. 62.

greatly challenged in the 1960's and especially in the 1970's. The powers of the royal prerogative as exercised by the monarch and by his ministers are controversial and it was because they led to a number of difficulties – from Queen Elizabeth II being forced to choose the Prime Minister twice in 1957 and 1963 to its abuse at the time of the Suez Canal Crisis – that voices of dissent came to be heard to challenge its unchecked use.

In such a situation, being seen to remain neutral was rather a feat but George V, advised by his ministers, did succeed in carving out a new role for the monarchy in the inter-war period. George V's monarchy was founded on family, traditions, and respect for the constitution. By appearing to be neutral in public and above party politics, he was able to make the monarchy virtually untouchable, even if the reality was different. Deference was at work. Furthermore, the confusion about what the "Crown" meant – either the monarch as bearer of the Crown or the powers of the monarch exercised by the ministers and the civil service – added to the mystique of the monarchy. The monarch was at once neutral and ever present metaphorically in the executive arena. This added to the personal prestige of the King, as a form of father figure, and to the deference given to him as it was never clear what his real role was. He was nowhere yet everywhere, creating an aura of magic around him, to which the coronation gave a sacred stamp.

Laski's insightful comment that the monarchy had "been sold to the democracy as a symbol of itself" showed that republican demands for the end of the monarchy – coming from the left – were not even an issue as the monarchy represented the nation. Being against it was being unpatriotic, which put the Labour Party in a rather odd position. Even the most republican radicals within the Labour Party were forced to recognize that the monarchy was the living link between the English and their history. Conversely, the monarchy could only survive in a democracy such as Britain because the Crown was the living embodiment of the nation's past. At the annual conference of the Labour Party in 1923, two republican resolutions were put forward on the grounds that the royal family was "no longer a necessary part of the British Constitution" and that "the hereditary principle in the British Constitution should be abolished".⁶² Both were defeated as the Labour Executive did not consider the removal of the monarchy as the real problem in the system. What mattered was "the social revolution" that the Labour Party constitution had committed itself to. Revealingly, the Labour Party refused to see that deference to the monarchy was the same as deference to the constitution; neither took their roots in the language of equality and social reform. Wanting to

⁶² See: Kingsley Martin, *The Crown and the Establishment*, London, Hutchinson of London, 1962, pp. 56-7.

achieve a radical socialist agenda in democratic Britain was rather difficult with the permanence of a monarchy which upheld a conservative establishment and a hierarchical structure of society. The Labour Party was in dire straits as it wondered how to take power without playing along with the hierarchical and capitalist structure they rejected. Refusing to see the monarchy as the problem was being dangerously blind to its ability to generate deference. Labour's relationship with the monarchy became a source of debate within the party which has never really died away and which is still based on equating deference with subordination and on what deference to the monarchy, in particular, entails.

Some members of the Labour Party started questioning automatic deference to the Crown after the first Labour ministers were welcomed to Buckingham Palace in 1924. The pictures which came out in the press later on that year of the new Labour Prime Minister Ramsay MacDonald wearing the "blue gold-braided tailcoats and white kneebreeches with sword"⁶³, worn on ceremonial occasions at Court, told the story of a Labour Party which deferentially accepted the protocol. In effect, royal traditions, drilled through years of conventions and practice, worked their magic on the new Labour ministers, whose revolutionary instincts were quickly extinguished by the pomp and circumstance of the Crown. At the 1924 Labour Party Conference, voices were heard criticizing the pictures. As Martin noted (with the advantage of hindsight), "the instinct of the critics that much more was involved here than a trivial issue of manners was correct. The readiness of Labour ministers to fall in with court protocol foreshadowed their future attitude to the Establishment"⁶⁴. Indeed, once in power, they had become the second party of the country, transformed into just another organ of the system that Labour had promised to reform. As a minority government, Labour had also been forced to dilute its most radical ideas so as not to scare voters with revolutionary or communist rhetoric. Ramsay MacDonald was intent on making the Labour Party a trustworthy party able to govern and his Chancellor, Philip Snowden, followed free-trade and balanced budgets for the same reasons. They were both aware of their lack of experience in power. The link with the Liberal Party also meant that most of the socialist ideas were replaced with more moderate proposals which could be defended by both parties. In effect, the new Labour ministers, coming from very modest backgrounds, joined a system which was geared to mould newcomers into the establishment, at the top of which reigned the monarch. There is nothing cynical about it: the parliamentary system co-opts the newcomers into its fold to train them in the rules and conventions of power. Deference to the structure is

⁶³ *Ibid.*, p. 57.

⁶⁴ *Ibid.*

just part of it. As the senior member of government join the establishment, so does the leader of the Opposition who, as the official leader of His Majesty's Opposition, receives a salary and is a member of the Privy Council. The whole edifice is constructed to be conducive to an atmosphere of debate, civility, dignity, and moderation. As the first Labour ministers who joined the ranks in 1924 discovered, it was very difficult to jump out of the fish bowl once in it, to see clearly what was happening inside. "Comparatively few MPs who arrive at Westminster with revolution on their lips and fire in their bellies prove intractable to the proper Establishment treatment" writes Martin.⁶⁵ He adds shrewdly that: "The most feared and disliked revolutionaries – rare birds in this country – are persons like Sir Stafford Cripps who come themselves from ruling families and are not cheated into mistaking the small change of courtesy for the reality of concession or victory".⁶⁶ For the generation of socialists who came to Parliament in the 1920's, refusal of deference to the system was difficult especially when the King himself was welcoming and affable to his new Labour ministers. A large number of them ended up being acculturated to the establishment, through respect for ancestral traditions, in which the monarch ensured a smooth transition without ruffling any feathers.

Trapped between the necessity of being in power to bring radical changes and a structure which embraced newcomers and incorporated them into the highest parts of the establishment through deference, the Labour party leader MacDonald found himself eventually at odds with his own party. The context did not help him. His rather traditional and constitutional approach meant that when the 1929 financial crisis hit the country, the Labour government were left with very little leeway or original economic ideas to deal with the emergency. As the crisis raged, the Labour Cabinet split on whether to cut unemployment benefits to secure foreign loans. This was anathema for the trade unions at the core of the Labour Party and for the foreign secretary, Arthur Henderson, who resigned along with others, leading to the fall of the government in August 1931. What happened next shows how influential the role of the King was in politics and also how MacDonald was required to accept his suggestions. Faced with a torn Labour Party whose support MacDonald could no longer guarantee, George V made use of his royal prerogative – the appointment of a Prime Minister – to propose a National Government under the leadership of Ramsay MacDonald. Much has been said about MacDonald's betrayal of the Labour Party but in reality, he was

⁶⁵ *Ibid.*, p. 87.

⁶⁶ *Ibid.*

compelled to lead the National Government by George V. The memo written by the King's private secretary makes this point very clear:

At 10 a.m. the King held a Conference at Buckingham Palace at which the Prime Minister [Ramsay MacDonald], Baldwin [leader of the Conservative Party] and Samuel [acting leader of the Liberal Party as Lloyd George was ill] were present. At the beginning, His Majesty impressed upon them that before they left the Palace some communiqué must be issued which would no longer keep the country and the world in suspense. The Prime Minister said that he had the resignation of his Cabinet in his pocket, but the King replied that he trusted there was no question of the Prime Minister's resignation: the leaders of the three Parties must get together and come to some arrangement. His Majesty hoped that the Prime Minister, with the colleagues who remained faithful to him, would help in the formation of a National Government, which the King was sure would be supported by the Conservatives and the Liberals. The King assured the Prime Minister that, remaining at his post, his position and reputation would be much more enhanced than if he surrendered the government of the country at such a crisis.⁶⁷

King George V was the architect of the National Government and MacDonald, as well as the Labour politicians who followed him – now known as 'National Labour' – could hardly have gone against him. The King was using all the force of deference for his gentle advice to be followed. The language of civility here is a language of force, all the more so because it does not appear as such and because George V was doing so in the interest of his country, rather than in his personal interest. The King's answer is draped in the language of dignity, on doing one's duty and of being honorable for the nation at large. Had MacDonald not accepted, the King could not have done much, but his intervention as a father figure of the nation to be respected, meant that his opinion should be deferred to politically. Neither could the other parties go against the King for that matter, as Baldwin, who could have held a majority to form a government, was also forced to loyally accept the demands of the monarch. Of course, the intestine fights of the Labour Party between those believing in compromise to govern for a nation at large and those bound to the trade-unions and their influence in the Party paled in comparison to the urgency of finding a solution to the raging financial crisis and the need to defend the pound. MacDonald was in no position to refuse the King. He accepted out of deference to the system and because of the use of the monarch's personal royal prerogative. As Bogdanor explains, "what happened in 1931 was constitutionally questionable because it

⁶⁷ Quoted in Harold Nicolson, *King George V: His Life and Reign*, London, Constable, 1952, pp. 465-66. See also: Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, pp. 104-12.

ignored the crucial role played by political parties in the formation of a modern government in a democracy”⁶⁸.

The King was to be more invasive still as, in 1935, he accepted – against what should have been a short lived National Government – to grant a dissolution on the grounds that the National Government should run the election. This was in itself an oddity as it meant not running along strict Party lines. The result of the election was a landslide for the National Government under the leadership of the Conservative Baldwin, but in view of the role of the King in bringing it about in exceptional circumstances, one can only see this election as a national act of voluntary deference to the constitution.⁶⁹ Voting against the National Government would have been to vote against the King and, by extension, the nation.

One of the reasons why the monarchy could not be easily criticized by the Labour Party was precisely because of its ability to support national causes and to unite the nation in times of crisis, which in return induced more deference. Democracy had replaced the old aristocracy but the change had increased the love and respect for the monarchy which was seen as doing no wrong. Again, Laski, saw this change very clearly:

The immense increase in the peerage, the marriage of the aristocracy to business enterprise in general, and to finance in particular, the growing transfer of leadership in the political parties to men of non-aristocratic origin, all these have tended greatly to enhance the social prestige of the royal family. Its patronage has been sought to an extent previously unknown; and this has made it extraordinarily influential in the realm of charitable effort⁷⁰.

How could the Labour Party find a way to criticize the monarch if he was both untouchable and worthy of deference through his actions, especially charitable ones? The only way was to criticize deference in the way in which Laski had done: by attacking the liberal structure of the constitution and identifying how the monarch was one of the great upholders of the system through the deference he generated. The radical members of the Labour Party were left to accept the constitutional anachronism of a monarchy even though a republic would have been best fitted to their views. From Keir Hardie at the end of the nineteenth century to Jeremy Corbyn, at the beginning of the twenty first, a wealth of left-wing leaders have been forced to swallow the monarchical pill against their own undeferential views. They cannot compete

⁶⁸ Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, p. 110.

⁶⁹ The National Government got a majority of 242 seats out of 615 seats. See: <http://researchbriefings.files.parliament.uk/documents/CBP-7529/CBP-7529.pdf>, accessed 5 February 2017.

⁷⁰ Harold Laski, *Parliamentary Government in England*, *op.cit.*, pp. 392-3.

with a monarch who is influential in private, who has latitude of choice, whose powers remain difficult to check and who is forever the representative of the nation as a whole.

Clearly, the monarchy adapted throughout the inter-war period to become so cherished because of the character of George V, but again the distinction between what appeared in public and what he did effectively do in private is much more interesting. St John Stevas notes that: “In the person of King George V, the country found exactly the type of man he [Bagehot] was describing, who stamped the English Monarchy with a character so strong that it has continued through two reigns and neutralised the incipient evils which Bagehot so much feared”⁷¹. George V was a ruthless monarch when it came to the survival of the monarchy. He abandoned his German titles and names, in 1917, to settle on a much more English sounding one in the midst of WWI and, as the head of the House of Windsor, he embarked on a royal tour of the industrial areas in the north of England to be seen. He understood the value of the magic of the monarchy and how appearing in public on regular occasions could generate greater ideals in the nation. The same year, he invited and then retracted his invitation to give exile to his long-loved cousin Nicholas II and his family (whose wife, Alexandra, was the granddaughter of Victoria).⁷² Because the Tsar was an undemocratic despot, George V worried about the criticism this invitation might throw on his own Crown at a dangerous time, even though this meant leaving the Tsar and his family to their own fate.

George V was aware that the monarchy needed to move on with its time. The first full time salaried press secretary was appointed in 1918 (only discontinued between 1931 and 1944) to deal with the growing demands for news concerning the monarchy. The Monarch’s voice was also heard for the first time in 1932 with the first Christmas radio broadcast which established a time-honoured tradition for families to gather on Christmas day to listen to their monarch.⁷³ George V’s pragmatic nature meant that he was able to accept changes. As he was asked how he got on with his first Labour Government in 1924, he exclaimed: “Very well. My grandmother would have hated it; my father would have tolerated it; but I move with the times”⁷⁴. No doubt the King was also very well advised throughout those years, as he often took decisions which were seen in a favourable light. For example, at the time of the financial crisis, he went along with cuts in the civil list as long as the crisis would last. He was also

⁷¹ Norman Saint John Stevas, “The Political Genius of Walter Bagehot” in: Norman Saint John Stevas (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, p.85.

⁷² Kenneth Rose, *George V*, London, Phoenix Press, 1983, pp. 212-4.

⁷³ Hear George V’s 1932 Xmas message at: https://www.youtube.com/watch?v=Bf30P_PbcZo, accessed 5 February 2017.

⁷⁴ George V cited by John Pitcavin Mackintosh in *The British Cabinet*, Toronto, University of Toronto Press, 1962, p. 515.

blessed with a longevity which always serves monarchs and engender more devotion through the celebration of their jubilees (a silver one in his case in 1935). All in all, George V succeeded in manoeuvring through three major constitutional crises (1910-11, 1912-4 and 1931), which are testimony to his ability to try and follow constitutional practices in a country without a codified constitution. Undeniably, the King had a survival instinct and a native cunning which allowed him to bypass the aristocracy to have a direct link with his people and to increase rational deference for the monarchy. Along with the monarchy, the character of the monarch, and his ability to understand his forever changing role, are the cornerstone of the constitution. Deference to him means deference to the Crown at large, but as long as the monarch behaves along these lines.⁷⁵

Trying to separate rational and irrational deference to the monarchy is pointless as it can be both at the same time. Voluntary deference to the central organ of the constitution sustains the system, but this also means that the monarch must always be seen to act in the interest of the nation – George V's interference in 1931 was for the good of his people not for a personal advantage for himself. This is why the royal prerogative could be used without being questioned by the members of the Labour Party who could have been more vocal about what happened. Bogdanor writes that they were "passive" but it seems that, except for radical leftists and intellectuals, they may have operated out of deference, too. Deference is even more conditional in a democratic age when ruler and rules are all expected to act their part. The outstanding victory at the General Election of 1935 of the National Government backed by the King would seem to validate this claim. Acting as the last guardian of the constitution in times of trouble, the constitutional monarch reinforced the deferential character of British democracy. Of course, for Laski, such a link between Monarch and constitution was possible because the constitutional monarchy was secure. His warning that "A successful myth operates only where a régime is secure; it collapses as that régime is undermined"⁷⁶, was far off the mark concerning the British system. But, the monarchy was not only "a myth" because if it had been, it should have disappeared in thin air at the time of the abdication crisis of 1936.

George V died on 20 January 1936, leading to a most remarkable moment in the history of the monarchy. The story is well known and does not need long details as the dashing and well-loved young Edward VIII became King (but not yet crowned) hoping to

⁷⁵ In the end, it is a paradox that he became a father figure for the nation in spite of being a rather poor father for his own children.

⁷⁶ Harold Laski, *Parliamentary Government in England*, *op.cit.*, p. 16.

marry his twice-divorced American mistress Wallis Simpson. Suffice to say that his choice was not the choice of the establishment which would use the force of convention to make Edward change his views. Nothing could legally force the King not to marry Mrs. Simpson, but it became clear that Edward VIII could not marry without the consent of his Ministers, who had a right to check who would become the nation's Queen. The real constitutional issue was about her being twice divorced, which would mean that the couple could not marry in Church as her former husbands were still alive.⁷⁷ The King as Supreme Governor of the Church of England was left in the impossible position of marrying Wallis Simpson outside the Church and in contradiction with his future Coronation Oath to defend the Established Church. The Prime Minister, Baldwin, and his ministers were thus forced to consider a situation which involved a personal matter which would have deep repercussions in public. The urgency of the matter escalated when Mrs. Simpson obtained her second divorce at the end of October 1936, potentially freeing her (within a 6 month period), to marry the King. Government and Opposition were at one on the subject that Edward VIII should renounce his desire to marry Mrs. Simpson, and they both could see that in the context of the time, such a marriage would damage the image of the monarchy. However, it was the King, by seeking the advice of his Ministers on the question of a morganatic marriage in which his wife would not be Queen and their possible children not heirs, that Baldwin had to refuse the government's consent. A morganatic marriage would require an Act of Parliament and the agreement of all the governments of the countries of the Commonwealth and the Dominions, dragging the monarchy into the realm of reality and debasing it in the process. So it is out of deference for the monarchy as an institution upholding morality that Baldwin and most of the establishment went against the King. The person of the monarch was no longer being deferred to, because he had violated the trust placed in him or had failed to live up to his obligations within that role. The exceptional circumstances of the abdication show that those who defended the King – the best known were Churchill and Lord Beaverbrook – also defended the institution but, in their case, they defended the monarch as a personal entity much more than the monarchy as a system.

It is interesting to see that a man who had been brought up all his life to perform his duty of King was so unaware of what made the monarchy so powerful: its capacity to generate trust, to instill morality, and to secure deference. Unlike today, when the whole

⁷⁷ Since then, conventions have evolved as the present Prince of Wales, Charles, was allowed to marry Camilla Parker-Bowles (in a civil ceremony followed by a service of Prayer and Dedication) in April 2005 even though they were both divorced and her husband was still alive (Diana, Princess of Wales, had died in 1997). Since 2002, the Church of England has considered remarriages in Church as acceptable.

question would have been dealt with in public and on social media, tearing the nation asunder, Edward VIII's questionings were done in relative privacy as the press did not report on what was happening. An unwritten rationally deferential rule of silence guided the media. However, it seems that Edward did consider going against his ministers' wishes believing he had the support of the nation for a morganatic marriage and wanting to broadcast an appeal to the nation. Turning to the nation was opening dangerous uncharted territories. Lord Zetland, a member of the Cabinet as secretary of state for India, expressed the predicament in these words:

[The King's] present intention seemed to be to refuse to withdraw from his position. It was pointed out at the Cabinet that this might involve the resignation of the Government, and that in this case it would give rise to a constitutional issue of the first magnitude, viz. the King *versus* the Government. It seems that the King has been encouraged to believe that Winston Churchill would in these circumstances be prepared to form an alternative Government. If this were true there would be a grave risk of the country being divided into two camps – for and against the King. This clearly would be fraught with danger of the most formidable kind. So now...we are faced with a problem compared with which even the international issues, grave as they assuredly are, pale into comparative insignificance.⁷⁸

The establishment showed great rational deference to the constitution by using their position to force the King into eventually submitting to his Ministers' wishes. In the end, the individual person as sovereign did not matter anymore, what did was the survival of the monarchy as a whole and as an organ of the constitution.

Left with either abdication or renunciation of Mrs Simpson, Edward VIII chose the former. The Instrument of Abdication that he signed on 10 December 1936 had to be turned into legislation in order to modify the line of succession fixed by the Act of Settlement of 1701. The legal document – His Majesty's Declaration of Abdication Act – made the King's brother and his descendants the new heirs to the Crown. It is also very telling that in his radio message to the nation on 11 December 1936, Edward VIII insisted that the decision made was taken on his own, to avoid a crisis.⁷⁹ In the space of a few weeks, the old edifice had succeeded in rejecting one King, and had replaced him by a new one, to whom deference would be transferred without questioning what had happened. The magical conjuring trick of replacing one King by another worked because the new King came from the same bloodline and carried the same force of the past in his person. Even better, George VI was the son of a

⁷⁸ Marquess of Zetland, *Essays*, London, John Murray, 1956, pp. 213-4. Also cited in Vernon Bogdanor, *The Monarchy and the Constitution*, *op. cit.*, p. 143.

⁷⁹ "I want you to know that the decision I have made has been mine and mine alone". Edward VIII, 11 December 1936, <http://www.britishpathe.com/video/abdication-speech-by-edward-viii>, accessed 21 June 2017.

blameless King and “the picture was quickly redrawn of the Monarchy restored in the image of George V”⁸⁰.

What should have been the perfect opportunity to topple the monarchy altogether turned out to be its great endorsement, leaving it even stronger. Taking advantage of the Declaration of Abdication Bill discussed in Parliament, a handful of republicans in Parliament did try to question the very survival of the monarchy. The socialist James Maxton declared:

To-day, I say that the step we are taking is a reactionary step, in attempting to set up again a governmental form which pertains to a class society, which pertains to a past age, which has a connection with problems that are not the problems of to-day. We are doing a wrong and a foolish thing if, as a House, we do not seize the opportunity with which circumstances have presented us of establishing in our land a completely democratic form of government which does away with all monarchical institutions and the hereditary principle.⁸¹

He was one of only five MPs who voted in favour of a republican amendment, vindicating the decision of the establishment but also of most MPs in the House. In the same debate, one of the other pro-republicans, George Hardie, thought it justified to say that “what has happened recently has done more for republicanism than 50 years’ propoganda could do.”⁸² In effect, just like Maxton, Hardie was mistaken. The establishment knew very well how to neutralize such criticism by dismissing it as either unpatriotic or not serious. But, maybe less cynically, very few people wanted to do away with the monarchy. In the words of Bogdanor, the crisis “turned out to be not the end of the monarchy but ‘Britain’s vote for monarchy’”⁸³. The pro-republican elements of society were forced to accept that if George VI was able to replace Edward VIII so effortlessly, it was because the system was greater than the man. Of course, if the individual who happened to become sovereign were to be suited to the position, like George V, the structure would be greatly enhanced but even the shy and stammering George VI, who had had no training in kingship and no desire to have such a heavy burden imposed upon him, could fill the role rather well because he just did his duty. In their biography of the life of the Windsors, Bryan and Murphy explain the replacement of one King by another such:

That the transfer of sovereignty took place with so little and such brief commotion was impressive evidence of the British capacity for accommodation – for making the best of a mess. But it was the impalpable, even romantic strain in the otherwise practical

⁸⁰ Kingsley Martin, *The Crown and the Establishment*, *op.cit.*, p. 114.

⁸¹ James Maxton, http://hansard.millbanksystems.com/commons/1936/dec/12/his-majestys-declaration-of-abdication#S5CV0318P0_19361212_HOC_20, col. 2208, accessed 4 February 2017.

⁸² George Hardie, http://hansard.millbanksystems.com/commons/1936/dec/12/his-majestys-declaration-of-abdication#S5CV0318P0_19361212_HOC_20, col. 2219, accessed 4 February 2017.

⁸³ Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, p. 144.

national temperament that eased the transition. It was not so much any perceived differences in the characters of the brothers as it was the hold of the throne itself on the imagination, the earthly faith of the British people.⁸⁴

The “impalpable, romantic strain” and the “earthly faith” of the nation may be grand generalisations – especially when referring to the “British” at large – but, most certainly for those who loved the monarchy in the country and overseas – from simple folks to the elite – deference to the constitution was at play at the time of the Abdication crisis. As WWII was looming, the use of a traditional family on the throne at one with the hardships of the nation, was to give the monarchy even more sense. Deference was to live with it, much more than in the politicians however great they were, as Churchill would discover to his cost in 1945.

The deferential nation at war

It is difficult to avoid the generalisations about the great insular spirit of liberty at work in Britain at the time of WWII, but it has to be recognised that in the wake of the falling of France in June 1940, and until the decision of the Americans to join on their side in December 1941, the country found itself alone in Europe to fight against Nazi Germany and Fascist Italy⁸⁵. Britain had no choice but to win an ideological war; this would nearly bankrupt the country and redraw the international map with Britain losing its global power status at the expense of the USA and the USSR. The government’s direct interference in the life of citizens in order to organise the war effort efficiently generated expectations on the part of the nation to improve their lot after the war. As Labour Ministers joined the War Coalition, they gained governing credentials in the process. What had been Labour demands in the 1930’s become possibilities in the 1940’s. Such desires were expressed in the 1942 Beveridge report on Social Service and Allied Services which encapsulated the desires for a state in which a real social service would be set up. Relying on full employment, Beveridge believed it was possible to create a fair system in which a National Health Service and family allowances would be funded by taxpayers. True to his Liberal background, Beveridge was attempting to find a middle way between the capitalism of the 1930’s and the collectivist beliefs of the Labour leaders. Effectively, it was the forced march towards an interventionist state during the war which made the social state possible.

⁸⁴ J. Bryan III and Charles J. V. Murphy, *The Windsor Story*, *op.cit.*, p. 292.

⁸⁵ Britain declared war on Japan on 8 December 1941 after the Japanese attack on the American navy at Pearl Harbour on 7 December 1941, and after Japan declared war on the USA.

What had started with conservative Prime Minister Neville Chamberlain trying to follow Appeasement with Hitler in 1939, ended up with his replacement by a belligerent Winston Churchill who was by no means then the figure he came to be. Churchill was in his sixties, had been out of government for years, had been one the main followers of Edward VIII at the time of the Abdication crisis, and was perceived as being both unreliable and a maverick. However, he was precisely the man for the job as he became Prime Minister of an all-party coalition government in May 1940 after the resignation of Chamberlain.

Churchill had the insightful ability of fighting the war on a battle of wills for which he needed to rely on the deferential core of the nation. It was as clever as it was desperate because he was appealing to both rational and irrational deference in the people. Families argue in peacetime but in wartime, they unite on what had made them great – it was the same with the Anglo-British Kingdom. He conjured up memories of proud moments of the Anglo-British past to create a rhetoric of a warrior ancestral spirit. In his August 1940 speech he insisted on the fact that France had collapsed because its “soul”⁸⁶ had been defeated and carried on being defeated against herself by the “crime” of “the men of Vichy”⁸⁷. This was not to happen to a nation like Britain which had seen many more difficult periods over centuries. The United Kingdom was an historical fighter and would even take pride in being the last one standing. It was better to die than be defeated. When referring to the years of difficulties ahead, he declared to Parliament:

Two or three years are not a long time, even in our short, precarious lives. They are nothing in the history of the nation and when we are doing the finest thing in the world, and have the honour to be the sole champion of the liberties of all Europe, we must not grudge these years or weary as we toil and struggle through them.⁸⁸

This was stirring chivalric deference to protect what the nation had always fought for at all cost: the liberty of the free Englishmen. “We have been nurtured in freedom and individual responsibility”, he carried on, “and are the products not of totalitarian uniformity but of tolerance and variety”.⁸⁹ The war would be won mainly through a battle of strength of character and Nazi Germany would be shown that the spirit of the British would be difficult to put down. This also meant that British fortitude had to be kept going with such inspiring speeches, led by trustworthy politicians united in the face of adversity and using all the means possible to boost the public morale. Radio broadcast brought news but also moments of relief

⁸⁶ *Ibid.*, col. 1160.

⁸⁷ *Ibid.*, col. 1168.

⁸⁸ *Ibid.*, col. 1160-1.

⁸⁹ *Ibid.*, col. 1160.

through entertaining programmes reminded the nation what resilient disposition they were made off, whilst cinemas showed patriotic films, such as Noel Coward's 1942 *In Which We Serve* or Laurence Olivier's 1944 *Henry V*, in line with Churchill's electrifying rhetoric.

The other great defence of Churchill was parliamentary government which he saw as the great sustainer of such a free spirit. Its defence was one of Churchill's "war aims"⁹⁰. Because the Palace of Westminster had been bombed during the Blitz on 10 May 1941 and the House of Commons destroyed, talks took place about whether the time had not come to build a lower House more fitted to the modern age: larger and maybe not rectangular but semi-circular like in most other democratic countries. For Churchill, government by debate meant that the Government and the Opposition sat facing each other in a space small enough to encourage discussion, dissent, and consensus. This is what generated deference to the system: the culture of governing institutions which debated freely, openly and with civility, handed down from generation to generation. In October 1943, as he defended such views to the House announcing the appointment of a committee for the rebuilding of Parliament, he declared:

The House of Commons had lifted our affairs above the mechanical sphere into the human sphere. It thrives on criticism, it is perfectly impervious to newspaper abuse or taunts from any quarter, and it is capable of digesting almost anything or almost any body of gentlemen, whatever be the views with which they arrive. There is no situation to which it cannot address itself with vigour and ingenuity. It is the citadel of British liberty; it is the foundation of our laws; its tradition and its privileges are as lively to-day as when it broke the arbitrary power of the Crown and substituted that Constitutional Monarchy under which we have enjoyed so many blessings. In this war [...] the House has shown itself able to face the possibility of national destruction with classical composure.⁹¹

Such Whiggish rhetoric implied that the nation had to follow suit and give due deference to the proud institution which had protected its liberties since 1688. True, this was to stir only those who felt a strong link to such a past, but the point is that he could assume that all his listeners did. Churchill's speeches reminded the nation that what they were fighting for was greater than themselves and made them a special nation, a beacon of liberty to shine for all world nations. He was also appealing to their social sense of civility which was still very strong. The language of Churchill was very remote from a technical rationalistic speech; it was comforting in its traditional conviction that society and government were at one in

⁹⁰ Winston Churchill, 28 October 1943, <http://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/yourcountry/collections/churchillexhibition/churchill-and-ww2/hoc-rebuilding/>, Hansard, 5th Series, Volume 393, col. 404, accessed 9 February 2017.

⁹¹ *Ibid.*, col. 405.

Parliament for the greater good of all. Even the last sentence, expressing the possibility of losing the war, is couched in words which convey the idea of the great battles of the past lost with dignity. There is something romantic and rousing in such words which appeal to the irrational in men, in the mythical past of the country, in the greatness of the British as a nation, in the ability of the monarchy to have survived 1688. Of course, once analysed, it loses its quixotic appeal and can be seen for what it is: political propaganda, a certain way of seeing history by turning even the biggest disasters into moments of triumphs and an undeniable ability to tell oneself stories until they are thought true. If such customary behaviour could still work, especially when it was needed throughout the war, it was already a conservative language of the past.

However much Churchill was considered the great war hero, defender of a free Britain, he was to be the first victim of the crisis of deference, post WWII. In many ways, he was already an outdated figure whose ideas only worked because of the dangerous context of the wartime leadership. There is no doubt that his ability to write and to express with Victorian deference and language the love of his country were essential to the war effort, but the defense of liberty and parliamentary democracy were not the main ideas in the minds of the British when the war finally ended. The nation had gone through two very bloody wars in less than two generations, was no longer under threat and people wanted peace, reconstruction, and the improvement of their social conditions. Churchill's English patrician belief in the pride of being the last man standing was no longer relevant. Class privilege was the problem and the time had come for the Labour Party to be heard, precisely as hierarchical voluntary irrational deference was dying and rational deference was questioned.

As soon as the war was over and a General Election was held in July 1945, it was not the Conservatives led by Churchill who were returned but the Labour Party, with a landslide, under the much less charismatic but efficient Clement Attlee.⁹² The socialist manifesto of the Labour Party – fittingly entitled “Let us Face the Future” – was based on the Liberal Beveridge Report and promised the creation of a welfare state which would protect the nation from “the cradle to the grave”. Government interference in all matters of life from health, housing, education and work, to security meant that the English *laissez faire* of old was to be fundamentally reformed in favour of the nationalisation of the means of production and full-employment. Labour was also ready for decolonisation, for abandoning what had been one of the strongholds of conservative England and of its pride: the Empire.

⁹² The majority of the Labour Party at the 1945 July General Election was of 183 seats. Several figures of the Conservative Party lost their seats.

The defeat of the Conservatives was based on a number of reasons – essentially a lack of clear policy, bad organisation of the Conservative Party machine at a local and a central level, a split in the party about the Beveridge Report, and the party's identification with the unemployment of the 1930's – but there is no doubt that Churchill's lack of a power base in the party and his being identified as a war leader only, played a part as well. Mistakes were also made about the mood of the nation. The Conservative election poster read "Confirm your confidence in Churchill" and the slogan chosen was "Vote National – Help him finish the job".⁹³ This was a rather paternalistic way of appealing to the people. It focused on exploiting Churchill's popularity and unwisely dragged the nation back towards the war. Had the electorate been deferential, they would have returned Churchill to his position and not imposed such a political humiliation on him, but times and people had changed. Yet, in times of uncertainty again, such as in 1951, they would return to the Conservatives and to him for comfort and security.

The reasons for the obvious signs of decline in voluntary deference by 1945 are unclear. They have been linked to a rise in political education, a refusal of the aristocratic and hierarchical structure of society or as its undermining by the egalitarian demands which came along with the Democratic Age. In truth, there is strong counter-evidence to show that if hierarchical voluntary irrational deference did die away for the reasons just stated, rational deference did not suffer the same fate, but transformed itself to adapt to the ways of the post-WWII age. The disposition for deference in the country, of looking up to something greater than oneself and of being linked to a certain understating of the nation's past, did not altogether disappear precisely because it was still needed. In the previous century, Matthew Arnold had already seen this rather well when opposing the movement towards English democracy to the expression of French democracy:

The difficulty for [English] democracy is, how to find and keep high ideals. The individuals who compose it are, the bulk of them, persons who need to follow an ideal, not to set one; and one ideal of great new, high feeling, and fine culture, which an aristocracy once supplied to them, they lose by the very fact of ceasing to be a lower order and becoming a democracy. Nations are not truly great solely because the individuals composing them are numerous, free, and active; but they are great when these numbers, this freedom, and this activity are employed in the service of an ideal higher than that of an ordinary man, taken by himself. Our society is probably destined

⁹³ See both posters online: the first on the Imperial War Museum archive online: <http://www.iwm.org.uk/collections/item/object/29129> (accessed 28 February 2017) and the second on the Online archive of California, <http://oac.cdlib.org/ark:/28722/bk0007t5r8x/?brand=oac4&layout=metadata> (accessed 28 February 2017).

to become much more democratic; who or what will give a high tone to the nation then? That is the grave question.⁹⁴

Indeed, this was to be the fundamental question as Britain moved out of WWII and embraced new ways which had a profound transformative nature on its deferential culture.

⁹⁴ Matthew Arnold, *Mixed Essays*, *op. cit.*, pp. 26-7.

Chapter 6

Voluntary deference in crisis (1945-1972)

The period from the end of WWII to the passing of the European Communities Act of 1972, which made the United Kingdom a member of the European Economic Community (as it was known then), saw numerous examples of the persistence of old voluntary rational deference but also a growing rise for demands for rational rights at the expense of a deferential society. These nearly thirty years from the Labour party's 1945 landslide to the moments when the UK passed legislation to become a member of the EEC are the most fundamental to explain the transition from a unified English deferential society to a multicultural and diverse British society for whom what mattered most was the guarantee of rights. Political deference – that is deferring on grounds of trust – changed and grew into deference to the judiciary as the best defender of rights in a liberal democracy.

Bogdanor writes that “Deference towards Parliament came to be eroded during the post-war years which saw rising levels of education and greater insistence upon the protection of individual rights”¹. Indeed, but this was not the only cause of the crisis of deference: attitudes to power and how it was used by those in charge also came to be much more questioned than in the past. The reaction to numerous political scandals and crises was a consequence of such a shift in society as it became less and less acceptable to behave in a patronizing way in power. Unified ideas concerning traditional ways of life were challenged as social conformism became an issue; demands for more equality in the face of abuses were expressed more forcefully, too. Political equality through the vote, as had been achieved in the first half of the twentieth century, was not enough, and social equality was now expected.² The last layer of change came with the demands for the recognition of differences (especially for women, immigrants, and regions) which began in the 1960s.

¹ Vernon Bogdanor, *The New British Constitution, op.cit.*, p. 55.

² In 1948, the Representation of the People Act mainly got rid of the double-member constituencies and university seats and the 1969 Representation of the People Act reduced the voting age to 18 instead of 21.

As already seen in the previous chapter, voluntary deference did not cease to exist in democratic inter-war Britain. Quite the opposite, deference to the constitution and what it represented – love of liberty, tradition, and continuity – triumphed, as neither the radical groups within the Labour Party, nor an event as serious as the Abdication crisis, succeeded in undermining the confidence and respect for British institutions. There was still a trust in the historical and political constitution expressed by voluntary deference to it. Such a trust had been founded on a cultural process but some, such as Laski or radicals within the Labour Party in the inter-war period, had come to denounce such a cultural process as alienating and dated for the advent of a real egalitarian democracy.

After WWII, British society move away from being determined by deference to its political and constitutional system. In this sense, irrational deference – mostly based on tradition, unquestioning of the organisation of power to the point of compliance, and trusting in its ability to come up with the best for the nation – was to be consistently replaced both by rational deference based on the independent choice to defer to those in power and by a rejection of deference. Rational and irrational deference – both upshoots of hierarchical voluntary deference – were still difficult to separate properly before WWII precisely because they were intertwined, often linked, sustaining the institutions. They were both part of what made politics a consequence of mores, manners, and traditional behaviours. As reminded previously, one could rationally seek equality ardently in society and irrationally defer to the monarchy and what it represented without questioning such a contradiction. After WWII, with full democracy and the setting up of a welfare system recognizing the needs of the nation, it became a lot more difficult for those in power to rely on such a form of irrational deference. Citizens demanded protection of their rights, recognition of specificities, and consideration for a plural society, while the politicians in power were forced to take into account the change in the character of society. The welfare state eroded traditional hierarchical voluntary irrational deference by attempting to bring each and everyone to a same level.

The rise in education most certainly also removed irrational deference in the 1950's and 1960's, but it was much more the rise in self-respect – “deference to the self”³ – as a part of the democratic process which had a role to play here. If one was to accept a hierarchical structure of society rationally and no longer as an irrational customary expression of deference to rulers, then this meant that one had sufficient confidence in oneself to give assent to a power chosen as right. Irrational deference had been born out of customary obedience to

³ Edward Shils, “Deference” in: Edward Shils, *The Constitution of Society, op.cit.*, p. 175.

authority, out of fear of the consequences of not conserving such authority, but such an obedience had ended up being transformed into respect for institutions which were seen as necessarily knowing better than the self. Hierarchical voluntary irrational deference was the disposition of those who did not question politics and also of those who were not interested in it, apart from an irresponsible understanding of power. Such deference could not subsist for very long in post-war Britain, and if it did, it was only as a process of enlightenment towards its counterpart, hierarchical voluntary rational deference. Irrational deference was certainly what Bagehot had perceived as the expression of love for the dignified parts of the constitution, but as light was “let upon magic” in the 1960’s, such habits were to be affected.

Rational deference became the expression of an independent disposition which understood where the nation and the country came from and looked into the past for virtues, such as self-reliance, which would flourish in the present. Rational deference to the system was the expression of a person who had enough self-respect and self-recognition to be able to make the responsibly independent decision to trust his own political system for its worth. The organs of the constitution had to be truthful, to provide justice, and to follow an equal application of the rule of law. This also meant that trust was given on the grounds that it would be properly used and came with the possibility of being taken away. Thus, those in power were faced with a different type of society, and this was to have consequences. As in other periods, if society changed, the historical constitution was compelled to change with it. With the gradual rise in rational deference throughout the period, there was a move from trust in the Victorian constitution and its conventional restraints to trust, first and foremost, in oneself and in one’s ability to judge the system’s legitimacy, to better defend one’s rights as defined by law and to “defect” from deference to it when it did not do what it was supposed to. The usual restraints of the constitution – the conventions and the rule of law especially – showed some of their limits as political scandals took place which undermined the faith of citizens for those who governed them. Those changes happened gradually, and had already started in the inter-war period but, from WWII onwards, nothing was to be sacred anymore, not even the monarch and the monarchy.

Therefore, talking about the British as an unified, homogenous, historical nation at one about the evolution of the traditional constitution and bent on respecting its little idiosyncrasies such as unwritten conventions becomes much more complicated after WWII. The changes in society brought about by the creation of a welfare state, by several waves of immigration into the country in the 1950’s and 1960’s, by the first demands for regionalist recognition in Wales and in Scotland, by the refusal of social conventions and by a growing

scepticism for an elitist form of power, were to challenge even rational deference. The existence of the historical and political constitution was founded on an English core which had grown with the idea of inferring rights from it. Social democracy as it was built after WWII was at odds with such a language, and the multicultural society that Roy Jenkins described in the 1960's⁴ had not been born into the old constitutional club in which the rules were difficult to find. Because of such a rise in the belief in the self – of individualism – deference to a Victorian constitutional way of life and its mores was declared to have died at the end of the 1960's.⁵ Nevertheless, rational deference lived on – only just – because the actors of the system were always bent on defending what they believed made them British, i.e. a disposition for liberty which could be shared by the newcomers, even if it had not been ingrained in them from birth. Rational deference and a certain type of spirit of British liberty are organically linked, and it is through the moments of expression of such liberty that rational deference may be witnessed – from 1945 to joining the EEC.

It now becomes even more complicated to refer to the English only, but what is meant by English deference, post-WWII, is the trust in one's ability to defend one's liberty through the faith in the past as expressed in the Anglo-British constitution. Immigrants were capable of adopting Anglo-British history, and the role of the monarchy was precisely to be the highest generator of such deference for those coming from the Empire and the Commonwealth post-1945. Nonetheless, the constitution continued showing signs of its inability to prevent abuses of power by the executive – as is about to be analysed. What remained in terms of deference was a temperament for liberty. This meant fighting in the system against all forms of arbitrary power and this is how the constitution started taking on a new shape. If the constitution was what the executive power in Parliament made it to be, as certain moments in the inter-war period had shown, a check on the executive needed to be introduced through the emergence of a proper public law role of Courts. The Courts were slow to implement this, as judges were themselves deferential to Dicey's political description of the constitution and its reduced definition of the rule of law, but the changes brought about to supervise the powers of Parliament in the 1960's were evidence of a profound earthquake to come. If the European Communities Act of 1972 was to challenge the principle of the sovereignty of Parliament, the reality is that from WWII to 1972, the tradition of

⁴ In 1966, Roy Jenkins, Labour Home Secretary, gave his definition of multiculturalism: "I define integration, therefore, not as a flattening process of assimilation but as equal opportunity, accompanied by cultural diversity, in an atmosphere of mutual tolerance". Roy Jenkins, "This is the Goal", London, 23 May 1966 in: Brian MacArthur (ed.), *The Penguin Book of Twentieth-Century Speeches* (1992), London, Penguin, 1999, pp. 362-3.

⁵ Alan Watkins, "The Death of Deference", *New Statesman*, 9 January 1970, p. 35.

parliamentary sovereignty suffered its first dents, this time at the expense of the growing role of the judiciary.

There are two ways of seeing the period regarding hierarchical voluntary deference: one, in which irrational and rational deference still coexist and are visible at the time of moments of national cohesion – the Coronation of 1953 especially – and others, in which rational deference kicks in, ditching irrational deference altogether, to protect the system from itself – the Suez Canal crisis, the Profumo affair or even joining the EEC. Conversely, deference comes under attack in those years as in no other way than before. The monarchy also, as the great source of deference, takes a blow, first in the 1950's but especially in the 1960's with a type of criticism unheard of previously. Essentially, the period at stake witnessed the decline of irrational deference, the birth of an irreverential society as well as the continued existence of rational deference, which survived as the expression of the modern democratic free Englishman. This slowly transformed the political constitution into a much more legal entity, starting from the 1960's.

A social democratic society onto a liberal constitutional structure

The new Labour administration which ran the country from 1945 to 1951 is considered one of the most influential of the twentieth century in the way in which it reformed Britain.⁶ The creation of the National Health service which offered free healthcare, the nationalisation of some 20% of British industry (from coal, gas, iron and steel, civil aviation, cable and wireless, transport, electricity to the Bank of England), and the building of new council houses (a million houses were built by 1951) were the great achievements of Attlee's Government, even if the financial situation of Britain was precarious. The main problem is that trying to create a planned economy which was supposed to empower the people just created a giant bureaucratic top-down state at the hands of an executive which went unchecked in Parliament. Such a transformation of the way of thinking the role of the state should have gone hand in hand with a rethinking of the organisation of government too. Some critics have denounced how the Labour Party only replaced one domination – that of a managerial class in the inter-war period – with that of the state, leaving in place the old structure without reforming it. "Nationalisation turned out in all respect to be not so much a

⁶ Kenneth O. Morgan, *Labour in Power 1945-1951* (1984), Oxford, Oxford University Press, 1985, pp. 45-93.

revolution as a prolonging of the *ancien regime* by bureaucratic means” writes Barnett⁷. The rush to keep the promises of the 1945 manifesto, attempting to lead the reconstruction as well as dealing with the cost of the war and the dismantlement of the Empire all at once, meant that there was little time for the Labour government to think how central state planning needed, precisely, to be planned. In reality, Attlee had kept Churchill’s efficient pyramidal structure of cabinet committees dealing with specific affairs, and thus, he did not rely on full cabinet meetings in which concerted action and policies could have been fully discussed.⁸ Such a way of governing had limits.⁹

Like many previous governments, Attlee’s team muddled through and adapted to the situation – essentially a county on the verge of bankruptcy in dire need of funds – as changes of direction were forced upon them. Hence, the reason why there are often two perceived periods in the 1945-1951 Labour administration: the first which saw the setting up of the welfare state and nationalisations and the second period, from 1947, which just tried to pragmatically keep the county afloat. The Labour Party was trapped in what Laski had described in the pre-war period, i.e. between what the system had been built on – an essentially property-based structure based on the non-intervention of the state in the market to which, Laski believed, a deferentially society submitted – and what the Labour Party wanted – a much more collectivist structure, based on participative citizenship following a common dream in which deference had hardly any place. One could only match the other through compromise and acceptance that capitalism and government intervention could work together through gradual improvements, that is, in the usual English way. This also meant that the nation was essentially still deferential and bent on defending its liberties rather than strictly egalitarian in its nature, something that members of the Labour Party did not want to accept. But, in the aftermath of the privations of the war, caution was thrown to the wind. The Labour Manifesto defended state collectivism and intervention in the life of citizens, which also meant a growth in the power of the state at the expense of the personal freedom of the citizens. What a Liberal like Beveridge had argued for during the war was bringing the state in line with the needs of the people through incremental moves and understanding the cost of the reforms needed. But, Attlee and his set of colleagues – most of them, in all fairness,

⁷ Correlli Barnett, *The Lost Victory: British Dreams, British Realities, 1945-1950* (1995), London, Faber and Faber, p. 226.

⁸ See: Brian Harrison, *The Transformation of British Politics, 1860-1995*, Oxford, Oxford University Press, 1996, p. 283.

⁹ For example, the decisions to launch an independent British Nuclear Programme were never discussed in full Cabinet but in a secret Cabinet Committee and Parliament was only informed much later. David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, London, Weidenfeld and Nicolson, 2008, p. 128.

already drained by their years in the War Coalition government – embraced socialism and once faced with financial realities, were forced to settle for an impossible balance in 1947. In reality, Labour did not have a long range economic project which would make their democratic collectivist vision possible, nor did they have a constitutional project to make the structure suited to their needs. In 1945-1951, they wanted to superimpose a social democratic structure onto a liberal constitutional one, without taking into account the fact that society did not necessarily suit the Victorian constitution as well as it had done previously.

Attlee and some of his men in Cabinet – particularly the left-wing of the Party led by the Health Secretary, Aneurin Bevan – were committed to the idea that the common ownership of the means of production would impose a new society on its own. They believed in an utopian ideal of an egalitarian society rather at odds with the character of the nation and its deferential disposition. Both Bevan and Attlee, along with left-wing intellectuals and Trade-Union leaders, despised the capitalist society of the inter-war period that they held responsible for corrupting and debasing people. In their eyes, the ideals of liberty and *laissez-faire*, through which the country had flourished throughout the nineteenth century, had produced a nation of greedy industrialists who were mostly focused on the individual satisfaction of their own needs at the expense of the well-being of society as a whole. The socialism of the Labour Party took root in what could bring people back together: their common good. The unity of the nation would not be based on the blind irrational deference to long loved institutions, nor even in the rational deference to the constitution, but on an egalitarian deference based on a common cause greater than themselves. Egalitarian deference was not hierarchical and established cooperation, democracy under the rule of law as the main starting points. It was very different to the ideals on which the English had thrived – deference to the constitution. Defending his record at the time of the general election of 1951, Attlee summarised what he believed in such a way:

What kind of society do you want? We know the kind of society we want. We want a society of free men and women – free from poverty, free from fear, able to develop to the full their faculties in co-operation with their fellows, everyone giving and having the opportunity to give service to the community, everyone regarding his own private interest in the light of the interest of others, and of the community; a society bound together by rights and obligations, rights bringing obligations, obligations fulfilled bringing rights; a society free from gross inequalities and yet not regimented nor uniform. Our opponents, on the other hand, regard the economic process primarily as the giving an opportunity to the individual to advance his own interests; community

interests, national interests, are regarded as a hypothetical by-product. Their motto is: 'The world is my oyster; each one for himself.'¹⁰

Putting aside Attlee's misplaced opposition between his socialist beliefs and the outdated version of what the Conservatives were supposed to believe in 1951, what is significant is the insistence on legal rights and duties. It is through the law – through the defense of human rights – that this new society would fully emerge as a brotherhood of equals. Voluntary irrational and rational deference, precisely because they had a hierarchical foundation, would be an impediment to such a quest. Egalitarian deference was the idea that all have an equal starting position, that those in power are only at the service of those who agree to trust them and that all are under the rule of law. There is no reference to the historical greatness of the English here, nor is the speech rooted in the common liberal references of the nation: Attlee believes in men in general, in equality before liberty and in a human unselfish nature. There is something very rationalistic about such words – even, some might say, continental – not in line with what the nation had shown itself to be and rather at odds with its historical constitution. Attlee's 1951 speech ended with one of the verses from William Blake's *Jerusalem*, that Labour would be the one to build a new Jerusalem "In England's green and pleasant land".¹¹ This well-known and well-loved reference to the work of the radical dissenting poet who had defended the French Revolution – which had initially been put into song at the time of WWI to stir up English troops and used by the suffragettes as an anthem¹² – was a fitting and clever way of finishing a speech referring to a common radical past which existed in the nation and which had often been airbrushed by the Whig historiography.¹³ Blake's *Jerusalem* and Attlee both stood for belief in human nature and not in national self-confidence, as extolled in deference to the Victorian constitution.¹⁴ If Attlee saw that there had been a fall in national self-confidence after WWII, he did not perceive that the rise in individual confidence had not got rid of rational deference. What the British wanted after WWII was to secure a better life and peace; they did not necessarily adhere to a radical

¹⁰ Clement Attlee, Leader's speech, Scarborough 1951, <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=161>, accessed 11 February 2017.

¹¹ See the very perceptive following explanation of the poem: James E. Swearingen, "William Blake's Figural Politics", *ELH*, Vol. 59, No. 1 (Spring, 1992), pp. 125-44.

¹² See the explanation given by the Women's Institute at <https://www.thewi.org.uk/faqs/why-was-jerusalem-chosen-as-the-wis-anthem>, accessed 28 February 2017.

¹³ See: Judy Cox, "Blake's Jerusalem", *The Socialist Review*, September 2012, n°372, <http://socialistreview.org.uk/372/blakes-jerusalem>, accessed 11 February 2017; "Why we... believe that 'Jerusalem' is not a nationalistic hymn", *Times Higher Education*, August 17, 2001, <https://www.timeshighereducation.com/news/why-we-believe-that-jerusalem-is-not-a-nationalistic-hymn/164437.article#>, accessed 11 February 2017.

¹⁴ Paradoxically, though, Attlee's use of history, here, did constitute a deferential gesture towards retrieving an undeferential past.

reconstruction of society on egalitarian grounds which was at odds with their past. It is the persistence of rational deference which made it impossible for Attlee to win in 1951. Oddly enough, Attlee could have appealed to the sense of history of the voters by reading the history of the nation to suit his ideas: that of the liberties and rights of all Englishmen and their struggles to protect them, beginning with Magna Carta. It is Attlee's failure to describe his project in those terms – as the continuation of a longer process – which contributed to its failure, because he did not seize the opportunity to capitalize upon deference to tradition and history.

Once the main pieces of Beveridge's social service had been put together, nationalisations achieved and full employment encouraged in the immediate post-war period, the tensions between radicals and modernists in the Labour Party rose about how best to carry on as the country was struggling financially. The radicals were those, along with Aneurin Bevan, who believed in socialism, hated capitalism, resented any encroachments on equality and loathed "ancestor worship"¹⁵. The modernists, for their part, believed a lot had already been done, that health expenses were spiralling out of control, and that in view of the necessity of curbing the budget in a context of rearmament in 1950-1, efforts should be made to secure political power. As Bevan resigned – over charging the British for teeth and spectacles expenses to relieve the NHS budget in April 1951 – the breach was open between the two sides within the Labour Party. The feud would keep Labour out of power for 13 years. Their internal strife was ideological and exposed two very different visions of the future of Britain: one, at variance with the nation's deferential past, and in favour of "a new society built by a justice-seeking central state"¹⁶ and, another, still rationally deferential, following in the national traditional moves of adaptation through incremental steps, for which equality through education and fiscal redistribution were the future. The aims were not the same as the former favoured a rationalistic re-organisation of the state towards such a purpose and the latter would go along with the structures already in place to consolidate the welfare state. However, both sides failed to recognise that this new type of equality was foreign to Britain. Until this period, what had defined English political culture on both the left and the right had always been a commitment to one or another form of deference – even if some left-wing

¹⁵ Aneurin Bevan explained in his biography how the House of Commons was like a church: "The vaulted roofs and stained glass windows, the rows of statues of great statesmen of the past, the echoing halls, the soft-footed attendants and the whispered conversations, contrast depressingly with the crowded meetings and the clang and clash of hot opinions he has just left behind in the election campaign. Here he is, a tribune of the people, coming to make his voice heard in the seats of power. Instead, it seems he is expected to worship; and the most conservative of all religions - ancestor worship." Aneurin Bevan, *In Place of Fear*, New York, Simon and Schuster, 1952, p.6

¹⁶ David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op.cit.*, p. 149.

radicals in the inter-war period already rejected a deferential set of mind. The post-WWII Labour Party succeeded in having and keeping power when it worked with the deferential culture but failed when it pushed too hard against it. Over time, two things happened: deference slowly weakened, and the Labour Party became more deferential in order to have access to power.

It is easy to read the victory of the Labour Party in 1945 as the great victory of Collectivism over *laissez-faire* and to accept the 30 years period, from the Labour landslide of 1945 to the IMF loan crisis of 1976, as the great years of the political consensus between Labour and Conservative over social welfare, a mixed economy and decolonisation.¹⁷ As is often the case, the reality is much more complicated, in that the welfare state set up by Labour after the war was very much in line with the recommendation of the Liberal Beveridge: it was only the long-awaited reforms of a patient nation who had hoped for them in the inter-war period. Thus, the Conservatives, who narrowly regained power in 1951, had themselves evolved and were not to revert to a period of unbridled capitalism with which their image had been associated. Churchill, by then an old and sick man, went along with what Labour had done and only reversed the nationalisation of the steel and road haulage industries. It is important here to see that the socialist utopia of the likes of Bevan could have been a possibility as Labour had won the popular vote at the general election of 1951¹⁸ but in view of what has been written so far on the deferential English, one wonders if this could have really been achieved. There was no passion for the consistent building of a socialist state which would create a new society – as the modernizing side of Labour had shown and would carry on showing – and there was a stronghold of rational deference for evolutionary ways of doing things much more in line with the custom of the country. In this sense, the Conservatives who came back to power were like a comfortable old blanket relying on traditional deference. R.A. Butler, the newly appointed Chancellor of the Exchequer, expressed his belief in a tradition which was

not a collection of causes for which we were obliged to die in the last ditch, nor a set of premises by whose consistent application we might infallibly regulate our conduct, but a mature tradition of political thought and behaviour which is neither fixed nor finished.

¹⁷ For two dissenting views on the post-war consensus, see: Ben Pimlott, Dennis Kavanagh and Peter Morris, "Is the 'postwar consensus' a myth?", *Contemporary Record*, 1989, 2:6, pp. 12-5.

¹⁸ Labour lost with 48.8% of the vote while the Conservatives won with 48%. The results in terms of seats were the following: 321 seats out of 617 for the Conservatives and 295 for Labour. See: <http://www.ukpolitical.info/1951.htm>, accessed 11 February 2017.

This tradition at its best is responsive to the demands of each new age, empirical as to method, resourceful in expressing itself in popular idiom.¹⁹

In other words, this was the old-fashioned adjustment through consensus which had worked remarkably well for Britain in the past. However, it had worked because of the nation's deference. Was it possible to continue in the same way in the 1950's? If the nation were not ready for a full socialist utopia, neither was it in favour of embracing a return to unquestioned deference to a paternalistic style of governance. Butler's way of doing politics meant muddling through the decisions of the state without absolute clarity, allowing adaptations and changes of mind, whereas transparency and truth now commanded respect. There was a hiatus between an elite in power used to being trusted for being conscious of its duties to society and a growing elite outside power, which increasingly cared about what was being done in its name. The Conservatives, who were in government from 1951 to 1964, were lucky in the sense that the context was favourable to them as an economic boom took place and they oversaw the great moment of the coronation of Elizabeth II in 1953. They also were unlucky, or irresponsible, in the sense that it was during their years that several scandals undermined the rational deference voters had for their representatives.

Rational deference undermined

Along with the electorate, the ruling elite in power should have changed, but as Butler's quotation above proved, the conservatives chose to return to old ways of governing in the 1950's. The constitution was like a rubber duck on the surface of the bath water: it gave the impression of being impossible to submerge and of always stabilising itself anew. The Conservatives went along with the post-WWII Labour reforms and acted as if the tradition of deference would just adapt alongside. They had not seen that the veneer of deference had already been cracking in the inter-war period. The inappropriate behaviour of politicians (either for individual interest or for the rise of party interests), the rise in the power of the Cabinet, and the decline in the authority of certain conventions which had been acting as restraints on the system were unmistakable signs of those cracks. Nonetheless, the Conservatives of the 1950's were behaving as if trust in power had not been weakened by the inter-war period and transformed by WWII.

¹⁹ Lord Butler, *The Art of the Possible: The memoirs of Lord Butler*, London, Hamish Hamilton, 1971, p. 28. Also quoted in: David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op.cit.*, p. 151.

The Conservative political order still remained outwardly aristocratic, even with figures such as Macmillan, who was Prime Minister from 1957 to 1963. The reality is that it was these very politicians, who were supposed to have an innate sense of their obligation, who brought their own downfall. They also turned into reality the Labour assumption that there was an intrinsically privileged ruling class perspective that needed to be challenged. Most of the civil servants and a majority of Conservatives were coming from the common mould of the public schools and/or of the great universities of the land which created a way of speaking, of dressing, and of behaving which became a caricature of itself in its ability to generate conformism.²⁰ Such a system could have survived the 1950's – only just – if it had been virtuous, but it was not. If the 1950's looked like a period of “cosy, somnolent contentment”²¹ because of a gilded economic boom, full employment and the control of the balance of payments, the period was really the ante-chamber of a number of troubles ahead. Firstly, the much-needed economic reforms to adapt to a global market were postponed until they would be forced upon the British by the IMF loan of 1976; secondly, the paternal whiggish attitude of compromise meant that the increasingly destabilising influence of the trade unions was not curbed until the victory of the Thatcher government in 1979 and that the unions themselves were at odds with their own party from 1974-79; thirdly, a culture of corporatism spread in the elite in power, who relied on a dying irrational deference when rational deference should have been sought to make citizens the actors of the structure and reform it democratically from within. This established an unchecked perimeter between those who were in the system and who knew the ropes and those who were out of it, which was not only contestable but especially undermining in terms of socio-political trust.

Two main scandals exposed the reality and the weaknesses of such a power. First, the Suez crisis of 1956 and, second, the Profumo affair of 1963. Both are well known in the history of the nation and need few introductions, but both were damaging to the old structure. Deference was and is linked obeying the unwritten rules and fulfilling obligations to the people: if those “who knew better” used the system to advantage their own class and defend their own personal agenda, then deference was not only naïve but dangerous.

The Suez affair happened when Anthony Eden – who had replaced the eighty year old exhausted Churchill after the General Election of May 1955 – decided to react to the Egyptian

²⁰ As Marquand reminds us, social diversity, let alone gender diversity, was not the way to make it into the Cabinet: “Macmillan’s Cabinet contained one fewer former public-schoolboy than Eden’s (seventeen out of eighteen as against eighteen out of eighteen), and two fewer Etonians (eight as against ten). However, fifteen of its members were Oxbridge graduates as against fourteen under Eden”. David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op.cit.*, p. 163.

²¹ *Ibid.*, p. 158.

President's decision to nationalize the Suez canal in July 1956. The possibility for Britain to retain the use of the Suez canal zone had been established by a treaty signed before WWII and was now seriously challenged by Gamal Nasser's very nationalistic stance. Eden and his government decided to fight for the control of the canal on the outdated belief that the old route to India and what was left of its Empire in the East (Singapore, Malaya, and Hong Kong) needed to be defended. France was in the same position as Britain. Clearly, there were financial interests at stake, but they were secondary in view of Nasser's decisions to take back control of an Egyptian asset from two countries that still saw themselves as proud first-rate powers and key actors in the region. In fighting a rearguard action, the Conservatives had seriously misjudged the mood of the nation and had learnt very few lessons from what had happened after WWII. Eden and his men were entrenched in an elitist view of the country and believed that the deferential nation (irrational deference in this sense) would just go along with their decisions. The French government was as blind as the British one, for the same thinking led it decided to set up a plan involving Israel – barred from using the canal by Egypt – which was worthy of an Ealing comedy (even if the improbable details of the three powers meeting secretly in Sèvres in October 1956 only appeared a long time later). Essentially, not to appear as the belligerent nations attacking Egypt directly, Israel would attack Egypt and head for the canal, allowing the French and the British to ask Israel and Egypt to both withdraw from the canal zone; if they refused, the French and British would send troops in as peacekeepers (in their capacities of great powers with interests in the canal zone). The plan failed abysmally, not so much because Nasser refused to leave the canal but because of the international and national reactions. Internationally, the United Nations condemned the decision of two members with permanent seats on its Security Council and imposed a ceasefire, whilst the Americans put dangerous pressure on the pound which had the immediate effect of making the Cabinet accept the ceasefire on 6 November. If internationally, this was the utter public humiliation of two former great powers by the American policeman, in terms of British domestic policies and deference to power, the cost was as heavy. The invasion gave rise to a public "Law not War" rally in London on 4 November which was attended by more than 30 000 people – the biggest demonstration since the end of WWII. It had been called at the instigation of the Labour Party and sought the withdrawal of Egypt or the resignation of the government, or both. Nye Bevan exposed the Prime Minister's botched up plan, criticising the conservatives for their immorality. "They [the government] have besmirched the name of Britain", he affirmed, "They have made us ashamed of the things of which formerly we were proud. They have offended against every

principle of decency and there is only way in which they can even begin to restore their tarnished reputation and that is to get out! Get out! Get out!”²². When only a few years previously, the nation had been one over WWII, it became clear that a number of people considered the government’s decisions as naked jingoistic self-interest. In the House of Commons, it became evident to the members of the Labour Party that what the government was saying – that they were only intervening as peacekeepers between Israel and Egypt and to secure passage through the canal zone – hardly matched the reality of the situation on the ground.²³ By 20 December, Eden, having been ill for three weeks, came back to be questioned in the House of Commons and effectively lied to the Members of Parliament by saying that the government had had “no foreknowledge of the Israeli attack” – which it clearly had.²⁴ The fact that the President of France, Guy Mollet, and the Prime Minister of Israel, David Ben-Gurion, could and would later give their own versions of what had really happened did not seem to cross Eden’s mind. Much worse, a number of the members of his cabinet sitting behind him in the House of Commons that day, including Butler and Macmillan, knew that the Prime Minister was lying. On 9 January 1957, Eden resigned on health grounds, but it was obvious that his position was untenable in view not so much of the public outcry (which had partially calmed down) but because of his shameful conduct. The sorry ending of this affair was that Eden saved the government by “doing the decent thing” and resigning, that Britain was now clearly a second-rate power and that the special relationship with America was in tatters. As for Israel, it would never turn again to Britain and France and would rely on its link with America from then on.

More importantly, it was obvious that a number of Britons no longer cared about the international role of their country. The former Empire, and what was left of it in 1956, had been one of the upholders, together with the monarchy, of hierarchy and of the belief in the greatness of Britain. It now became obvious that it was precisely because the imperial frame of mind was perceived as a symbol of authority and hierarchy that the nation reacted to what happened in Suez. If the monarchy could adapt – and would be forced to do so – British domination abroad was no longer being seen something to be proud of, much more to be shunned as an outdated symbol of supremacy. As a result, in the words of Cannadine, “the

²² The speech can be heard online: <https://www.youtube.com/watch?v=XZmw8XloZeY>, accessed 28 February 2017.

²³ See the questions raised in an adjournment debate on 9 November 1956 by Tony Benn over the use of a radio in Cyprus taken over to broadcast the “voice of Britain” and contradicting the Prime Minister: <http://hansard.millbanksystems.com/commons/1956/nov/09/middle-east-broadcasts>, accessed 14 February 2017.

²⁴ See the transcripts of the answer of the Prime Minister in the Hansard: <http://hansard.millbanksystems.com/commons/1956/dec/20/israel-and-egypt-anglo-french-ultimatum>, accessed 14 February 2017.

‘decline of deference’, and the lessened respect for established institutions were in considerable part a consequence of the loss of Empire, and of the undermining of the establishment and the established way of looking at things, which resulted from it”.²⁵ Indeed, the Suez fiasco said a lot about the elite in power. David Marquand writes – perhaps unsurprisingly for a left-of-centre political writer and historian – that “British ministers were exposed, not just as liars, but as bungling and unconvincing liars” and he adds “the cabinet were exposed as hypocrites”.²⁶ Undeniably, the very people who were asking the nation to defer to them were ready to lie in Parliament in order to push their outdated, imperialistic agenda on Egypt on the grounds of moral superiority. The country, with a permanent seat at the security council of the United Nations, was supposed to help promote peace and security - - not force Egypt to comply through military means with their decisions with little regard for international law. It seemed as if the law applied to all but them. “The elite’s claim to rule rested, among other things, on its long training in statecraft [...]”, concludes Marquand, “At Suez, it had insisted on banging its head against a wall of impossibility; its statecraft had been considerably less impressive than Nasser’s. Imperceptibly, the structure of authority, and deference that had protected it began to crack. Little by little, it started to look ridiculous rather than formidable”.²⁷ Losing face on a matter of trust meant seriously damaging the hierarchical voluntary deference which was sustaining the system.

Lying in Parliament was as serious as it was insidious. It made people doubt their rulers and their sense of entitlement as well as instilling a form of cynicism for those in power. It also gave rise to a much wider culture of political satire which would be acted in plays such as John Osborne’s 1957 *The Entertainer* (an attack, through the decline of music hall, on the dusk of the Empire in the background of the Suez fiasco) or, later on, in the 1960’s *Beyond the Fringe*, with Peter Cook’s outrageous imitation of Harold Macmillan. In the end, if the establishment could brazenly lie and act with roguish lawlessness, anybody else could too. If the establishment was not behaving properly, decently, was nakedly self-interested, why should it be trusted and deferred to? Rational deference, much more than irrational deference, was fragile as it was based on faith, willingly given, to an historical system which had proved to be good and to encourage virtuousness, gentility and civility. If the system was only a means to cover up the behaviour of an entitled establishment who expected the nation to follow suit without asking questions, then rational deference was no

²⁵ David Cannadine, *Class in Britain* (1998), London, Penguin books, 2000, pp. 159-60.

²⁶ David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op.cit.*, p. 163.

²⁷ *Ibid.*, p. 164.

longer a positive pillar of the system; it was just a manipulative psychological way of expecting people to comply. Rational deference would be rationally withdrawn. A number of Labour radical left-wing politicians, such as Nye Bevan and Tony Benn, exposed the reality of what a deferential class amounted to but, perhaps paradoxically, their language was not deferential enough to be heard by most. Denouncing deferential society could only be done with a vocabulary which would speak to people and explain the roots of deference, that is, which would explain how British democratic society had emerged out of an English aristocratic structure. It would also mean recognising, in all fairness, that a disposition for deference in the English had allowed liberal democratic ideals to emerge. It was the inability to unpick deference for its various meanings – including for its worth – which made the radical egalitarian rhetoric inaudible for most.

In the end, there seemed to be a common acceptance in early 1957 that it was better to lay the matter to rest after Eden had resigned, but in view of what had happened, the reaction of the nation and of most MPs was tame. It was just as if, after an explosive moment of truth, the members of a family had all decided to retreat to their old positions, too shaken to face what had really happened. Explanations were demanded in Parliament – the Labour Party did raise a number of challenging questions from November to December 1956 – but few explanations were given, and the story was conveniently set aside to make way for a period of spurious affluence. Nevertheless, this episode did not prevent a complacent political class from making new mistakes.

As the Sphinx-like Macmillan took over from the sophisticated pariah Eden, one could have expected that the lesson of the humiliation of Suez would have been understood. In fact, Macmillan himself would be forced into retirement because of another lie professed, not by him directly, but by one of his ministers in 1963 at the time of the Profumo affair. By then, rational deference for the old Victorian constitution and for what it had stood for – especially belief in the rule of law and the respect of conventions – was not as strong as it had been in 1945. In taking over on 10 January 1957, Macmillan's aim was to move away from Suez and to reconstruct the relationship with the USA. In truth, there were far more pressing matters that he set aside until the whole resignation of his Treasury Ministerial team in 1958 forced him to face up to them, i.e. the structural problems of Britain, especially the need to curb the rising cost of public spending to avoid inflation. The state management of the economy consisted in maintaining full employment and high public spending whilst trying to prevent the rise in prices: this balancing exercise meant that the country was endlessly trapped in a cycle of boom and bust. The right wing of the Conservative Party, led by the not yet infamous

Enoch Powell, were concerned that without radical changes to the economy, difficult times lay ahead. They did, but not fully emerging until the 1970's. In the meantime, affluence continued, bringing extraordinary changes to Britain and allowing Macmillan to enjoy a period of boom upon which he rode to win the 1959 General Election with an increase in his majority – a feat for any Prime Minister in power. His Eastern Commonwealth Tour over six weeks in 1958 and his equally long African Commonwealth tour in 1960 had a monarchical scent, but this was a gilded age and Macmillan was a fit figure for it. He also led a life which was not as golden as it seemed on the surface. His wife, Lady Dorothy Macmillan, the daughter of the 9th Duke of Devonshire, had a long affair with the popular Bob Boothby, Conservative MP and close friend of Churchill, from the end of the 1920's up to the end of her life.²⁸ This was common knowledge for those who were part of the establishment but, with hindsight, the image of Macmillan as the genteel father figure overlooking a period of prosperity rather takes on a new understanding. Those in power, especially the aristocracy (of which Macmillan was not a part and who looked down upon him), often found themselves above conventions and a bit contemptuous of traditions. As long as socially questionable behaviour were not in the open, even though they were well-known in the higher circles, they could be disregarded, but it is in Macmillan's years that the veneer of respectability which had ruled British society was peeled away.

There was a type of elite hypocrisy which could no longer continue and which was the proof that the establishment was out-of-touch with what they were creating: essentially, a mobile society through the improvements made to people's lives. Sooner or later, such people would get more involved in the life of the state. The term "establishment" came to mean for some, in 1959, "the English constitution, and the group of institutions and outlying agencies built round it to assist in its protection; it naturally also includes all those who stand like commissionaires before these protective institutions to protect *them*"²⁹. The old Victorian frame of mind still ruled, relying on the system, but unaware that the people's character had changed: "Now, it is this Victorian England, with all its prejudices, ignorances and inhibitions, that the Establishment sets out to defend"³⁰. Political satire continued with the creation of the very irreverential *Private Eye* in 1961 and with *That Was the Week That Was* which ran on the BBC from 1962 to 1963, which "Edward Heath, who later became Prime

²⁸ Robert Rhodes James, *Robert Boothby: A Portrait of Churchill's Ally*, New York, Viking, 1991, pp. 114-20.

²⁹ Hugh Thomas, "The Establishment and Society" in: Hugh Thomas (ed.), *The Establishment* (1959), London, Anthony Blond, 1962, p. 12.

³⁰ *Ibid.*, p. 13.

Minister, blamed (or credited) [...] for the ‘death of deference’ in Britain”³¹. Macmillan’s patrician attitude made him a target of choice as well as the inconsistencies of those in power.³² Two Britains were walking side by side in those years, one looking back at the nineteenth century, the other with its head firmly turned towards the future.

Faced with a period of bust in 1961 and forced to impose deflationary measures which were not very popular, Macmillan thought that applying for membership of the EEC in 1961 would impose a much needed modernization of the economy to meet European standards. By then, Macmillan was losing his grip on power, and he used the royal prerogative to fire more than a third of his government in July 1962 – proving even more how much power the Prime Minister could wield personally – while also facing a new political scandal which stripped away what was left of the veneer of respectability on which public life rested. The Secretary of state for War, the public-school educated John Profumo, was revealed in the summer of 1962 as having had an affair with a call-girl, Christine Keeler, the previous summer. The young, attractive Keeler unwisely revealed that she was having an affair with a Soviet Naval Attaché at the same time as her short affair with Profumo, sending shockwaves about possible breaches of national secrecy in an hysterical Cold War context. But, much more than the affair itself, it was the numerous plots and subplots in the story – from Profumo meeting Keeler at Lord Astor’s Cliveden estate to Keeler having been “provided” by a socialite osteopath with disreputable links with the Soviets – which blew up into Macmillan’s face. When Profumo denied the rumours through a March 1963 statement in Parliament – “There was no impropriety whatsoever in my acquaintanceship with Miss Keeler”³³ – which he hoped would put the scandal to rest, he only intensified the interest of the nation. The magic trick, which had been performed only a handful of years previously at the time of the Suez crisis, could no longer be conjured up: double standards were no longer accepted. Profumo finally had to confess and resign out of shame in June 1963 but, unlike Eden, he apologized for his behaviour to Parliament. In an astonishing capacity for double-standards, knowing Macmillan’s own private situation and how he had sat behind Eden when he had told an

³¹ Peter Kellner (ed.), *Democracy. 1, 000 Years in Pursuit of British Liberty*, Edinburgh and London, Mainstream Publishing, 2009, p. 438.

³² For example, just to pick one sketch from *That Was The Week That Was* poking fun at the dishonesty of politicians, the 1963 sketch on the Conservative Home Secretary, Henry Brooke was particularly vicious and ended with the final repartee “Just shows. If you are Home Secretary, you can get away with murder”. *That Was The Week That Was*, commonly known as *TW3*, was watched by millions – 12 millions for the most watched episodes. See: *Ibid.*, pp. 438-41.

³³ John Profumo, Personal statement to the House, 22 March 1963, http://hansard.millbanksystems.com/commons/1963/mar/22/personalstatement#S5CV0674P0_19630322_HOC_7, cc809-10, accessed 28 February 2017.

untruth to the House of Commons in December 1956, the Prime Minister gave the following answer to the questions of an indignant Harold Wilson on 17 June 1963:

A great shock has been given to Parliament, and, indeed, to the whole country. On me, as head of the Administration, what has happened has inflicted a deep, bitter, and lasting wound. I do not remember in the whole of my life, or even in the political history of the past, a case of a Minister of the Crown who has told a deliberate lie to his wife, to his legal advisers and to his Ministerial colleagues, not once but over and over again, who has then repeated this lie to the House of Commons as a personal statement which, as the right hon. Gentleman [Harold Wilson] reminded us, implies that it is privileged, and has subsequently taken legal action and recovered damages on the basis of a falsehood. This is almost unbelievable, but it is true.³⁴

That Profumo had lied to Macmillan is probably true but the self-righteousness of this declaration must have sounded insincere to any who knew Macmillan well – starting by Butler or his other rival in the Conservative party, Lord Hailsham. Denouncing Profumo's lies, Macmillan was himself lying to Parliament which meant that he was either a master in deceit or just that dishonesty ruled in such a way that Orwellian alternative facts could be invented at will to suit political purposes. Truth did matter and parliamentary government could not function without faith that if absolute ethical standards could not be achieved, at least conventions and deference to them restrained the worst offences. With Eden and then Profumo, respect for the conventions of Parliament were trampled on as well as trust that the system could regulate itself peacefully. Much worse, it showed that the establishment was unworthy of respect and that this may even have been the case beforehand. The crisis of deference went along with a crisis of what the country had stood for: decency, civility, moderation, justice, fairness. Outside Parliament, the scandal was unheard of. *The Times* titled one of its leaders "It Is A Moral Issue" in which it explained that the scandal was a "tragedy for the probity of public life in Britain" and lamented the lack of morality of the Conservatives in power for more than a decade.³⁵ For Wayland Young, of *The Guardian*, the Profumo affair was "the natural fruit of a period of government when convenience was set above justice, loyalty above truth, and appearance above reality"³⁶. *The Spectator* thought it was much more a political than a moral matter and drew the following perceptive conclusion:

³⁴ Harold Macmillan, 17 June 1963, <http://hansard.millbanksystems.com/commons/1963/jun/17/security-mr-profumos-resignation>, cc 54-5, accessed on 15 February 2017. See also Harold Wilson's indignation in Parliament on the same day and his insistence on the gravity of lying to the House: <http://hansard.millbanksystems.com/commons/1963/jun/17/security-mr-profumos-resignation>, accessed 15 February 2017.

³⁵ Editorial, *The Times*, 6 June 1963.

³⁶ "Private Morals and Public Life", *The Guardian*, 6 June 1963 cited in: Wayland Young, *The Profumo Affair: Aspects Conservatism*, Harmondsworth, Penguin Books, 1963, p. 112.

This is the truth of it: the man who pulled together not merely a divided party but a deeply divided nation after the shock and shame of Suez must quit because of a weak and prevaricating colleague's minor sexual indiscretion which chance, together with a marginal incompetence, inflated into a monstrous political scandal. It is a sorry business, and even Mr. Macmillan's fiercest political enemies in his own party as well as in the Opposition will certainly not withhold that sympathy and understanding for which he, pathetically, pleaded on Monday. But he will have to go, and that successor upon whom the consensus is yet to fix will have to work hard to repair the damage to his party, to Parliament, and to the morale of the nation.³⁷

Undeniably, Macmillan had to go and he did resign in October 1963 due to his health. His parting shot was to exit the political stage by damaging both his party and the reputation of impartiality of the monarch by imposing his favourite – an unlikely choice in the context and another Etonian – the 14th Earl of Home.³⁸ The prestige of the Parliamentary system, which had already become subordinate to the work of the Cabinet and the decisions of the Prime Minister, suffered a little more as Alec Douglas-Home was chosen from the Lords to take on the last year of Macmillan's term, a choice all the worse because the party favoured Butler. The Conservative Party, in those days, did not have a system to select the leader who, in a perfect Whiggish incremental way, was supposed to emerge naturally from the party's ranks. Here too, deference to old conventions could no longer work as Macmillan twisted them to present the Queen with what he said was the choice of the party as a whole. She was unsure as to whom she was supposed to call on to become next PM and found herself relying on his advice. One of the members of the party and a supporter of Butler, Iain Macleod, took to the pages of *The Spectator* a few months later to voice his concerns about what had really happened and made clear that Alec Douglas-Home had become PM by the sole will of a handful of men led by Macmillan. This was damaging enough as these men were all part of a tight knit set of mostly Etonians who also decided to dispense with discussing their views with the Cabinet. Macleod writes "To me it seemed clear that if the situation was going to gell swiftly, the choice must be Butler: if there was deadlock, it would surely come back to the Cabinet. I had not, of course, appreciated then that it was in fact an essential part of the design that the Cabinet should have no such opportunity".³⁹ Such ways of deciding who should rule the country were outdated, undemocratic and the actions of a rearguard elite which tarnished the end of Macmillan's era. Macmillan, the upper middle-class comfortable PM, lacked

³⁷ "No Moral Issue", *The Spectator*, 23 June 1963, p. 3. <http://archive.spectator.co.uk/article/21st-june-1963/3/no-moral-issue>, accessed 15 February 2017.

³⁸ Lord Home renounced his peerage using the 1963 Peerage Act with enabled Peers to disclaim their peerages and admitted all female hereditary peers to the House of Lords.

³⁹ Iain Macleod, "The Tory Leadership", *The Spectator*, 17 January 1964, p. 5, <http://archive.spectator.co.uk/article/17th-january-1964/5/the-tory-leadership>, accessed 17 February 2017.

deference in the end. The article also portrayed him as a merciless leader determined to bar power to the members of his own party, such as Butler, whose qualities he obviously resented. If the Prime Minister himself did not respect conventions and the rules of the game, who could be trusted? Definitely, rational deference to the way of doing politics was undermined even if Lord Home was only in power for a year. In terms of the Conservative Party's inner rules, this meant that never again would their leader be expected to emerge out of common sense, belief in what was best for the party, and debate between members. The old ways had proved to be too easy to abuse and so, in 1965, new rules for a transparent and democratic leadership selection process were set up. They were a taste of things to come for the constitution as judicial progress was made in the 1960s to introduce "a more potent scheme of legal accountability"⁴⁰, known as judicial review.

Alec Douglas-Home proved to be too stern a figure, too remote from middle-class reformers, stuck in economic difficulties and coming in too late to win the 1964 General Election. After thirteen years of Conservatism, the new Prime Minister, the young Labour Harold Wilson, was supposed to bring fresh new ideas, settle the structural economic problems of the country, and make way for a new class of politicians much more at one with the changing nation. In the end, the six Labour years, if they were free of massive national political scandals, were rife with economic pressures – as the high value of the pound meant that the government would have to devalue the pound in 1967 – and difficult industrial relations with the trade unions – a family feud for the Labour Party. By the end of his six years in power in 1970, Wilson was perceived as being a let-down both by his party, who felt that he could not resolve the strikes and demands of the trade unions, and by those who had voted Labour and whose enthusiastic hopes for wider changes in terms of planning and technological improvements were not met. Certainly, a number of radically new measures were passed during those years to match the liberal march of society such as the end of theatre censorship, the abolition of the death penalty (1965), the right to abortion (1967), easy access to birth control pills, the legalisation of homosexual acts between consenting adults (1967), the lowering of the voting age to 18 (1968) and, in spite of financial difficulties, the increase in benefits for the most affected in society. Nonetheless, it was becoming clearer that the steady rise in living standards of the nation from the 1950s to the 1960s which had kept a stable social fabric alive was now, along with rational deference, collapsing under the pressure of refusal of social conformism. Some had been left out of the period of affluence,

⁴⁰ Adam Tomkins, *Public Law*, *op.cit.*, p. 171.

but even those who had not, had children who were rising against a society in which consumerism was perceived as the greatest good in the face of what was happening in the 1960s in the world. Tensions were very much alive in British society and could not be airbrushed. This was personified by the rise of a new popular culture, based on music and fashion. Britain became known not for its Dunkirk spirit but for the Beatles, Carnaby Street, and James Bond: the Swinging Sixties had arrived. Since the end of WWII, a million immigrants coming from the countries of the Commonwealth had also settled in the UK, bringing out serious racial problems in the old urban areas in which they had settled. At the same time, recognition of nationalist demands in Wales, Scotland, and tension-torn Northern Ireland were becoming much more than just aspirations for cultural recognition. Finally, demonstrations against the use of nuclear weapons tore generations and parties asunder. On the left, a number of intellectuals, known as the New Left movement, who had reacted strongly to the Soviet invasion of Hungary in 1956 – under the cover of the Suez crisis – moved on to define a type of socialism which was neither communist, nor socially planned by the Labour Party.⁴¹ Above all, the New Left thinkers valued human beings and men's innate capacity to question, discuss and find solutions together. They believed that participative politics, free collaboration rather than organisation through parties, and the promotion of cultural values were the alternative to a capitalist dominated world in which consumerism ruled. Other intellectuals, such as the historian A. J. P. Taylor, along with very different strands of society were also involved in fighting against nuclear weapons – a matter which divided the Labour Party – and set up marches which gathered Britons in the ten thousands under the banner of Campaign for Nuclear Disarmament. What was being played during those years and in those campaigns was a regular refusal of unchecked governmental power in the name of the people. It was no longer acceptable for the nation to defer to power out of tradition only: power came with responsibility and was supposed to be exercised with integrity. In reality, such groups refused the hierarchical past of the nation and because of this, voluntary deference (either rational or irrational) was necessarily a target because of its perceived submissiveness to history. Such groups wanted to break free from old structures on utopian grounds and believed that it was possible to create a better future whilst refusing one's past.

⁴¹ One of the main book of this movement was *Out of Apathy* (1960) edited by E. P. Thompson for the New Left book series. See: E. P. Thompson (ed.), *Out of Apathy*, London, Stevens and Sons, 1960, 308 pages.

Rational deference and changes in society

It would be too easy to believe, though, that rational deference had been given the kiss of death during those years. In reality, the core of rational deference remained: the Englishman who would defer out of usefulness but who would not comply if he felt that certain things went contrary to his rights. What the new politicized generations of people were showing, along with the unlikely set of people who fought for the Campaign for Nuclear Disarmament or those who rejected a shallow consumerist vision of the world, was that deference to what had made the nation special still mattered. Civility, deference, and truthfulness along with moderation and debate were valuable in a world in which what seemed to matter was a sense of entitlement and the domination of money. If the nation's deference to power was going to be abused, it was time to bring checks unto the governments of the day. The real enemies were really those who felt entitled to power through hierarchy and education or those who once in power, could use their positions for their own benefit, or the benefit of their kin, taking advantage of the uncodified nature of the constitution at the expense of the nation. This would no longer be acceptable with a spreading middle-class much less willing to accept the secretive club-like workings which ruled the establishment.

The social fabric of the 1950's was kept together through affluence, social conformism, and especially class consciousness. Therefore, if the nation was seeing its life improve, it was still very much defined by hierarchy. The Education Act of 1944 had solidified the already buttoned-up social system much more than it had opened it up. In effect, there were different types of education possible: on the one hand, the fee-paying public school and, on the other, state-funded education which had two main types of schools – the grammar school for the academically gifted and the secondary modern schools for others⁴². Society was to be structured along this type of education which reproduced classes: the aristocracy and the upper middle-class, the middle classes, and the lower ones. Escaping such an organisation was difficult except through the meritocratic hole of the grammar schools – but one would always have the stigma of being a “grammar school boy” – or through sending one's children through the fee-paying system. Therefore, people still knew their places, and those who made it through the system were deferential to it because they had been brought up to value it. Nevertheless, new generations came of age in the sixties and in the seventies who questioned the very idea of class-consciousness and with it, deference to anything – even if, this

⁴² The 1944 Education Act had created a tripartite system: grammar schools, secondary modern schools and secondary technical schools but a lot of technical schools failed to open.

challenge did not succeed much. So, alongside a conservative part of society who was still rationally deferential to what being English was all about – love of liberty, a certain common sense, and love of traditions – and who reacted with strong moral integrity to such scandals as the Profumo affair, and another part of society, who was rationally deferential out of belief that the old system could adjust and improve towards social democracy, came a new generation for whom nothing was revered and who rejected deference altogether as the reason for the country's inertia. The Beatles and the Rolling Stones, or David Bailey and Twiggy, were far more relevant to the young than Parliament or the Queen.

Hence the reason why the concept of deference lost much of its relevance at the time. It was either used to explain why lower classes voted Conservative or to justify the inability of the nation to reject the class structure system, but it was never used in a positive way, that is, to describe a valuable trait of character of the English which had set up free institutions well before any other western nations. Thus, referring to English deference was perceived as an anachronism in the 1960's, and even more so in the 1970's, as the concept was linked to the Victorian constitutional mindset. In reality, the idea of deference was as valuable as ever to explain the links between the classes and the tensions regarding traditional authority in a democratic society, and it could clarify how the principles of the constitution interacted thanks to it. Cannadine has drawn attention to how “we cannot understand the history of modern British society unless we recognise the continued existence of hierarchy as a way of seeing and making sense of it”⁴³. Hierarchy in his eyes, is also “strongly individualist and consensual” as opposed to the other two ways of explaining class in Britain – as upper, middle and lower classes or as the Marxist approach of elite vs. the people⁴⁴ – which are much more “collective and conflictual”.⁴⁵ This is a very particular understanding of the term hierarchy which is important for the definition of rational deference in a democratic age. Therefore, accepting that such a vision of hierarchy has been, and remains, a constituent part of Britain makes sense in terms of deference. The evolutions of hierarchical deference in England – from involuntary and voluntary deference to irrational and rational deference – then help to explain how, even though the country did not abolish hierarchies at the time of its seventeenth century revolutions, it integrated in its political culture an understanding of hierarchy which evolved with the democratic process and with its uncodified constitution. Unfortunately, for such an understanding, it was also in the early 1970s that the concept was declared to be

⁴³ David Cannadine, *Class in Britain, op.cit.*, p. 167.

⁴⁴ *Ibid.*, p. 161.

⁴⁵ *Ibid.*, p. 167.

worthless by political scientists⁴⁶ or just plain dead by journalists⁴⁷. It is as if there was something debasing in accepting that a hierarchical structure had shaped the nation and its mores.

The rejection of deference as a tool of political analysis

The use of deference as a tool for comprehending British political culture and the interaction between ruler and ruled was blurred by three different approaches which were followed in the second half of the 1960s and at the beginning of the 1970's: firstly, deference was increasingly linked exclusively to a conservative electorate; secondly, the typical Marxist explanation confused the deferential issue by relating it only to a class-structured society, and thirdly, political scientists attempted to debunk deference according to empirical research data.

The two main studies on the working-class electorate of the Conservative Party were published in 1967 and 1968, and both were surveys into the voting habits and the deference of the Tory lower classes.⁴⁸ They came after a number of articles published on British political culture and voting patterns in the midst of the Conservative fall from power after 13 years of domination from 1951 to 1964.⁴⁹ The endurance of the Conservative Party during those years was allegedly seen in the light of the working class's deference to their conservatives rulers – seen as their betters and as more able to govern than they were – and the corresponding fall from grace, in 1964, as a rejection of deference. Nordlinger in *The Working-Class Tories. Authority, Deference and Stable Democracy* (1967) started with Bagehot's own description of deference – which he called “social deference”⁵⁰ – and wondered how it had survived the democratisation process. In his eyes, deference had morphed into the Conservative Party and its elite as “the chief inheritors of the nation's political tradition” who therefore expected to be naturally deferred to by the people. “The contemporary Conservative Party”, he concluded,

⁴⁶ The most damaging article for the concept of deference in those years is the following: Dennis Kavanagh, “The Deferential English: A Comparative Critique”, *Government and Opposition*, July 1971, vol. 6, issue 3, pp. 333-60.

⁴⁷ Alan Watkins, “The Death of Deference”, *New Statesman*, 9 January 1970.

⁴⁸ See: R. T. McKenzie and A. Silver, *Angels in Marble. Working-Class Conservatives in Urban England 1958-1960*, London: Heinemann, 1968, xi-295 pages & Eric A. Nordlinger, *The Working-Class Tories. Authority, Deference and Stable Democracy*, Worcester and London, Macgibbon & Kee, 1967, 276 pages.

⁴⁹ See especially: Raphael Samuel, “The Deference Voter”, *New Left Review*, 1/1, January-February 1960, pp. 9-13; S. M. Lipset, “Must Tories always Triumph?”, *Socialist Commentary*, November 1960, pp. 10-4; Crossman, Richard, “Introduction” in : Walter Bagehot, *The English Constitution, op.cit.*, pp. 1-57; Frank Parkin, “Working-Class Conservatives: A Theory of Political Deviance”, *The British Journal of Sociology*, 1967, Vol. 18, pp. 278-290.

⁵⁰ Eric A. Nordlinger, *The Working-Class Tories. Authority, Deference and Stable Democracy, op.cit.*, pp. 34-5.

“is itself structured in accordance with the political culture’s two characteristic features – particularly sharp hierarchical authority relations and social deference”⁵¹. His study, which surveyed voting working-class behaviours in England, showed that certain types of jobs and certain parts of the country harboured strong working-class Tories who should, in all political logic, have voted Labour. For Nordlinger, conservative values were more important than political ideas for such sections of society and belief in the stability of the edifice as a whole, meant voting Tory. For MacKenzie and Silver, who worked on Greater London in *Angels in Marble: Working-Class Conservatives in Urban England 1958-1960*, the link between the upper-class and working-class Tories kept the party together for the benefit of all, as Conservative governments were trusted to govern properly by the deferential grassroots. “British political and social culture”, the authors write, “has acted directly upon both the Conservative elite and large parts of the working class, disposing the one to promulgate and the other to accept doctrines and policies which have continued to nourish working class Conservatism”.⁵²

The problem with these studies is that they did not explain why the Conservatives had lost power in 1964, why the rest of the Tories (the middle-class ones especially) were also deferential, why a certain number of Labour were deferential to their political system without voting Conservative, and why deference was supposed to have collapsed. Voting behaviours were not necessarily linked to class interests and associating “social deference” with working-class Tories was a non-started, rather than an explanation for why deference persisted or not in society. For one thing, referring to “social deference” was misleading as well as using Bagehot’s definition of deference as a definite explanation of the term, as was explained in chapter 3. By dissociating “social” deference from political deference, such writers were not seeing that such a Manichean distinction hid the question of the link between social mores and political constitution away. The real difficulty to identify was how the deferential nature of the English had been linked to its capacity to generate stable institutions, and this was not reserved to the electorate of one party or to one class only.

Referring to “social deference” had an unmistakable Marxist flavour based on the assumption that society was hierarchical and polarized between the elite and “the rest”. It led to other types of mistakes such as Parkin’s belief that “large segments of the British working class express the moral commitment to many of the dominant class symbols and institutions

⁵¹ *Ibid.*, p. 43.

⁵² R. T. MacKenzie and A. Silver, *Angels in Marble. Working-Class Conservatives in Urban England 1958-1960*, *op. cit.*, p. 252.

which sanction inequality”⁵³. Such a view considered that the lower classes were manipulated by their rulers to irrationally defer to power out of custom and respect for the antiquarian constitution. This analysis was faulty, over-simplified, and still did not give clues as to why the Labour Party was returned to power in 1964 and remained in power for six years nor as to why, for example, Churchill had not been returned to power in 1945. If the Conservative establishment had been as Machiavellian in their capacity to hold power, they would not have fallen under the scandals of the period and under the feeling that something was rotten in their way of doing politics. Even the clever assertion to escape such criticism that “moral and political rules hold sway not because they are self-evidently ‘right’, but because they are made to seem so by those who wield institutional power”⁵⁴ does not hold in the wake of the Profumo affair when institutional power was unable to cover the story and make it look right. If such ideas had a definite element of truth before 1963, they could no longer be brandished as self-explanatory in the 1970s. Linked to these views was also the belief that because of the period of affluence, society had become more middle-class and more prone to vote conservative to protect their lifestyles. However, in *The New Statesman*, a few months before the general election which would see the return of the Conservatives under Heath in June 1970, Alan Watkins declared that “The Death of Deference” was a good thing because the growing middle-classes far from being deferentially conservative would be “bloody-minded” and practice ‘active dissent’ towards politics and politicians and that it would be healthy for democracy. He concluded that “the death of deference is something that no socialist can deplore. It is after all, part of what socialism is supposed to be about”⁵⁵ which was true enough but did not explain why it was supposed to have died. In the end, deference as a concept ended up being confusing, because no adequate definition about what it was supposed to mean was given and it was used in any way which suited those who used the term. For example, Watkins was mistaken in saying that “deference” was dead, and the changes he was welcoming in society were much more those of a “collective confrontational” response to politics rather than a “consensual and individualistic” way of understanding life in society.⁵⁶ The death of his type of deference was only the demise of irrational deference at the expense of rational deference. By asserting that equality of situation and socialism were what was hoped for the future, he was only proving that rational deference was not dead.

⁵³ Frank Parkin, *Class Inequality and Political Order. Social Stratification in Capitalist and Communist Societies*, London, MacGibbon & Kee, 1971, p. 84.

⁵⁴ *Ibid.*, p. 84.

⁵⁵ Alan Watkins, “The Death of Deference”, *New Statesman*, 9 January 1970, p. 35.

⁵⁶ David Cannadine, *Class in Britain*, op.cit., pp. 167-8.

Alongside such misunderstandings of deference, the most damaging blow to the use of the term – a near fatal one – came from Kavanagh’s 1971 long article “The Deferential English: A Comparative Critique”⁵⁷. The author focused on the use of deference to understand English politics and found, simply, that it had “outlived its usefulness”⁵⁸. Starting unsurprisingly with Bagehot’s description of the English as a deferential society, Kavanagh rightly sees that the problem with deference is not Bagehot’s use of the term, but how what Bagehot wrote about deference was misunderstood or willingly distorted. For Kavanagh, the terminological misuse crystallised an accepted elitist view of British society (in reality, Anglo-British) which was either accepted as socially useful for consensus and stability or rejected as domineering and paternalistic. Using the work of a number of political scientists published in the 1960’s, he denounced the lack of a precise and common definition which would have allowed comparisons based on adequate research.⁵⁹ “It will not be without significance”, he writes, “if we find that researchers into British politics are measuring and talking about differing phenomena yet continue to maintain that they are locating a property they call deference”.⁶⁰ The main predicament for Kavanagh was that the word had too many meanings – referring to “the power of the monarchy”, “strong leadership” or “political passivity” – and as many consequences – “High status political leaders”, “strong and effective governments”, “working-class Conservatism”, “political socialization”, “stable democracy” – which could not be calculated by any form of reliable data.⁶¹ As a political scientist, Kavanagh had no trust in the concept of deference *per se* and even less so in its capacity to explain the persistence of deference in politics. His conclusion was forthright:

The failure of empirical research to demonstrate the existence of large-scale deference should provoke a reassessment of this aspect of political culture. At present there is a

⁵⁷ Dennis Kavanagh, “The Deferential English: A Comparative Critique”, *Government and Opposition*, July 1971, vol. 6, issue 3, pp. 333-60.

⁵⁸ *Ibid.*, p. 333.

⁵⁹ Kavanagh based his study on the research of the following scholars: Richard Rose and Harvé Mossawir, “Ordinary Individuals in Electoral Situations”, in Richard Rose (ed.), *Policy-Making in Britain*, London, Macmillan, 1960; Eric A. Nordlinger, *The Working-Class Tories. Authority, Deference and Stable Democracy*, *op.cit.*; A. H. Birch, *Representative and Responsible Government: An Essay on the British Constitution*, Toronto, University of Toronto Press, 1964, 252 pages; A. H. Birch, *The British System of Government*, London, Allen and Unwin, 1967, 264 pages; Harry Eckstein, “The British Political System” in: Samuel H. Beer and Adam Ulan (eds), *Patterns of Government: The Major Political Systems of Europe* (1958), New York, Random House, 1965, xvii-780 pages; Gabriel Almond and Sydney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Princeton, PUP, 1963, 562 pages; W. G. Runciman, *Relative Deprivation and Social Justice: a study to social inequality in twentieth-century England*, London, Routledge and Kegan Paul, 1966, xiv-338 pages; R. T. McKenzie and A. Silver, *Angels in Marble. Working-Class Conservatives in Urban England 1958-1960*, *op.cit.*; J. H. Goldthorpe (et al), *The Affluent Worker in the Class Structure*, Cambridge, CUP, 1969, viii-239 pages.

⁶⁰ Dennis Kavanagh, “The Deferential English: A Comparative Critique”, *op.cit.*, p. 337.

⁶¹ *Ibid.*, pp. 336-54.

theory of deference in search of data. It may also be that the abandonment of this concept might result in more fruitful research. The contemporary secularization of English political attitudes – and the growth of a more critical outlook – would seem to deviate from the model suggested by Bagehot and perhaps too readily accepted by his successors.⁶²

Such a verdict was relying far too much on the possibility of explaining English politics in terms of empirical analysis only. It did not explain why the term was still used as self-explanatory to describe the English – even if by then, the term was still used to talk about “the British”, which is much more problematic for other reasons. In view of the long political history of the nation, of the uncodified nature of its constitution, of the continued persistence of hierarchy and of a strong individual strand in the nation, analysing political attitudes to power and political culture was never going to be easily quantifiable anyway. It is the recognition of such a difficulty which makes the study of English political culture – or even any other political culture – a challenge. As Jessop rightly perceived, “much political culture analysis had been concerned only with the link from attitudes to behaviours and has not considered the effects of political structures on people’s attitudes”⁶³. The reality, especially concerning England (less so Britain), is that the link between power and people rests on a historical bond which has shaped them whilst allowing them to evolve. Reducing this to empirical data only runs the risk of losing sight of the greater picture: the organic link between the English and their constitution and their rational deference to their political system, generating individuality, consensus, and stability.

The permanence of deference in sociology

If deference was rejected by political scientists and by those who could make use of it politically, the opposite happened in the field of sociology. Essentially, as early as 1956 and during the 1960’s, a number of thinkers, initially Erving Goffman and Edward Shils, started working on the concept of deference and what it meant in terms of the relations of society to the sacred.⁶⁴ Their work had political ramifications which have been overlooked by political scientists and some historians, especially in view of the hierarchical foundations of the nation and because of the ever present role of the monarch.

⁶² *Ibid.*, p. 360.

⁶³ Bob Jessop, *Traditionalism, Conservatism and British Political Culture* (1974), London, Routledge revivals, 2011, pp. 20-1.

⁶⁴ See: Erving Goffman, “The Nature of Deference and Demeanor”, *American Anthropologist*, 58, 1956, pp. 473-502; Edward Shils, “Deference” (1968) in: *The Constitution of Society*, *op.cit.*, pp. 143-75.

Goffman focused on “ceremonial deference” by which he meant deferring to a superior out of respect – essentially what he meant was voluntary deference (in which irrational and rational deference are not distinct and coexist) of a limited ceremonial form. For him, human interactions were guided by ceremonial deference and it was difficult but essential to be able to evaluate the impact of such deference between people to understand how society really worked. He was aware that such deference was impalpable but yet very much alive in the societies of the 1950’s. Shils’s reflection in the 1960’s went further in the sense that he was wondering why democratic societies which were supposed to rule out deference – precisely because of the levelling of conditions – still kept or created less sophisticated rituals which helped deference to subsist.⁶⁵ He declared: “It is however an open question whether equality or approximate equality is antithetical to rituals of deference. What seems fairly certain is that the relationships of equals can and do at present contain considerable elements of attenuated deference and can indeed not dispense with them”.⁶⁶ Thus, if deference – again, what is voluntary deference – carried on existing in democratic societies it was because there was a need for it in people. More precisely, in Shils’s view, the maintenance of a deferential framework allowed men to have self-worth by looking at something higher than themselves which, at the same time, pulled them towards self-improvement. This was a very strong assertion which meant that life in society had to be considered through the lenses of moral sentiments and not only through political demands for equality. It also opened up new territories of research as to how social recognition and self-respect were perhaps more important to citizens than political decisions taken by the state. Shils’s work cut through a number of false distinctions which cast a shadow on the understanding of English deference: firstly, what he writes does not concern any political party, meaning that the desire for consideration, honour, and deference were not confined to the conservative electorate as some British political scientists explained at the time; secondly, he asserts that it was “through class consciousness that deference strata are formed”⁶⁷, meaning that desire for recognition worked in a given hierarchical context and that desire for recognition created each level of the strata (the upper middle-classes looking up to the aristocracy and down on the middle classes and so on); thirdly, he states that deference was “a need”, meaning that any attempt to get rid of it artificially would lead to a form of recreation

⁶⁵ In 2000, the French journal *Communications*, published a number of articles on deference and translated as well as analysed Shils’ 1968 article. See: “La Déference”, *Communications*, n°69, 2000, 268 pages.

⁶⁶ Edward Shils, “Deference” (1968) in: *The Constitution of Society, op.cit.*, p. 159.

⁶⁷ *Ibid.*, p. 169.

of this source for social distinction and self-worth. Shils's powerful narrative is based on the following belief:

To grant or accord deference is also a “need “ of human beings aroused or generated by the process of interaction and by the fact of living in a society which goes beyond the limited radius of face-to-face interaction. Just as they wish to be worthy and to have that worth acknowledged by the deference of other persons, so they also often have a need to live in a social world implanted with worthiness, to acknowledge the embodiments of that worth and to derogate those who are unworthy.⁶⁸

Thus, whatever their position in life, men were to recreate, in one way or another, the possibility of giving deference and of feeling recognised according to their own hierarchical scale. So, even when taking an example related to the context rejecting class structure, this distinction works: the new rockers of the 1960s, such as the Beatles, rejected deference to the system of values and the music of their parents but they gave deference to the American blues and rock singers of the 1950's and got great recognition and self-worth out of it within their circles, creating their deference strata within such a group. Fame and fortune allowed them to accede to precisely the same class, with the same privileges that they had sought to undermine.

The problem with Shils's explanation is that he was talking about all human beings and not making any distinctions between nations. The reasons why the English are especially deferential is that they have founded their constitution on a historic disposition for self-reliance, which came from a long tradition of defending their liberty, generally taken on and defended by the aristocracy against the monarch (until 1688). Therefore, Shils really elucidates why there can be a human global desire for deference – much more a form of recognition for others and oneself in this sense. Nevertheless, he does give some clues as to why political deference was so important in England. The “need” of the nation to defer to their rulers as their better selves is precisely because they reflect a better version of themselves. Such a need to defer extends to the constitution for its worthiness taking root in its link with the past and to the monarchy because of its near sacredness. Hence the reason why elements of deference still dominated interactions between people in democratic Britain.

Analysing British politics means looking into the behaviour and the mores of the nation and how the relation between ruler and ruled makes one feel about oneself and attitudes to power. In a British society which was changing radically from pre-war England, the attitudes and the surviving political customs of the nation – as we are about to discuss

⁶⁸ *Ibid.*, pp. 144-5.

concerning the coronation of 1953 – were clues into how deference persisted in terms of political culture.

In an article published a year after Kavanagh's, John Ray attempted to measure political deference in Australia – precisely to see if there was any in a country founded on egalitarian premises.⁶⁹ Ray's analysis took into consideration the criticism on "the variety of meanings assigned to the term and the poor operationalizations of any of these meanings in previous empirical research"⁷⁰ and used the research published on deference in the 1960s. Staying out of the difficulties of definition surrounding the term and focusing only on the idea of deference as respect for a ruler, Ray decided to use a set of twelve items on a scale reflecting deference or anti-deference. He focused essentially on "the competence of leaders, hereditary breeding and equalitarianism"⁷¹. The results did show clearly that deference did exist in an egalitarian society – what we would call egalitarian deference based on the idea of a common starting ground for all.⁷² Ray then refined his measurement approach to try and find justifications for such deference in Australians who were less prone than the English to be aware of such deference.⁷³ The conclusions of his experiment are rather useful – they have been disregarded as a tool to compare deference on an international scale – and validate Shils's belief of a "need" to defer. "It is quite clear then", concludes Ray,

that deference cannot now be viewed as simply a particular instance of attitude to authority in the political field. It is a quite separate determinant of voting behaviour in its own right. Deferentials defer not because of their attitude to authority but because of their beliefs about the causes and efficacy of social position. They are not browbeaten people.⁷⁴

Flying in the face of rational logic, Australia has repeatedly rejected the possibility of becoming a republic (along with Canada and New Zealand). Such an analysis, along with Shils's sociological theory, expanded the possibilities of explaining the links between rulers and ruled and between people in general. Self-worth – deference to the self – in democratic

⁶⁹ John Ray, "The Measurement of Political Deference – Some Australian Data", *British Journal of Political Science*, vol. 2, issue 2, April 1972, pp. 244-51.

⁷⁰ *Ibid.*, p. 245.

⁷¹ *Ibid.*, p. 246.

⁷² *Ibid.*, p. 247.

⁷³ In an article written in 1960, two academics warned of the difficulties in research interviews of not taking into account the social relationship created between the interviewer and the interviewed in terms of class and how deference (here voluntary deference) could have implications in gathering data, including in nations in which equality was a starting point. John Ray does not take into account this problem in his own research in Australia. See: Gerhard E. Lenski and John C. Leggett, "Class, Caste, and Deference in the Research Interview", *American Journal of Sociology*, vol. 65, n°5, March 1960, pp. 463-7.

⁷⁴ John Ray, "The Measurement of Political Deference – Some Australian Data", *British Journal of Political Science*, *op.cit.*, p. 251.

societies was important but it went along with a necessary deference to a figure of power, not out of submission but out of usefulness. The political culture of a given people, founded on the past of the nation, was another variable which established strong hierarchies, or none, but, whatever the starting point, a type of hierarchy between ruler and ruled would be set up. If Shils's conclusions were right, anybody – even any newcomer in a given political society – would defer to power on those grounds.⁷⁵ The only variable would be the starting point of society, either hierarchical or egalitarian, but whether soft or rigid, some form of hierarchy would exist. Ray and Shils give a clue as to why hierarchy is reconstructed in democratic societies which have rejected institutional inequalities. It is a paradox but political equality only is not enough: people seem to need a social and hierarchical canvas on which to defer out of belief that such deference will be inherently useful to the stability of their institutions and to themselves by giving them self-worth. This is also an explanation which is rejected by radical politicians as contrary to their egalitarian beliefs.

Thus, irrational deference very much disappeared post-WWII in England, essentially because subordination could no longer be submission, but rational deference to power survived, along with a looser social hierarchy, out of utility and respect for worthy rulers. Therefore to keep power, politicians needed to be worthy of being deferred to and recognize that their actions had consequences on the level of deference given back to them or to their party – whether on the right or on the left of the political spectrum.

Talking about the end of deference starting from the end of the 1960s was, at best, mistaken, and at worst, risky because it instilled the belief that disregarding social and political conventions – which helped to fix distinctions – was now acceptable. The opposite was correct: deference by politicians to the task they had been elected to, by people who deferred to them, was even more essential in a democratic society with a loosened hierarchy than in an undemocratic society which had imposed a hierarchical caste. If social perceptions of class were certainly much diminished in the 1960's, what had not diminished was the role of the structure to generate commitment to political values of stability, civility and continuity and of people's desire for them. In this sense, the monarchy was still performing an essential role as the great upholder of social hierarchy and the monarch became, perhaps even more so than ever before, the natural figure to whom to rationally defer to.

⁷⁵ Whether extreme anarchists would defer is another problem because, in their case, it is in their wilful determination and absolute rejection of the state and hierarchy that they end up deferring to their self only. But even anarchists defer within their own group to those they consider worthy of being like themselves.

Reappraising deference to the monarchy

Like other institutions, the post-war monarchy was not safe from the levelling of conditions introduced in the country. As the supreme institution at the top of the hierarchy and as the nucleus in the constitutional system, the monarchy found itself stuck between the new-found desire for transparency (that both TV and tabloids exploited) and the perceived necessity to shield the monarchy behind a secret veil to preserve its magic. The tension between the need to be seen and being overexposed was the great problem of the monarchy in those years as royalty was adjusting to an omnipresent Media. Being seen was a necessity; being overexposed was dangerous for the future of the monarchy in a democratic setting. Finding the right balance was what George VI, but even more so, his daughter Elizabeth, were faced with. The right balance meant a monarchy which corresponded to its people and not necessarily “the bicycle monarchies” of Northern European countries. The second problem, as unquestioned irrational deference was very much on the wane, was how to rely on rational deference for an institution which could be ruined by scrutiny.

In a democratic social state, the continuation of the monarchy was wholly linked to voluntary deference. George V had been most aware of this fact, protecting the monarchy at all cost (even to the extent of sacrificing his favourite cousin, the Tsar). His second son, George VI, even though he was not supposed to have become King, was brought to understand the full use of deference as soon as his own public royal wedding in 1923. The union came at the right time after WWI and with the daughter of a minor Scottish aristocrat, pulling the monarchy firmly away from its German roots and back into British soil. It was a grand occasion for a second son – the equivalent of a present-day Prince Harry – which was stage-managed to generate deference. Such a public royal wedding was still a novelty in those days; the celebration took place in Westminster Abbey, the place where monarchs are crowned, and sufficiently big to welcome a great number of guests. People were encouraged to partake in the royal moment through street processions and decorations. In effect, it was a modern publicity stunt draped in the attires of the past. In the words of Cannadine, this was “a matter of creativity, as new-old royal ceremonials were invented to augment the ‘traditional’ dramatic representations of the social hierarchy”.⁷⁶ From then on, the monarchy would have no choice but to rely on such ceremonials in a much more regular way than previously.

The role played by George VI throughout his life but especially after the abdication crisis of 1936 and during WWII was practically faultless. This was “a truly reluctant

⁷⁶ David Cannadine, *Class in Britain, op.cit.*, p. 141.

monarch”⁷⁷, a private man who had never wanted to bear the Crown, who had a strong stammer, who was forced to take on a public role left upon him by an older self-indulgent brother, and who had to accomplish the miracle of transferring the sacred onto his own person. This was no small feat in view of the man, the situation and the context, but to all intents and purposes, George VI succeeded in doing so. Among his greatest assets were certainly his close-knit and loving family and the fact that he was genuine. Once on the throne, the King, as prudent as his father had done, followed the bagehotian precepts to the letter and made certain that deference to the monarchy would be given because of his personal conduct. In his biography of the King, Wheeler-Bennett notes,

To all Bagehot’s principles of Monarchy—its necessary dignity, its social value and its essential morality—Prince Albert [George VI] dedicated himself with a solemn rectitude and an upright morality. He believed, as did his father, that the Crown must of necessity represent all that was most straightforward in the national character, that the Sovereign must set an example to his people of devotion to duty and service to the State, and that, in relation to his Ministers, he must closely adhere to—and never abandon—the three inalienable rights of the King in a constitutional monarchy : the right to be consulted, the right to encourage and the right to warn.⁷⁸

In effect, such behaviour was to be very useful at the time of the war when he decided to remain in London with his people and when, along with Churchill’s rhetoric, he used the power of being seen to rouse spirits for a common cause.

It is also the type of behaviour which allowed the passing of the Empire and the rise of the Commonwealth of Nations. Most of the former dependences of the British Empire which became independent in the course of the twentieth century chose to retain a link with Britain and its Crown through a voluntary association – even some countries for whom independence had been difficult to achieve, such as India. Remarkably, given that some became republics, the Crown became the formal link between those nations as the symbol of a shared and common past. Unlike the European project which set nations together through the signing of treaties and kept them bound by law, the Commonwealth was suited to the nature of the English in its loosely voluntary organised gathering around the figure of the Crown. The Commonwealth was not a rationalist project framed by judicial oversight in order to become a super-state; rather, it had grown out of the Empire as a way of maintaining a link between people who wanted it and who felt strongly about their common history. The Commonwealth, summarizes Bogdanor, “was powerfully buttressed by informal links and in particular by the

⁷⁷ Kingsley Martin, *The Crown and the Establishment*, *op.cit.*, p. 115.

⁷⁸ John W. Wheeler-Bennett, *King George VI : His Life and Reign*, Londres, Macmillan & Co Ltd, 1958, p.132.

existence of a common political culture which gave rise to common interests and ideals”.⁷⁹ deference to the Crown was part of such a political culture and the new immigrants to the country who arrived post-WWII from the Commonwealth were often as attached as the English to an institution they revered precisely because of its own link with their national past.

If pre-WWII, the Crown united the members of the Commonwealth (the former white dominions) with a single citizenship common to all, post-WWII, the situation became more complicated with new independent states (non-white dominions), some of which became republics such as India in 1949 and which wanted to determine their own nationality laws. To find a solution to this matter, the 1948 British Nationality Act conferred British citizenship on all the citizens of the Commonwealth which allowed them to come and work in the UK along with their families, whilst allowing the countries of the Commonwealth to decide their own national laws for themselves.⁸⁰ This meant that the “Crown-as-Executive” was replaced by the figure of the “Crown-as-Monarch” to be the new link between the post-war Commonwealth and all the citizens of the Commonwealth.⁸¹ This was a remarkable way of bending the notion of the Crown but the only possibility to make such a loose diversity of countries, regimes, peoples and traditions fit with the idea of a multicultural Commonwealth linked by the sovereign. Thus, the individual figure of the sovereign personified the Commonwealth and allowed the transition from dominions, to self-governing dominions, to fully independent states throughout the twentieth century. Clearly, the shift from the Empire to the Commonwealth of Nations was not peaceful – especially not in India or in Eire (since 1937 and, after 1948, the Irish Republic) – but when Britain declared war on Germany in 1939, most of the countries of the Commonwealth felt compelled to do so at the same time (except for Eire which remained neutral and India which was forced to do so as a colony).⁸²

The personal link between the monarch and the Commonwealth was made clear at the London Conference of 1949 when George VI was made Head of the Commonwealth. The title, which is not hereditary, was also given to Elizabeth II in 1952, but the title is only

⁷⁹ Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, p. 248.

⁸⁰ The Commonwealth Immigrants Act (1962) restricted immigration to those who could prove that either they, their parents or grandparents had been born in Britain. The 1971 Immigration Act further restricted immigration as Commonwealth citizens lost their automatic right to remain in the UK and faced the same restrictions as other nationalities – they had to live and work for five years in the UK.

⁸¹ On this separation between “Crown-as-Executive” and “Crown-as-Monarch”, see: Sir William Wade, “The Crown, Ministers and Officials: Legal Status and Liability”, in: Maurice Sunkin and Sebastian Payne (eds), *The Nature of the Crown: A Legal and Political Analysis*, Oxford, Oxford University Press, 1999, p. 26.

⁸² Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, p. 249.

conferred through the consent of the countries of the Commonwealth.⁸³ For all these reasons, the Commonwealth is an improbable structure which is rationally deferred to primarily because of the person of the sovereign. Shils' s sociological explanation of deference as a "need" in search of a symbolic expression tends to be confirmed by the modern Commonwealth – which is now even open to countries with no former past with the Crown. "Deference, which is basically a response to charisma", sums up Shils, "is only a matter of opinion, but it is an opinion with profound motivation and a response to profound needs in the grantor and in the recipient of deference".⁸⁴ Such deference can conveniently find its expression in the monarch.

One of the reasons why the sovereign as an individual could generate such deference and so much affection was also because the Coronation conferred upon his person a sacredness that few could summon but also, surprisingly, a humanity which allowed people to be touched by the sacred and, in return, defer to it. What the reign of Elizabeth has shown is that "demystification as mystification"⁸⁵ – in effect, rational deference – is as strong as the sacredness of the monarch. Considering the monarchy as only a source of traditional irrational deference *à la* Bagehot, has got the great disadvantage of putting the monarchy in a box – "an alibi for not bothering to think about it".⁸⁶ The example of George V showed how the monarchy needed not only to be seen, like in the Victorian period, but also to be seen as acting, in order to maintain the hierarchical order and to mould the newcomers into a class structure bent on generating stability. This was possible because the sovereign was both extraordinary and ordinary, allowing deference to be given on either irrational or rational grounds – a possibility that the new Labour politicians embraced for a large part. Therefore the 1953 coronation, for all its mystical aura, was also a moment to bring people together to an amazing theatrical show celebrating what they had in common in a very ordinary way (street parties, picnics, and mass merriment).

George VI's coronation in 1937 was as powerful as his daughter's in June 1953, but there was one main difference between both: the advent of the television age. Queen Elizabeth's coronation was attended by those who could go to London but viewed by

⁸³ The Royal Titles Act of 1953 confirmed the Queen's titles as "Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith".

⁸⁴ Edward Shils, "Deference", *op. cit.*, p. 175.

⁸⁵ Michael Billig, *Talking of the Royal Family*, London and New York, Routledge, 1992, pp. 72-4.

⁸⁶ Tom Nairn, *The Enchanted Glass: Britain and its Monarchy*, London, Hutchinson Radius, 1988, p. 361.

millions, including the citizens of “her territories overseas”.⁸⁷ The age of television was to be both a blessing and a curse for the monarchy after the 1950’s, but it was definitely an amplifier of deference at the time of the Coronation of Queen Elizabeth II in 1953. The feudal spectacle of the coronation was a grand occasion to remind the nation of its legendary traditions and was stage managed to have maximum theatrical impact. The eminently Anglican service was a reminder that the title of supreme Governor of the Church of England went along with the role of the sovereign as head of state and that both were inseparable – excluding *de facto* and *de jure* all the other religions of the Kingdom.⁸⁸ The coronation oath itself, according to which the monarch swears to serve the people, was like the rest of the ceremony “lost in a mysterious jargon which delights specialists in heraldry and ecclesiastical tradition” but added to the mysticism of ceremony.⁸⁹

Yet, no sooner had the Crown been set on Elizabeth’s head that some timid criticism was heard of the coronation being “more purely national, more aristocratic, more exclusive, more Anglican, more medieval, than ever before”⁹⁰. The cost was also denounced the day after the coronation in a very amusing cartoon by David Low published in *The Guardian*, depicting a hangovered nation, union jacks and bunting in disarray, having to meet the cost of a “£100,000,000 spree”.⁹¹ After a short period came gossip about the state of the Queen’s marriage as her husband left on a world tour on his own in 1956. Then, in 1957, came criticism of the Queen herself for her old-fashioned pronunciation – considered to be “a pain in the neck”⁹² – and what was seen as her inability to connect with her people. The disparaging comments were all the more hurtful as they were written by John Grigg – a peer who had disclaimed his title – who felt that adoration and irrational deference were contrary to the period. In a piece on “The Monarch Today”, Grigg, who was editor of the *National and English Review* in 1953, remembered the Coronation having taken place in “an atmosphere compounded of sycophancy and hypocrisy”⁹³. To his mind, the society of the 1950s had a dangerous blindness or even an incomprehensible propensity to be taken in by such an irrational cult of royalty. Explaining himself a few years later, Grigg, affirmed, “The British

⁸⁷ Around 300 million people viewed the coronation. See: Dr Eliza Filby, “Queen Elizabeth’s Coronation: what we can learn from 1953”, *The Telegraph*, 30 May 2013, <http://www.telegraph.co.uk/news/uknews/queen-elizabeth-II/10089421/Queen-Elizabeths-Coronation-what-we-can-learn-from-1953.html>, accessed 14 February 2017.

⁸⁸ See: Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, p. 215.

⁸⁹ Kingsley Martin, *The Crown and the Establishment*, *op.cit.*, p. 118.

⁹⁰ *Ibid.*, p. 121.

⁹¹ David Law, “Morning After”, *The Guardian*, 3 June 1953.

⁹² John Grigg, “A summer storm”, in: Jeremy Murray-Brown (ed.), *The Monarchy and its Future*, *op.cit.*, p. 48.

⁹³ *Ibid.*, p. 43.

Monarchy has survived because it is not a sacred institution, but one which depends, like every other British institution, upon popular approval. Someone had to re-assert the traditional principle that our sovereigns are not above criticism, and that task happened to fall to me”.⁹⁴ If Grigg was still a lonely voice at the end of the 1950’s, clearly the social and political changes in the country were to have an equivalent impact on the shedding of irrational deference given to the monarchy less than ten years after. Let it be noted that those who criticised did so not to reject the monarchy but because they felt that it should become as transparent in its way of working as other institutions of the state. To do so, the Queen needed to let go of the old-fashioned entourage which advised her. To be able to give rational deference to the Crown, one needed to respect it for what it was and for what it did for the nation. The monarchy could no longer shroud itself in secrecy, believing that secrecy added to its aura, because such secrecy was now perceived as a way of hiding ways of doing which were regarded as suspicious in a democracy. Grigg was strongly attacked for his views in the press and privately, but his intention was to get the monarchy to change for its own good. In 1969, in a collective work published under the title *The Monarchy and its Future* – to which Grigg also contributed – differing opinions were expressed but most were adamant that to have a future, the monarchy would have to move out of a comfort zone.⁹⁵ “We should have the same right to scrutinize the machinery of the monarchy that we exercise over government machinery”, explained Clive Irving, “The palace must be prepared to open up its books, to allow to see not only how much value we get out of the monarchy but also to make sure it applies to itself the same standards which it urges on all the other representatives of this country”⁹⁶.

The monarchy was no longer immune to criticism and was stuck in the position of not being able to answer back, so as not to be dragged into the political and social arena. This was all the more difficult as twice, in 1957 and in 1963, the Queen was forced to choose the Prime Ministers getting her into murky political waters. The appointment of Lord Home in 1963, much more than Macmillan in 1957, did generate controversy within the Conservative Party to the extent that in *The Sunday Times*, William Rees-Mogg wrote that the Tories “ceased to be gentlemen, without becoming democrats”⁹⁷. As explained above, the Queen was heavily influenced by a sick Macmillan and did behave constitutionally, but she was pulled down to

⁹⁴ *Ibid.*, p. 52.

⁹⁵ Jeremy Murray-Brown (ed.), *The Monarchy and its Future*, *op.cit.*

⁹⁶ Irving, Clive, “The Palace and the Image Machine”, in: *Ibid.*, pp.108-9.

⁹⁷ William Rees-Moggs, *Sunday Times*, 13 October 1963, cited in: Vernon Bogdanor, *The Monarchy and the Constitution*, *op.cit.*, p. 98.

the level of party politics for appointing an aristocratic figure who had less widespread support than Butler. By the middle of the 1960's, as a wave of satire swept the country, the Queen and her husband found themselves more often than not either lampooned in cartoons or even in amusing sketches.⁹⁸ The very first of those, in the celebrated *That What The Week That Was* in March 1963, imagined the Royal ship sinking with the commentary ridiculing the flattering tone of royal commentators, saying “And now the Queen smiling radiantly, is swimming for dear life. Her Majesty is wearing a silk ensemble in canary yellow”⁹⁹. This was discourteous but it was also corrosive and along with cartoons in the press, essays and articles on the usefulness of the monarchy, soon the mood was much more disrespectful at the end of the 1960s. In a piece entitled “Our Own Kings”, Colin Macinnes summed up what he saw as the problem, “some see the monarchy as a helpful force, creating stability, binding us together [...]. I am bound to say I see it as having a totally opposite effect: of preserving dangerous illusions of grandeur, and of being one factor among many that inhibits national revival”.¹⁰⁰ It was one thing having a modern monarchy, it was another accepting an outdated one which favoured too openly its own class. But Macinnes was mistaken in such an assertion as there was another side to the monarchy – its ordinariness – which was nearly as important as its grandeur.

The direct criticism of the monarchy was matched by the many ways in which it lost its aura throughout the reign of Elizabeth II. The stage-managed royal spectacles attracted as much rational deference from the upper middle class and middle classes who could revel in the hierarchical order, and expect to climb the social ladder, as from the lower classes, who focused on what they could relate to. Being rationally deferential to the monarchy in the twentieth century meant that the irrational magic of it had died away. Nobody described this better than Richard Hoggart in *The Uses of Literacy* (1957):

[The working classes] are not royalists by principle. Nor do most harbour resentment against it; they have little heat. They either ignore it or, if they are interested, the interest is for what can be translated into the personal. Since they are “personalists” and

⁹⁸ According to Kingsley Martin, the first cartoon in “a century” to lampoon the monarchy, was a caricature by Cummings in *The Spectator*, 19 January 1962, poking fun at Lord Snowdon (Princess Margaret’s husband) carrying on his career as a photographer for the Conservative *Sunday Times* (putting the Crown in an odd position of being seen as supporting the Conservatives). See: Kingsley Martin, *The Crown and the Establishment*, *op. cit.*, p. 133.

⁹⁹ “The Queen’s Departure”, *That Was The Week That Was*, March 1963, Season 1, Episode 17. Cited in: Sarah Bradford, *Queen Elizabeth II: Her life in Our Times*, New York, Viking, 2011, p. 133.

¹⁰⁰ Colin Macinnes, “Our Own Kings”, in: Jeremy Murray-Brown (ed.), *The Monarchy and its Future*, *op.cit.*, p. 148.

dramatists, they are more interested in a few individual members of the Royal Family than in the less colourful figures of parliamentary government.¹⁰¹

This was the reason why the monarchy was still useful because, far from hiding the efficient power of the Prime Minister and Cabinet, it diverted attention to trivial matters and still succeeded in generating rational deference. The demystification of the monarchy which took place in the 1960's, which partook in the demise of irrational deference, allowed to rationally personalize the link between the sovereign and the people by making the monarch human. This was a continuation of the work begun by George V.

Paradoxically, even if the magic tricks were revealed, the Royals still kept their allure, but no longer their sacredness. Shils's explanation of the "need" to defer comes in to explain how if the elements of sacredness disappear, there still remains a need to defer. In his analysis of the impact of the Royal Family on people, Michael Billig included countless interviews which reveal how such personalization of the monarchy takes places. For example, in several interviews in which working class people remembered being in direct contact with members of the Royal Family, most could only focus on how tired the Queen looked or on how shabby and badly made up the Queen Mother appeared. Suddenly seeing an old woman trying to hide her bald patch with far too much make-up generated the same type of affection that one would give an old aunt or grandmother doing her best to do her duty. In stifling irrational deference, it built sympathy and kept a lower type of deference on rational grounds. Billig makes plain that "ordinariness was unveiled but the magic of the occasion had been heightened".¹⁰² There was a narrow line to walk, however, between being more open to scrutiny to allow rational deference and a type of familiarity which would breed contempt. The line was crossed with the BBC/ITV documentary *Royal Family*, now impossible to find.

In 1968, a new younger press secretary to the monarchy, the Australian William Heseltine, thought that alongside the preparations for the investiture of Prince Charles as Prince of Wales on 1 June 1969, one of the ways of reviving the image of the Crown would be to allow the Royals to be filmed for nearly a year in their "natural habitat". The documentary, which was first aired on the 21 June 1969 and was watched by 350 million people worldwide, was an oddity. For those who viewed it, the Queen was seen performing her official duties alongside her family life in a way which transformed the attitude to the media coverage of the monarchy in the future. It was not all for the best. Some, like David

¹⁰¹ Richard Hoggart, *The Uses of Literacy: Changing Patterns in English Mass Culture*, London, Chatto and Windus, 1957, p. 92.

¹⁰² Michael Billig, *Talking of the Royal Family*, *op.cit.*, p. 72.

Attenborough, warned that the documentary killed “the monarchy by breaking an anthropological taboo”.¹⁰³ Hearing the Queen complain about the oiliness of her husband’s dressing for the salad during the famous Prince Philip barbecue scene – one of the few clips still available – was unreal. Unlike seeing a Royal on show, fully made up for duty, this was seeing the Royals as they were – that is, as human beings performing human actions and no longer ordinary human beings performing mystical or extraordinary deeds. The fact that the documentary has been locked away by the monarchy and not since seen, apart from some cuts carefully used in other more traditional documentaries, is proof of its toxic power. Nowadays, it would just be the rendering of a period in which the monarchy was trying to strike the right balance with the media but its unavailability is the sign that it went further than expected in exposing the monarchy and endangering even voluntary deference. Heseltine still disagrees:

In later years, when “lack of deference” became a major issue, then a lot of people were prepared to point the finger and say this was “all Heseltine’s fault” and that we shouldn’t have shown *Royal Family*. I thought then and I think now that was a nonsensical argument because you couldn’t go into the seventies ignoring television as they’d done in the fifties and sixties.¹⁰⁴

In reality, *Royal Family* was a landmark in how the monarchy was to be treated from then on. It came along nearly at the same time as the monarchy was queried for its cost. As other political institutions, the monarchy had to have a value for money because the passing of irrational deference demanded lack of polite pretence regarding its costs. It had a straight value in keeping people happy, as a form of entertainment value for some and something to still look up to for others. The question of the exemption from income tax, cost of the civil list and grants-in-aid was to allow parliamentary interference in the Royal expenditure as well as media interference from the 1970s onwards. Attacked on many fronts, the Elizabethan monarchy was compelled to become much more open and more transparent in its costs and its expenditures, as well as compelled to find a new role – a charitable one especially – to hold on to its shine. It had to adjust, even more so than in the pre-WWII period, into a functional socio-political institution which could be audited for its value. As a whole, if republican comments did rise in those years, none were ever sufficiently vocal to consider toppling the monarchy. As long as the monarchy performed the useful function of generating rational deference through its blameless conduct and performing of traditional duties, it would have a

¹⁰³ David Attenborough cited in Robert Hardman, *Our Queen* (2011), London, Arrow Books, 2012, p. 213.

¹⁰⁴ William Heseltine cited in Robert Hardman, in: *Ibid*, p. 213.

use, but if it ever lost sight of its perfunctory role in a popular show at the mercy of its viewers, it would be in danger.¹⁰⁵

The modernisation of the judiciary

The monarchy was not the only institution to see changes in the 1960s. As politicians and parties in power took on more control, using the uncodified nature of the constitution to expand the power of the executive as the expense of civil liberties, the judiciary slowly defined a new role for itself. If the government was to be checked by the legislative and to act only through the legislation enacted by Parliament, then, the two houses of Parliament had to have enough independence to be able to perform such a function. The reality was that Parliament was – and still is – dominated by political parties which kept a check on their MPs, stifling their independence of action and their ability to question government. The House of Lords was no longer in a position to prevent the government from passing the laws it saw fit to expand its power. In effect, there were very few safeguards left, apart from deference, to protect the constitution from abuse by the executive. As voluntary deference was now only given to what was worthy, there were dangers that deference itself would no longer play its role of pacifying political discontent and keeping social stability. This is where and when the Victorian constitution started collapsing. Those who recognized what was happening, who could do something about it, and who started to consider themselves as the guardians of the liberty ingrained in the uncodified constitution, were the judges.¹⁰⁶

After WWII, a number of judges came to question the traditional Diceyan vision of the constitution which extolled the virtues of the balance kept between the three pillars of the system, sovereignty of Parliament, the rule of law and the conventions of Parliament. What Lord Hewart had already identified in the inter-war period as abuses of discretionary powers on the part of the executive¹⁰⁷ became much more obvious in the post-war period, when the intervention of the state in the economy and in the lives of people created a welfare state. As seen above, the legislation passed to allow the state to take on more powers to protect the people and to provide for them post-WWII, had consequences on the rule of law. Slowly but

¹⁰⁵ With the advantage of hindsight, *Royal Family* was highbrow in comparison with the truly dire *It's a Royal Knockout* of June 1987 – watched by 18 million viewers – devised by Prince Edward against the wishes of his mother, and including the participation of Princess Anne, Prince Andrew and his wife, the Duchess of York, in a humiliating and ridiculous spectacle, albeit for charity. See: Daniel Roseman, “Was this the day when royalty lost the plot?”, *The Independent*, 20 April 1996. <http://www.independent.co.uk/news/uk/home-news/was-this-the-day-when-royalty-lost-the-plot-1305932.html>, accessed 7 August 2017.

¹⁰⁶ See: Lord Denning, *Freedom under the Law* (1947), London, Stevens and Sons, 1949, p. 126.

¹⁰⁷ See: Lord Hewart of Bury, *The New Despotism*, *op.cit.*

surely, some judges saw that the Diceyan refusal to protect the common law system and the separation between public and private law showed signs of unsuitability to the political developments of the day. Liberal practices were only as good as the people who believed in them and only worked in stable conditions when the state was not at war, as the 1917 *R. v Halliday, ex parte Zadig* case had shown.

Dicey believed that the judiciary's interpretation of the laws enacted by Parliament was enough to protect the rule of law from an increasingly sovereign Parliament, i.e. a strong executive. But, clearly, throughout the first half of the twentieth century, in the words of Loughlin, "the principle of the 'rule of law' extolled by Dicey had come to mean 'rule by such law as Parliament enacts'".¹⁰⁸ There were very few means of holding government to account in such a system, apart from the control of Parliament or, every few years, general elections. A system of administrative law, distinct from private law, was needed to check and regulate the use of the powers of the state and also to recognize basic human rights. The main problem was that the English constitution was a political and historical constitution bent on defending fundamental liberties which were inferred from the interpretation of judges. Therefore, the judges had to set up a legal constitution – through their interpretation of the laws – which would counteract the perverse effects of the abuse of power of the political. This had tremendous consequences as it meant that the English historical and political constitution founded on a number of principles and sources – including some difficult to pinpoint such as the rule of law, the royal prerogative, or conventions – could eventually be checked for being properly exercised, not exceeded, nor abused. This meant that the judges would eventually have to explicitly state what difficult expressions such as "rule of law" encompassed.¹⁰⁹ It also meant that the judges would not only interpret the law to infer rights out of legislation but would also be themselves, the actors of a constitutional transformation. This was no less than the death of Bagehot's and Dicey's Victorian understanding of the English constitution. Paradoxically, it was because irrational deference was no longer given to the Victorian interpretation of the constitution that the role of the judiciary rose, with the goal of maintaining rational deference for the system. The judges have often seen themselves as the custodians of the constitution because they are the only safeguard against the ever-expanding power of the executive but, maybe more than this role, it is through their constant reminder that the rule of law is fundamental and came from the seventeenth century, that they have

¹⁰⁸ Martin Loughlin, *The British Constitution. A Very Short Introduction*, *op.cit.*, p. 93.

¹⁰⁹ The Rule of Law was recognised by statute in the Constitutional Reform Act of 2005 but no clear definition was given leaving it open to the interpretation of the judges – in the time-honoured fashion of evolutions and adjustments to the context and the cases. See: Tom Bingham, *The Rule of Law*, *op.cit.*, pp. 7-8.

allowed the nation to keep faith in their system. In this sense, they generate rational deference to the constitution if they refrain from partisanship.

Judicial attempts to check the executive started in the 1960s through the development of the judicial review, i.e. “seeking a review of the legality of what has been done, or is proposed to be done”¹¹⁰. Legal accountability had not been until this period assembled into a set of principles which were easy to refer to. Through four important cases in the 1960’s, the main principles of what was to become a modern judicial review were considered by the senior Law Lord, Lord Reid, who was a key figure in judicial modernisation. In *Ridge v Baldwin* [1964], *Conway v Rimmer* [1968], *Padfield v. Minister of Agriculture, Fisheries, and Food* [1968] and especially in *Anisminic v Foreign Compensation Commission* [1969], as Tomkins explains, “the law of procedural fairness was reformed, then substantive review and aspects of the relationship between the law and the Crown were reformulated and strengthened [and] the arcane but important area of jurisdictional review was revisited”¹¹¹. Essentially, what these cases did was to allow judicial flexibility for the generations of judges coming who would acknowledge such precedent and have administrative laws checked by the common law courts. Obviously, this was to take some time in a case-law system to be fully achieved – not before the 1980’s, as the following chapter will show – but Lord Reid laid the foundational stone of a legal system which was to supervise the political constitution. From then on, public and private law started being distinguished and, with it, Dicey’s reduced understanding of the rule of law was slowly replaced by a much broader interpretation.

Lord Reid was aware that such a change would mean that the law could also be decided by judges – and no longer only declared by them – and, as a consequence, have repercussions on the principle of the sovereignty of Parliament.¹¹² Ultimately, judicial review – and especially what it has become in the twenty-first century – may conflict with the executive and the legislative. If judges can make the law, how can their own role in policy-making be checked? Such questions were to be asked much later, but they were directly linked to judicial progress in changes to the judicial review in those years. What started with checking administrative power in deference to a political system, which had very few restraints left to hold government to account in the 1960’s, grew into a much more legal system involved in the modernisation of the old constitution. This new role was bolstered by

¹¹⁰ Adam Tomkins, *Public Law, op.cit.*, p. 170.

¹¹¹ *Ibid.*, p. 171.

¹¹² In his lecture “The Judge as Lawmaker” (1972), Lord Reid declared: “We do not believe in fairy tales anymore, so we must accept the fact that for better or worse judges do make law”. Lord Reid, “The judge as law maker”, 1972, 12 JSPTL, p. 22. See also: E. W. Thomas, *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles*, Cambridge, Cambridge University Press, 2005, p. 3.

the United Kingdom legally joining the European Economic Community in 1973. This was another change which took place at the same period which also came to challenge the sovereignty of Parliament, transform the constitution, and raise questions about British deference to a foreign structure.

Chapter 7

The Rejection of Rational Deference (1973-1997)

The debate about constitutional reform came to the forefront in the 1970's because of the consequences of the passing of the European Communities Act of 1972, of a continuing imbalance of power within the institutions of the state for the benefit of the executive, and because the period was rife with economic turmoil. Just as in the midst of the financial crisis of the 1930s when a number of intellectuals such as Laski and the Webbs had considered changing the structure of the system to make it correspond to the necessary social demands of the period, the 1970s saw a number of politicians, lawyers, and intellectuals engage in constitutional issues again.

The economic stagnation of the country forced Harold Wilson, Labour Prime Minister from 1974 to 1976, to apply for a loan from the IMF in 1976 to release pressure on the pound. The reality was that Britain, which had enjoyed an economic bubble from 1955 to 1973, was hit by its structural inability to maintain full employment and to meet rising public costs whilst controlling inflation and the demands of the trade unions. The government was effectively forced to move away from the Keynesian principles which had ruled its economy since 1945. James Callaghan, who replaced Wilson as Labour PM from 1976 to 1979, was the first to curtail public expenditure according to the terms of the IMF loan to the extent that some historians even consider that “Callaghan provided the overture for Thatcherism, pioneering many of her themes [...] and a lot of her social conservatism”¹. In domestic affairs, the inability of several governments since the 1960s to find a compromise with the trade unions over wage and price cuts in nationalized industries led to the infamous crisis of the Winter of Discontent of 1978-9. This was taking place with an international background in

¹ Larry Elliott and Dan Atkinson, *The Age of Insecurity*, London, New York, Verso, 1998, p. 53.

which fixed exchange rates had been ended, damaging the level of the Pound, alongside the oil crisis which had hit the country at the end of 1973. By 1978, Britain reached a level of unemployment of one million, unseen since the 1930s, which paved the way for Thatcher's monetarist revolution in 1979, when the Conservatives won the General Election.

The 1970's were the proof that confidence – in the government by both the people and the markets – was not an empty word. Without confidence, there was no deferential trust, and without deferential trust, the whole constitutional edifice was shaky. As Philip Norton presciently pointed out, deference followed when citizens felt that they were meaningful participants in the political process.² But such a political deference was and is conditional. It is conditional on the effectiveness of government. So long as the citizen believes he or she can trust government and government proves capable of delivering the goods, consent is maintained. Such rational deference was no less than a certain English disposition for self-reliance and freedom that some had exercised well before the Victorian period, as the events of the seventeenth century or even as far back as the barons of the thirteenth century had demonstrated.

In a *Times* article written at the time of the Queen's Silver Jubilee in 1977, entitled "Constitution Under Mounting Attack", the author noted that "Those who work the system have failed by too wide a margin to match by their effects the expectations maintained by the public. When things go as badly as that, blame is not confined to those who work the system, it implicates the system itself"³. What was left of rational deference relied on the ability of government to prove itself worthy of power and, accordingly, of confidence. One of the first to openly question the survival of the English Constitution was the future Lord Scarman, in 1974, when he showed how the common law system was under threat by the type of rights enclosed in the 1948 Universal Declaration of Human Rights and in the European Convention on Human Rights, that the UK had signed in the 1950s – which represented the next step of the British European link (the first being membership to the EEC). The common law was also further questioned by the expectations generated in terms of rights by the advent of the welfare state post-WWII, which were not inferred but stated.⁴ Soon, others such as Lord Hailsham, in his 1976 Dimpleby Lecture, condemned the system with greater force for having

² Philip Norton, *The Constitution in Flux*, *op.cit.*, pp. 24-5.

³ T. J. O. Hickey, "Constitution Under Mounting Attack", *The Times*, Jubilee Britain Supplement, 5 January 1977, p. 1. Also cited in: Philip Norton, *The Constitution in Flux*, *op.cit.*, p. 28.

⁴ Leslie Scarman, *English Law—The New Dimension*, London: Stevens & Sons Ltd., Hamlyn Lectures, Twenty-sixth Series, 1974, xi-88 pages.

become an elective dictatorship.⁵ Such attacks were all the more damaging as they were coming from respected members of the establishment.

Leslie Scarman and Lord Hailsham's lectures pointed out the growing predicament of the 1970s: on the one hand, the legal challenges posed by different models and ways of doing coming from Europe and from the world at large to incorporate or adapt to in British law and, on the other hand, the unchecked supremacy of government along with an increasing lack of faith in it on the part of the people. Such changes were undermining the old constitution as it had worked previously. An imbalance had set in within an archaic mechanism as nothing – neither conventions, nor the customary moderation of the parliamentary system – was able to limit the challenges to the common law system coming from abroad, nor the power of the government undermining legislative sovereignty from within. It was the organisation of power itself which was becoming responsible for undermining trust in politics and without trust there was no deference.

As the uncodified constitution was evolving with such important acts as the European Communities Act of 1972 or the transformation of the judiciary, how would rational deference move along and adapt to an European legal system founded on a different constitutional mentality? What was the use of the specifically English form of rational deference in a much more rationalized system resting on laws or on a global world using the same rules? Would the English adopt a more global form of deference – in Shils's sense – to written constitutions and written rights? Would there be any use of applying, in the time-honoured fashion, one's own self-restrictions with regards to politics or was such a political behaviour less important in a much more rationalised structure in which the law dominated?

Thus, the genealogy of deference takes a new turn in the 1970s as lack of political effectiveness and an inability to generate political confidence gave way to either political apathy or rejection of the system encompassed in the bleak years of the closing of the 1970s and in the demands for constitutional reforms of the 1980's. The rise of Thatcher – herself, an odd case of rational and irrational deference within a same person – was to come along with a reintroduction of Victorian belief in the superiority of the English Constitution. In times of trouble such as WWII or 1979, old forms of irrational deference which had faded away were resurrected to brighten up the future by leaders who knew how to use such a past to their benefit. Such views were challenged by the new Social Democratic Party in 1981, and then by the Liberal Democrats, who fought for constitutional reform on the grounds that the historical

⁵ Lord Hailsham, *Elective dictatorship*, London, British Broadcasting Corporation, Richard Dimbleby lecture 1976, 17 pages.

constitution trapped the nation in an outdated deferential Victorian frame of mind.⁶ For them, the only solution was to resort to a codified constitution which would guarantee the rights of citizens living in a democracy to restore trust in the system.

In fact, two views confronted each other and had been doing so – albeit with greater intensity with the passage of time – since the franchise began to expand: parliamentary sovereignty, on the one hand, and popular sovereignty, on the other. The former relied on rational deference and what had been the traditional ways of working the system (adjustment, incremental moves, hierarchy, and trust); the latter which no longer had faith in the system to secure good governance, focused on equal democratic rights and trusted instead an instrument of government – a written constitution – protected by the law to secure citizenship rights. Such a tension and demands for constitutional reforms would take on more momentum after 1988, when Charter 88 put in writing what a real democratic government could look like.⁷ It was left for the rechristened New Labour Party, post-1995, to fully take on the mantle of constitutional reform in the 1990's and to try and make it its own after its landslide victory of 1997. To borrow Norton's expression the constitution was indeed "in flux"⁸ from 1972 to 1997, and so was rational deference to it.

The advent of rational deference in a European context

After initially refusing to join the European Economic Community along with six founding members in 1957, Britain decided that membership might help the country modernise its flagging economy and, in view of the demise of the former Empire, create new bonds closer to home. The British creation of a European Free Trade Association (EFTA), set up in 1959 as a rival association, was also not as successful as the EEC. Two applications were made and rejected in 1963 and 1967 and it was only well into the 1970's that Edward Heath successfully achieved membership. It is fair to say that the relationship between the UK and the future European Union was set up on a misunderstanding. For the British, membership had been sought for pragmatic reasons, mainly to benefit the economy of the

⁶ The Social Democratic Party was founded in 1981 by four members of the Labour Party (Shirley Williams, David Owen, Roy Jenkins and William Rodgers) who were disillusioned with the very left-wing leadership of Michael Foot. The SDP merged with the lingering Liberals to become the Liberal-Democrats in 1988. One of the Liberal Democrats' main aim was to achieve electoral and constitutional reform and to defend the European membership of the UK.

⁷ For a summary of the ideas and legacy of Charter 88, see the following article: David Erdos, "Charter 88 and the Constitutional Reform Movement: a Retrospective", *Parliamentary Affairs*, 2009; 62 (4), pp. 537-51. <https://doi.org/10.1093/pa/gsp022>, accessed 22 March 2017.

⁸ Philip Norton, *The Constitution in Flux*, *op.cit.*, pp. 24-5.

country, but never to reach the ideal of a fully united Europe seeking closer political integration, even federalism. In the light of the vote in favour of a British exit of the EU in June 2016, it is all too easy to reconstruct this story to show that it was doomed from the start, but there is no denying that major difficulties were present at the outset. General de Gaulle encapsulated the predicament for both the UK and the EEC when he explained that England was “insular”, “maritime”, “linked through her interactions, her markets and her supply lines to the most diverse and often the most distant countries”, and that “she pursues essentially industrial and commercial activities, and only slight agricultural ones”. His conclusion was very straightforward as England had “in all her doings, very marked and very original habits and traditions”.⁹ Whatever other reasons de Gaulle had for vetoing the membership, he recognised that England (he does not say Britain) was not a continental nation. The country’s “habits and her traditions”, by which he meant the mores and the past of England, were at odds with the rest of Europe. England cultivated its differences in such a way that joining the European project would only be a mistake for both, as at the very heart of the EEC project was a transformative vision.

Undeniably, joining the EEC was to have an impact on the country’s public law in a way which was unforeseen by Edward Heath and his cabinet when the European Communities Act was passed in 1972. Some, like the leader of the Labour Party from 1955 to 1963, Hugh Gaitskell, had seen this and had made it very clear in a speech at the Labour Party Conference of 1962, also insisting on the fact Britain had “a different history” and that joining the EEC would “mean the end of Britain as an independent nation state” and “the end of a thousand years of history”.¹⁰ The growing role of judges in the 1970’s was the sign that all was not well with the Victorian constitution, but joining the EEC was to stretch legislative supremacy to its limit as well as further transforming the constitution and voluntary deference to it. Tomkins makes clear that:

the move witnessed in England since 1970, and even more markedly since 1990, from the political to the legal constitution represents one of the most fundamental realignments of the constitutional order since the end of the seventeenth century. Even the emergence of democracy in the early twentieth century – significant through that was – did not rewrite the unwritten constitution to such an extent. The word is much

⁹ Press conference given by General de Gaulle, 14 January 1963, http://www.cvce.eu/obj/press_conference_held_by_general_de_gaulle_14_january_1963-en-5b5d0d35-4266-49bc-b770-b24826858e1f.html, accessed 23 February 2017. The video of the press conference can also be seen at: <http://fresques.ina.fr/de-gaulle/parcours/0004/de-gaulle-et-l-europe.html>, accessed 23 February 2017.

¹⁰ Speech by Hugh Gaitskell against UK membership of the Common Market, 3 October 1962. See: http://www.cvce.eu/content/publication/1999/1/1/05f2996b-000b-4576-8b42-8069033a16f9/publishable_en.pdf, accessed 23 February 2017, p. 7.

over-used but a revolution is happening. The constitution is up for grabs, and it is the judges who are grabbing it.¹¹

Joining the EEC went along with accepting that (European) Community Law would prevail over national law in a way which was difficult to reconcile with the Diceyan principle of the sovereignty of Parliament. Legislative supremacy – that is “what the Queen in Parliament enacts is law”¹² – was made legal by the judges’ self-constrained recognition of such a doctrine (even though the doctrine is in common law and could thus be interpreted and adjusted). Parliamentary sovereignty, the way Dicey had seen it, was fundamental to the English constitution – even more so than the rule of law and the constitutional conventions – because it was in the laws of the land and in the way in which they were done that lay the essence of the system and its people. Nothing was above those laws, and this is why deference was given to a representative system which was supposed to express the character of the nation: debate, moderation, consensus, individualism, and love of liberty (even if the intensity of such terms had changed from the Victorian ear to this one). Of course, what the democratisation process had done in the twentieth century was to create a parliamentary structure dominated by party machines and professional politicians which had themselves transformed deference for the system or even had led to a rejection of it by some. As the 1960’s made clear, the need to supervise the executive had already given rise to a much more assertive judiciary but, what the European Communities Act of 1972 did was to run counter to legislative supremacy. Parliamentary sovereignty was a political description of an English reality which was difficult to understand in any country of the continent for whom popular sovereignty and codified constitutions were the rule. The EEC had been created on a very different structure than the British one and the challenge, after 1972, was to try and reconcile what was in essence, irreconcilable, i.e. two different ways of doing. In such a context, how was hierarchical voluntary rational deference – a vestige of the past – faring?

There are two ways of seeing what happened in 1972, either that the European Communities Act undermined legislative supremacy because of the supremacy of European Laws and the right of their direct enforcement by citizens, or that it did not fully because repealing the 1972 Communities Act was always a possibility – which is what is about to happen after Brexit. Maybe more importantly, the amount of research and analysis published on this matter since 1972 is the proof that parliamentary sovereignty is a principle deeply held by the nation. The construction of the EEC was rationally conceived, based on laws and on

¹¹ Adam Tomkins, *Public Law*, *op.cit.*, p. 23.

¹² Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. xii.

bringing together very different nations on the belief that only the rationality of laws could bind them together first and give them a common political aim later. For the English constitutional tradition, in which rights are inferred and in which the mores and manners of the people agree with their constitution, the EEC rationalist project was (and is) just unfamiliar, not to say literally opposed to their ways of doing.

Much worse, joining the EEC brought in its own set of problems for English rational deference: firstly, because it was difficult for the English to defer to a structure which was foreign and that they could not relate to their history; secondly, because European Community law was a different rationalistic legal system at odds with the common law system but which was to be enforced by the national courts, and, thirdly, because national sovereignty carried on having a meaning for the nation against a supranational structure. It is important to remember, as Tomkins points out, that “since 1 January 1973 there have been two legal systems operating in this country, not one, and the doctrine of the legislative supremacy of statute is a doctrine known to only one of those two systems”¹³. It is the same with rational deference: it is only known in one of these systems – the old English one which had its own set of rules. Failing to see that the English constitution was also dependent on such a character meant that becoming a member of the EEC was never going to be easy. Rational deference was never going to be given to a structure, which as it grew, watered down the decision-making process by introducing majority voting, infiltrated itself into the national structure, whilst not fully compatible with the character of the nation. Nevertheless, the European ways of doing brought with them a great deal of constitutional changes from accepting and making work together two system of laws to the use of nationwide referenda, in which the voice of the people ran counter to that of their representatives in a parliamentary structure.

Which deference was rejected?

Throughout the 1970’s, a number of thinkers carried on working on the concept of deference in the wake of Kavanagh’s attack on it in 1971.¹⁴ Some of the most interesting papers or books were written at the time to try and grapple with the meaning of a concept which, for some, kept on having a role in explaining the interaction of people and power.¹⁵ If

¹³ Adam Tomkins, *Public Law*, *op.cit.*, p. 118.

¹⁴ Dennis Kavanagh, “The Deferential English: A Comparative Critique”, *Government and Opposition*, *op.cit.*, pp. 333-60.

¹⁵ The three main books which came out at the time were: Bob Jessop, *Traditionalism, Conservatism and British Political Culture* (1974), London, Routledge revivals, 2011, 287 pages; David Cresap Moore, *The Politics of*

John Ray produced data to prove that the Australians were deferential to power – even though they did not have the same political hierarchical starting point as the English and not the same reasons to express such deference – he was soon followed by a number of colleagues, some historians, others sociologists, who challenged Kavanagh's findings. Thus, if the 1970s kept on being considered, in the press especially, as the years of the end of an ill-defined “deferential society”, a renewal of the concept was taking place in academia which never fully reached the perception of journalists or writers of the period – nor after. Everything or everybody were still considered as responsible for the end of deference. If Edward Heath had pointed the finger at the corrosive nature of the sketches of *That Was The Week That Was*, the *Financial Times* put the blame on Harold Wilson who had liberalised society and mores by introducing a number of reforms on abortion, divorce, and homosexuality during his first premiership.¹⁶ For the *Financial Times*, social equality had been achieved at the expense of the traditional stabilizing hierarchical class system. A 1976's article's reference to an “almost total abolition of deference”¹⁷ was a another critical way of saying that since the class structure was no longer what it had been, deference could no longer order society and political stability was at stake. The term was brandished as if deference – mostly understood as submissive respect for power – was the reason for the existence of a class culture in the country and that it had been an asset for the country. So, essentially, the *Financial Times* was lamenting the loss of irrational deference to power as if it had been the sole foundation for the class structured and ordered society on which the UK had thrived. This was a myth that Kavanagh, to his credit, had rightly wanted to dispel in 1971: deference, as mentioned above, was not the source of the hierarchical system but a consequence of it. In itself though, this assertion was only partially true as *irrational deference* had most certainly been a cause of the

Deference. A Study of the Mid-Nineteenth Century English Political System, The Harvester Press Limited, 1976, 529 pages; Howard Newby, *The Deferential Worker. A Study of Farm Workers in East Anglia*, Harmondsworth, Penguin Books, 1977, 462 pages.

The following articles (some already mentioned previously) published in the 1970s were as important as the three books mentioned: John Ray, “The Measurement of Political Deference – Some Australian Data”, *British Journal of Political Science*, vol. 2, issue 2, April 1972, pp. 244-251; Howard Newby, “Agricultural Workers in the Class Structure”, *Sociological Review*, vol. XX, 3, 1972, pp.413-39; Bell, Colin and Newby, Howard, “The Sources of Variation in Agricultural Workers' Images of Society”, *Sociological Review*, vol. XXI, 2, 1973, pp. 229-53; Howard Newby, “The Deferential Dialectic”, *Comparative Studies in Society and History*, vol. 17, n°2, April 1975, pp. 139-164; David Spring, “Walter Bagehot and Deference”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 524-531; J. G. A. Pocock, “The Classical Theory of Deference”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 516-523; Richard W. Davis, “Deference and Aristocracy in the Time of the Great Reform Act”, *The American Historical Review*, vol. 81, n°3, June 1976, pp. 532-539; J. R. Fisher, “The Limits of Deference: Agricultural Communities in a Mid-Nineteenth Century Election Campaign”, *Journal of British Studies*, vol. 21, n°1, Autumn 1981, pp. 90-105.

¹⁶ On Heath see: Peter Kellner (ed.), *Democracy. 1,000 Years in Pursuit of British Liberty*, op.cit., p. 438. On the *Financial Times*, see: Joe Rogaly, “Society Today”, *Financial Times*, 17 March 1976.

¹⁷ Joe Rogaly, “Society Today”, *Financial Times*, 17 March 1976.

stratification of society in previous centuries – out of fear and submission, respect for a powerful leader had been accepted as a traditional form of subordination. Nonetheless, *rational deference* was a consequence of the class system in the 1970's – through a certain Shilian need to defer, most of the population had seen the use of mutual interdependence and voluntarily agreed to defer to power, no longer out of submission but out of reason. Kavanagh was not taking a long-term view: his conclusions only applied to the 1970's and never considered deference on any other terms than obedience and submission to power, for historical reasons.¹⁸

In this sense, the work of Howard Newby is most perceptive in attempting to blend Kavanagh's criticism and his own research on agricultural workers in the 1970s. Newby produced a number of inspiring papers on the subject in the 1970s which he crowned with a book on the farm workers of the region of East Anglia entitled *The Deferential Worker* (1977). As befitted the context, Newby agreed that “the concept of deference [was] in need of a drastic re-appraisal”, but he also took the view that “properly understood, the concept of deference emphasizes certain properties of the relational and normative aspects of social stratification that require considerably greater consideration than they have been granted hitherto”.¹⁹ Newby, drawing on part of Shils' sociology of deference – that Kavanagh had agreed with but not taken into consideration for his political research – observed how farmers were not necessarily naturally deferential, what he defined in *The Deferential Worker* as “the subscription to a traditional moral order which endorses the individual's own political, material and social subordination”²⁰ (i.e. irrational deference). Farmers mostly deferred to power (rationally this time) because of the context and the social situation in which they lived and worked. “Thus”, concludes Newby,

deference is best considered not merely as a particular form of behaviour, since this ignores the problem of its meaning to the actor, nor as a set of attitudes, since this is too over-deterministic, but as a form of social interaction. Specifically deference can be best defined as the form of social interaction which occurs in situations involving the exercise of traditional authority. [...] A reconsideration of deference along these lines not only renders the concept more heuristically useful, but can explain much of the data on the social situation of agricultural workers”.²¹

¹⁸ Some thinkers, such as Newby, saw that there was something too drastic in Kavanagh's desire to get rid of deference altogether as a tool of political analysis.

¹⁹ Howard Newby, “The Deferential Dialectic”, *Comparative Studies in Society and History*, *op.cit.*, p. 141.

²⁰ Howard Newby, *The Deferential Worker. A Study of Farm Workers in East Anglia*, *op.cit.*, p. 415.

²¹ *Ibid.*, pp. 416-7.

In so doing, Newby retrieved the concept of deference from academic death and reinstated it for its worth, as a tool for understanding “mutual and harmonious interdependence”²² within “traditional authority”. Even though Newby was relying on Shils’s sociological explanation, he was also adding a part missing in Shils: that of a specific English background, interwoven in a precise history of social interactions giving rise to a particular type of English deference. Newby was showing how, far from being dead, rational deference to power was alive in communities who accepted the use of social hierarchy and who legitimated it, not out of servility, but out of usefulness. This was precisely what Ray’s research on Australians’ attitude to power had proved through data analysis even if “traditional authority” was a far looser concept in his country and the specificities of the English traditions did not exist in his country. In the end, the studies of Shils, Newby, and Ray proved that the concept had some respectability left and deserved a lot more attention than Kavanagh believed or than the elastic uses of deference in newspapers allowed one to understand. Especially, it deserved particular attention to the cultural and political conditions of the nations out of which each type of deference sprung. It also pointed to a specific English rational deference which relied on customs and mores much more anchored than in other countries, precisely because England forged its political story on a much longer historic one.

Newby was not working on English political culture – his research was on English agricultural workers – but there was a specifically English political background on which he was basing his research, i.e. the attitude of English farmers to power. This led him to remark that “Deference can help us to understand how the distribution of power is stabilized, but in itself it cannot account for any change in the structure of power”²³. Therefore, applied to the study of politics, Newby’s conclusions help to see that what remained of deference – rational deference – organically followed the changes in the structures of power. As such, what was left of deference in the 1970’s was therefore truly a *consequence* of what happened to the structure of power post-WWII rather than the direct cause of the changes themselves. While it was the decline in rational, and especially irrational, deference which led to the political imbalance of the 1970’s, it was paradoxically the remains of a rationally deferential attitude that would always help to stabilize the system – the secret ballast of the Anglo-British constitutional rubber duck. If trust for the system was further undermined, however, rational deference also suffer. This, however, was to have unforeseen consequences.

²² Howard Newby, “The Deferential Dialectic”, *Comparative Studies in Society and History*, vol. 17, n°2, April 1975, p. 145.

²³ *Ibid.*, p. 149.

The passing of the Communities Act of 1972, the difficulties of incorporating the European Convention on Human Rights into English law, the introduction of the use of a national referendum in 1975, the centralization of power under Thatcher, the overly-extensive power of the executive over the legislative, the demands for constitutional settlements in the 1980's and 1990's along with the social changes going on, were all to have further impact on rational deference in that long period from 1972 to 1997, and to seriously weaken deference by the end of the 1990's. Consequently, the easiest way to seize deference at work is to analyse the political changes which took place in the constitutional structure, after the UK became a member of the European Economic Community, in order to see how such transformations further affected rational deference and led to further imbalance.

Parliamentary sovereignty undermined

The European Communities Act of 1972 was the starting point of what Bogdanor calls the “new Constitution”²⁴ because, as seen above, it recognized by law a new and second legal order (European Community law) potentially superior to Parliament's legislative supremacy.²⁵ The act, as the several *Factortame* cases²⁶ of the 1990's subsequently showed, also bound all the post-1972 Parliaments by law, something that Dicey had not even considered possible. Parliamentary sovereignty, again as already mentioned, was thought by Dicey to mean that each Parliament had the right to make or unmake any law (meaning that no Parliament was bound by its predecessor) and also that nobody could override or set aside a statute.²⁷ The problem was that the 1972 Act had both bound its successors – even if the

²⁴ Vernon Bogdanor, *The New British Constitution*, *op. cit.*, pp. 50-310. The European Communities Act of 1972 may be found here: <http://www.legislation.gov.uk/ukpga/1972/68/section/2>, accessed 4 March 2017.

²⁵ To be clear here, one has remember that European Community law is enforced by the European Court of Justice (in Luxemburg) whereas the European Convention on Human Rights is enforced by the European Court of Human Rights (in Strasbourg). The two are separate: the UK signed the European Convention on Human Rights at the beginning of the 1950's and was one of its chief instigators, whilst the UK joined the EEC in 1973.

²⁶ *Factortame* is the name given to a number of cases related to the rights of a group of Spanish fishing companies to trawl in British waters recognized in Community law but in contradiction with the British Merchant Shipping Act of 1988. The House of Lords which ended up hearing the appeal, acted according to the European Communities Act of 1972 which ruled that UK courts had to enforce Community law. The lawlords decided to suspend the 1988 Merchant Shipping Act. This meant that a statute of the UK Parliament was set aside by the courts – which was a challenge to Dicey's principle of parliamentary sovereignty. *Factortame* has given rise to countless studies some believing that it was all but a scrapping of the doctrine of the sovereignty of Parliament, others, attempting to explain that the House of Lords had only acted as a court following Community law – meaning that the 1988 Merchant Shipping Act had only be set aside in Community Law and not in English law. For two opposite accounts see: H. W. R. Wade, “Sovereignty – Revolution or Evolution?”, *Law Quarterly Review*, vol. 112, 1996, pp. 568-75 & Adam Tomkins, *Public Law*, *op. cit.*, pp. 112-20.

²⁷ On whether or not Parliamentary sovereignty was fundamentally affected by the European Communities Act of 1972, Tomkins makes a clear case that it was not: Adam Tomkins, *Public Law*, *op. cit.*, pp. 108-20. Vernon Bogdanor takes a much less definite view, stating that the European Communities Act did have “fundamental

possibility of repealing the act always existed – and declared that Community law would prevail over UK laws – even if Parliament has never willingly legislated against Community law but could have done so. Thus, if in theory, with the provisos given (repeal or possible willful violation of the Community law), parliamentary sovereignty had not been lost, in practice, the 1972 Communities Act had severely restricted Diceyan Parliamentary Sovereignty. “The European Communities Act, as it has been interpreted by the courts”, states Bogdanor, “shows therefore that there can be, not just obligations of honour, moral obligations limiting the power of Parliament, something that had been readily conceded by Dicey, but very real legal obligations limiting its sovereignty so long as Britain remains within the European Union”.²⁸ Here, by “obligations of honour” and “moral obligations”, Bogdanor is referring to constitutional conventions but also to deference to a system which until 1972 relied very much on implicit self-restraint and faith in the structure.

The European Communities Act transformed the Victorian constitutional edifice from within, in a way which trickled through the structure as well as into the political mentality of the British (the four regions of the UK were all impacted by the Act). It demanded rational deference by Parliament to the EU project and institutions: this was something new for the nation. The Labour politician Richard Crossman had made this point in 1970, predicting that joining the EEC would alter the political organisation of the UK:

To enter Europe is for us, in terms of constitutional methods, almost as difficult as making ourselves an extra State in the USA. Therefore, this whole issue of our attitude to written constitutions and the natural law is tremendously linked with the prospect of entering Europe. It might be true that in our local British problems we could retain our British ways. But we couldn't possibly retain our fusion of executive and legislative in our relations with the rest of Europe.²⁹

The new system, rationally relying on laws, was supposed to be incorporated through adjustments to the old structure – in a time honoured-fashion – but the reality was that the new legal European Community order injected into the English common law system was at odds with it, constitutionally speaking. The debates in the 1960's about the English being insular and foreign to the integrating aims of the European Community founders came back as a reminder of how transformative the European project was for the Anglo-British constitution. All nations are singular but England (more than the UK) was constitutionally unique in both

implications for the doctrine of parliamentary sovereignty”. Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 273.

²⁸ Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 273.

²⁹ Richard Crossman, *Inside View. Three Lectures on Prime Ministerial Government* (The Godkin Lectures at Harvard University 1970), London, Jonathan Cape, 1972, pp. 105-6.

its law and in its patterns of deference. It is the failure to accept and to embrace such a difference which has led to some of the problems in the present European Union regarding the UK. Trying to construct a federal state and a supra European nationality is particularly problematic but even more so with a kingdom in which, one nation, the English, have always revered their past and defended their national sovereignty on such grounds, expressed in a parliamentary structure, in which legislative and executive powers were fused – and not separated.

No sooner was the European Communities Act of 1972 passed than the Labour Party, which had had internal feuds regarding the membership, decided to hold a national referendum on the effects of joining the EEC. This was a constitutional innovation in a country used to a representative government. There had been debates at the time of the passing of the European Communities Act about holding a referendum on whether the nation agreed with the idea of becoming a member of the EEC but, after a number of disagreements, the matter had been set aside because Parliament was viewed as representing the nation. Thus, the proposal of the 1975 referendum was rather problematic as it came after the act had been enacted, challenging the decision of the Heath government to have taken the country into the EEC. It was just as if politicians had suddenly woken up to the constitutional implications of the act two years after it had been passed; it did not look good with the European partners nor within Parliament. There was also another dilemma in the idea of the referendum itself, which was a rather continental experimental way of seeking the direct opinion of the people on a whim of the political party in power. Resorting to a referendum was to have far-reaching consequences, as the use of referenda was from then on used on a number of occasions at a national and especially at local levels.³⁰ “Until 1975”, writes Bogdanor, “when Britain held her first [...] national referendum, the British constitution knew nothing of the people. The sovereignty of Parliament was seen as being incompatible with that of the people. Democracy in Britain was understood as being exclusively representative democracy”.³¹ Essentially, since the country had become a democracy after WWI, nothing had been wilfully experimented to match what the implications of a democratic government meant with the workings of the old constitution founded on parliamentary sovereignty. Deference had a lot to do with such a refusal to tackle what the democratisation process meant for the people. Irrational deference

³⁰ In 1973, a specific referendum had taken place in Northern Ireland on whether Northern Ireland should remain part of the UK – The “Northern Ireland “border poll” – but the referendum had not taken place over the whole of the UK. See the interesting analysis of the solicitor Graham Wheeler on the following blog: Graham John Wheeler, “Referendums That Time Forgot”, *U.K. Constitutional Law Association Blog*, 17 Feb 2017, <https://ukconstitutionallaw.org/>, accessed 28 March 2017.

³¹ Vernon Bogdanor, *The New British Constitution*, *op. cit.*, p. 173.

was a brake until WWII, but by accepting the representative system for its value, rational deference was another self-imposed brake on the evolution of the democratic structure, which gave its trust to an old constitutional way of doing politics. Therefore, the referendum was something new in the English Constitution which challenged such a view and was also a direct challenge to a rationally deferential mentality.

Clearly, even today, there is an inner tension: either it is the elected representative of the people in Parliament who have the sovereign power to change the laws of the country and give direction to its political project or it is the “people” through direct consultation who approve the decisions taken. The other tension is the debate about what representation means: either to make laws according to one’s judgment about what is best for the country, or to make laws mirroring the expressed beliefs of one’s constituents (whether those preferences would be good or bad for the country). There is an opposition between the aims of parliamentary and popular sovereignty which was exposed in the 1975 referendum. If the European Communities Act of 1972 had been passed by Parliament – that is, agreed upon by the representatives of the body of the people who had elected the MPs to their seats to represent them – then there could be constitutional complexity in holding a referendum after the act had been enacted. The referendum – whatever the result – could not have any legality but what was the point, then, to risk a crisis of popular vs. parliamentary sovereignty? In fact, the Labour Party under Wilson had decided to hold the referendum for purely internal political reasons to try and appease dissent within its own party on the membership, but it is interesting how little it took into account the specificities of the English Constitution and how such an experiment would go wrong. It was also the proof of how undeferential a greater number of Labour politicians had become: they wanted to rely on the people to solve their internal disagreements and no longer on customary ways of doing so. The referendum was supposed to be “advisory or consultative” and the convention of collective responsibility was to be lifted to allow ministers to vote according to their own personal views.³² To make matters more intricate, the question which was put to the people – “Do you think that the UK should stay in the European Community (the Common Market)?” – lacked clarity as the “Common Market”, the name by which the European Economic Community was widely known in Britain at the time, focused on only one aspect of the European project, mainly free-trade, and the question was asked in such a way as to favour a positive answer.

³² Margaret Thatcher, EEC Membership (Referendum), HC Deb 11 March 1975 vol 888 cc291-408, <http://hansard.millbanksystems.com/commons/1975/mar/11/eec-membership-referendum>, cc. 315, accessed 7 March 2015.

In order to hold the EEC referendum, legislation had to be passed allowing Parliament to discuss the matter. The idea of the referendum and its constitutional inconsistency was denounced by a number of politicians, but none more so than by Margaret Thatcher. She had succeeded Heath as leader of the Conservative Party in February 1975 and only a month later, she stood in front of the House of Commons to denounce a constitutional experimentation that she found in complete contradiction with the spirit of the English Constitution. She warned of the danger of not taking into account “the constitutional decision of a referendum” and “the status of the referendum result at law”.³³ She particularly resented the way in which the Labour Party was trying out a political tool, with long term results for the country, to solve an internal party feud. Her profound opposition to the referendum was based on her rational deference to the English Constitution. In the style which was to define her in the years to come, this is what the recently elected first female leader of the Conservative Party explained:

The White Paper takes the view “Other democratic countries have had a referendum—why should not we?”. That is to take far too simplistic a view of the referendum and to attempt to divorce one constitutional feature of a country from its whole context and refuse to look at the matter against a proper background. If one is considering a referendum—I would be prepared to consider it, but not against this background—it would have to be considered against whether one should have a written constitution, under what circumstances one should have referenda, and how one would require to limit the power and curb the use of it by the Government of the day.³⁴

Thatcher made the case that a referendum was unfamiliar to the English Constitution and potentially hazardous as “the longer-term result [would] be to create a new method of validating laws”, leading “to a major constitutional change, a change which should only be made if, after full deliberation, it was seriously thought to be a lasting improvement on present practice”.³⁵ In this speech, she embraced deferential faith in institutions and ways of doing which had been validated by their usefulness in the past. She also warned that the 1975 referendum would be used as a precedent and, in that sense more than any, she was right. A precedent had been introduced into the constitution to resolve contentious issues (generally relating to territorial problems or political infighting) through the use of referenda.

Obviously, calling a referendum – including in continental Europe – is rare, but it is always a tool used to validate a political decision taken which if it goes wrong leads to other

³³ *Ibid.*, cc. 308, accessed 7 March 2015.

³⁴ Margaret Thatcher, EEC Membership (Referendum), HC Deb 11 March 1975 vol 888 cc291-408, <http://hansard.millbanksystems.com/commons/1975/mar/11/eec-membership-referendum>, cc 309, accessed 7 March 2017.

³⁵ *Ibid.*, cc 317.

types of problems. The 1975 referendum was playing with fire because if it had had a different outcome, the government would have found itself in a delicate situation – the position which the Conservatives who woke up to Brexit in June 2016 have found themselves in.³⁶ The Labour Party was also fortunate in 1975 as the two biggest regions of the UK, England and Scotland, both voted in favour of remaining within the EC, not pulling the union asunder which was the case after the 2016 Brexit vote. For all intents and purposes, it had been a lucky political escape as the nation deferred to the majority opinion of their political leaders but the precedent had been set which undermined the representative government model by introducing a new way of validating laws.³⁷

What was most striking with the Labour decision to hold the referendum was its open recognition that an internal disagreement within its own ranks on an important subject could find no other solution than through appealing to the people, the way it was done on the continent. Surely, if there was something to envy in parliamentary government it was its embrace of disagreements and differences of opinions which could be sorted out in the House of Commons through a robust debate. But, the nature of parliamentary government had been affected by the rise of party machines, the loss of independence of MPs, and the role of party whips to such an extent that debate itself no longer fully took place the way it had been done. This is why, for Thatcher, using referenda meant passing “the buck to the people”³⁸ which was contrary to the constitutional nature of the representative system and the sign that the system was no longer working. Deference to it was undermined for the same reasons. In a speech at the Conservative Political Centre a few years previously in Blackpool, appropriately entitled “What’s wrong with politics?”, Thatcher had already singled out a number of reasons why she thought “People have come to doubt the future of the democratic system and its institutions”. Her first reason, after which six others followed, was:

I don’t think we realise sufficiently how new our present democratic system is. We still have comparatively little experience of the effect of the universal franchise which didn’t come until 1928. And the first election in this country which was fought on the principle of one person one vote was in 1950. So we are still in the early stages of dealing with the problems and opportunities presented by everyone having a vote.³⁹

³⁶ In the end, 67.2% of the nation (with a 64.5% turnout) voted in favour of remaining a member of the EEC in 1975.

³⁷ Paul Martin Gliddon, “The Labour government and the battle for public opinion in the 1975 referendum on the European Community”, *Contemporary British History*, October 2016, pp. 91-113.

³⁸ Margaret Thatcher, EEC Membership (Referendum), HC Deb 11 March 1975 vol 888 cc291-408, <http://hansard.millbanksystems.com/commons/1975/mar/11/eec-membership-referendum>, cc 311, accessed 8 March 2017.

³⁹ Margaret Thatcher, “What’s wrong with politics”, Conservative Political Centre, Blackpool, 11 October 1968, <http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=101632>, accessed 8 March 2017.

For her, the democratising process had forced parties to organise themselves differently to gain voters, leaving no “room for a variety of opinions on certain topics within the broad general principles on which each party is based”, cementing the ideas of parties within a political manifesto on which they were elected and then expected to deliver creating a “curious relationship between elector and elected”.⁴⁰ Thatcher’s other points – much better known – were to denounce a culture of welfare in which people expected the state to take care of them, whilst questioning its role and never looking at their duties towards it. “All of these things”, she concluded, “are a partial explanation of the disillusion and disbelief we encounter today. [...] *But we must not try to find one unalterable answer that will solve all our problems for none can exist.*”⁴¹ To summarise, she considered that there was something rotten in the United Kingdom and that she had identified the reasons for the rot in the political consensus which has stifled debate by not allowing dissent since 1945 and which had brought in a culture of expectation on the part of voters, which had in turn prevented them from understanding their duty and responsibility to participate in politics. Thatcher took most of her inspiration on the rejection of the consensus from her ally and friend Sir Keith Joseph and from his interpretation of Hayek and Friedman, that he poured into the Centre for Policy Studies. By the time Thatcher became leader of the Conservative Party in 1975, she had a new ideological armour to help her transform the UK. Whether it was back to a Victorian way of thinking or forward towards a complete *laissez faire* utopia was, and, to a certain extent, has continued to be, unclear. What is apparent is that she hoped to rely on the deference of the nation to achieve her aim, but which kind of deference is more contentious.

The curious case of Thatcher’s deference

Margaret Thatcher does not fit the deferential narrative easily as she blended within her own identity irrational and rational deference to the English Constitution. She believed in the historical structure of the Kingdom, having great respect for a nineteenth century understanding of respectability in which everyone knew their place and got on with their allotted role and in which social ascent was allowed only within a hierarchical system. At the same time, she had a deep belief in independence, self-respect, and the possibility of climbing the hierarchical ladder through merit. Hence the reason why she can be best described as a

⁴⁰ *Ibid.*

⁴¹ *Ibid.* The sentence in italics is Thatcher’s.

curious instance of a person going ahead, whilst looking backwards. Her ideas were at odds with Heath's or Disraeli's One Nation Toryism, but she was, at the same time, reviving the Victorian values of the realm lost in the 1970s. Her deferential acceptance of the hierarchical structure of society, whilst defending meritocracy at all cost makes her a baffling case that Cannadine, in his book on *Class in Britain*, was forced to analyse separately.⁴²

It is not for nothing that she rose to power in 1975 on a conservatism with which she was not in agreement: the 1970s were suited to her ascent. As Secretary of State for Education under the Heath government and as opposition leader from 1975, she decided that the UK had lost a sense of the values which had made the country great by accepting and seeking economic and social equality in 1945. In her opinion, true liberty could only be expressed in a system which promoted independence, free spirit, laissez-faire, and equality of opportunity. This was the only way for the electorate to regain a form of trust in the state which was being severely undermined with the constant crises of the 1970s. What some saw as the end of deferential society, she saw as a dangerous loss of faith in one's past, and as a consequence, in one self. She and her team, who were very much on the right of the Conservative Party, devised a document entitled "The Right Approach to the Economy" in which they listed their principles to solve the economic quagmire in which Britain found itself. In a September 1975 speech in New York, she refined her initial 1968 attack on what was for her the real enemy: the political consensus based on the existence of the welfare state and on the belief in Keynesianism which had been alive for thirty years in the various policies of the Labour and Conservative parties. To her mind, the promotion of equality had been made at the expense of liberty, whilst liberty had always been the true aim of the English nation. In this sense, she was only resorting to an old rhetoric linking the free national character of the English to their constitution. "Now", she stated in her speech, "it's not that our people are suddenly reverting to the ideals of laissez-faire. Nor are they rejecting the social advances of recent decades. It's rather that they are reviving a constructive interest of personal responsibility, because in some respects the concepts of social responsibility have turned sour in practice"⁴³. The only way to fight what she denounced as the corrosive nature of socialism was to bring in prudence in economics (curbing the expenses of the state), to reintroduce a good dose of laissez-faire, and especially to fight the dangerous power of the trade unions who had too much influence on national life and opinions.

⁴² David Cannadine, *Class in Britain, op.cit.*, pp. 171-80.

⁴³ Margaret Thatcher, "Speech to the Institute of SocioEconomic Studies ("Let Our Children Grow Tall")", 15 September 1975, New York, <http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=102769>, accessed 28 March 2017.

There was also a moralizing aspect in the folds of that approach. People had to revert to Thatcher's mythical "Victorian values" that she took from her childhood. A lot had been made – no less by Thatcher herself – of her life in Grantham, of living above her father's grocery store, understanding what a decent, hard-working and responsible way of life meant within the community life of a post-WWII English town.⁴⁴ At the same time, Thatcher's father was not as modest as he was portrayed to be and his daughter forged a remarkable place for herself, first through her abilities but, second too, because she married a wealthy businessman who eased her political ascent. Nevertheless, she always drew from her childhood years in Grantham an innate belief in a "British character"⁴⁵ which valued liberty and fairness and the conviction that her lower middle-class credentials allowed her to be the voice of the people as much so, if not more than the trade union leaders she confronted in the 1970's and 1980's.⁴⁶ Thatcher comes about as an instinctive politician who, in her words "had been equipped at an early age with the ideal mental outlook and tools of analysis for reconstructing an economy ravaged by state socialism"⁴⁷. For her, drawing very much on what she crudely made of Hayek's complex work, the state could never understand all the forces organising the market and, therefore, the only answer was to reduce its intervention in the lives of the people.

Thatcher was neither part of the traditional conservative establishment, nor part of the conservative working classes: she came from a lower middle-class – aspiring bourgeois – background and she was proud of it. Her gender also contributed to her being at odds with the traditional class system. She was and remains a complex case of the voluntary deferential Englishman, or Englishwoman in her case. Cannadine probably catches her contradictions better than most:

In one guise, she was a neo-conservative, believing society was a Burkeian hierarchy of disciplined authoritarianism and ordered subordination. In another, she took a neo-liberal view, that society was a tripartite construct, dominated by *laissez-faire* ideology and entrepreneurial ethos of the middle classes. From yet a third perspective, she was a neo-populist confrontationalist, leading what was often described as 'the peasants' revolt' against established and entrenched élites.⁴⁸

⁴⁴ Margaret Thatcher, *The Downing Street Years*, London, HarperCollins Publishers, 1993, pp. 10-1.

⁴⁵ Margaret Thatcher, "ITV Interview for London Weekend Television *Weekend World* ("Victorian Values")", 16 January 1983, <http://www.margaretthatcher.org/document/105087>, accessed 15 March 2017.

⁴⁶ Margaret Thatcher, *The Downing Street Years*, *op.cit.*, p. 10.

⁴⁷ *Ibid.*, p. 11.

⁴⁸ David Cannadine, *Class in Britain*, *op.cit.*, pp. 174-5.

In this sense, Thatcher was everything at once: irrationally deferential (the Burkiean reference here points to it), rationally deferential to a useful system which would allow liberty to prosper and, in a way, and not deferential at all, rejecting the unfair rule of a condescending elite bent on defending its advantages. This is the reason why Thatcher is so difficult to understand in terms of deference but in many more ways than not, she was extremely deferential to what had made England (maybe much more than Britain) great: its past, its people, and the political expression of such a character in its constitution. Her belief in what she referred to as “Victorian values” had a strong moral flavour which contrasted with the loose mentality of the 1970s.⁴⁹ Those were the values which she used, while in power from 1979 to 1990, to reject a post-Suez defeatist mentality and to try and impose a new way of life, completely at odds with the post-WWII socialist mindset, which would be a return to English values albeit set in a new period.⁵⁰ She has often been compared to David Lloyd George, though he came from a very poor background whereas she was the archetype of the meritocratic lower middle-class person who valued order and stability and for whom what counted was also what worked and had a financial value.⁵¹ However in her re-definition of conservatism, she estranged a number of traditional allies – starting from the establishment, the traditional allies of the Conservatives – and transformed Britain in ways which were opposed to what she had stated. She centralized power much more than she decentralized it or even reduced it, she made money-making a virtue to the extent that the culture of money replaced the moral values she wanted to promote, and she did not lead a cultural revolution in terms of social attitudes as the gap grew between the rich and the poor during the 1980s. In fact, the way her policies on free-market economics developed were at odds with the Victorian values she had sought to promote. Instead of the One Nation theory (of her own new kind), she had presented at the outset, her policies were to increase divisions rather than end them. Individualism in economy did not foster morality in society the way she had thought it would. She had believed that her monetarist reforms, coupled with privatizations, the creation of a shareholder society, and the curbing of the unions would create a dynamic setting. Like in the Grantham storybook of her childhood, she believed that responsible individuals would create stable communities in which the money of entrepreneurs would

⁴⁹ “You were taught to work jolly hard, you were taught to improve yourself, you were taught self-reliance, you were taught to live within your income, you were taught that cleanliness was next to godliness. You were taught self-respect, you were taught always to give a hand to your neighbour, you were taught tremendous pride in your country, you were taught to be a good member of your community. All these are Victorian values”. Thatcher Cited in: John Campbell, *Margaret Thatcher*, London, Pimlico, 2004, vol. 2, p. 182.

⁵⁰ Thatcher referred to the “Suez syndrome” of defeat. See: Margaret Thatcher, *The Downing Street Years*, *op.cit.*, p. 8.

⁵¹ David Cannadine, *Class in Britain*, *op.cit.*, p. 179.

trickle down towards those who had less and who would, in return, willingly accept to be grateful subordinates. Under Thatcher, unemployment rose and so did a class of underprivileged people, generally young and living in inner cities. The patrician elite in power was replaced by a new set of people who were at odds with the old whiggish frame of mind. With her, the structure of the old Victorian mentality was taken down, even though she purported to retrieve the Victorian frame of mind. In fact, her Victorian values were not those of the old ruling class whom she despised for having let the country be swamped by “impotence”⁵² after 1956. The old patricians were also those, in her view, who had lied and cheated at the time of the Profumo affair.

Thatcher defended different types of values, those of the decent hardworking Englishman. Nevertheless, the fundamental tension between her idea of “a new beginning”⁵³, paradoxically a retrieval of Victorian values, was eventually exposed for its impossibility of taking the social house down whilst wanting to keep the same old constitutional foundations. The main problem was that Thatcher could no longer rely on the irrational deference that the Victorians had given their constitution and rational deference was only given to institutions which worked for the benefit of all and generated trust. Thatcher was aware of this as she wrote in the introduction of her memoirs: “I was less able to depend on automatic deference, but I was also perhaps less intimidated by the risks of change”.⁵⁴ Yet, the reality is that Thatcher further extinguished the type of deference she was hoping to partly reinstate – both irrational and rational – because she overlooked the social structure behind the constitution and how intertwined the two were. “The complex structure of authority, deference and social control that Conservatives had defended for so long was crumbling”, writes Marquand, “many of the institutions which had been central to it – the older universities, the liberal professions, the senior civil service, even the Church of England – had been the targets of populist rage, much of it stimulated by the government”.⁵⁵

As Britain recovered financially in the 1980’s from the gruelling financial difficulties of the 1970’s, it encountered new types of problems : the marginalization of new classes within society and transforming forces from abroad. The whole equilibrium of the constitutional edifice was unsteady. If irrational deference was no longer the cause of the trust in the old Victorian structure and if rational deference was no longer very much alive because there was a lack of trust in governance by those who had been rationally deferential up to

⁵² Margaret Thatcher, *The Downing Street Years*, *op.cit.*, p. 8.

⁵³ *Ibid.*, p. 15.

⁵⁴ *Ibid.*, p. 10.

⁵⁵ David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op.cit.*, p. 324.

then, what was left? Was voluntary deference dead? Thatcher's belief in "an ordered hierarchy and [...] an almost Burkeian reverence for 'a great chain of people, stretching back into the past and forwards into the future'"⁵⁶ was a mirage. Her policies simultaneously continued the diminution of irrational deference, whilst reinforcing reliance on rational deference, which her policies made hard to sustain.

More damaging, maybe, was the criticism that Thatcher's ideas, in wanting to retrieve a Victorian state of mind, had ignored the real constitutional problems lying at her door. Thatcher further subordinated legislative sovereignty to the influence of a strong centralizing executive that she embodied. Interestingly, when the Conservative Lord Hailsham had criticised the system for having become an elective dictatorship in 1976, Labour was in power. But his acute analysis fitted Thatcher's period well, even if this was not his initial aim. Hailsham's point was to denounce how,

the sovereignty of Parliament has increasingly become the sovereignty of the government, which in addition to its influence in Parliament, controls the party whips, the party machine and the civil service. This means that what has always been an elective dictatorship in theory, but one in which the component parts operate in practice to control one another, has become a machine in which one of those parts has come to exercise a predominant influence over the rest. At the centre of the web sits the Prime Minister. There he sits with his hand on the lever of dissolution, which he is free to operate at any moment of his choice⁵⁷.

Thatcher and her prime-ministerial style of governance – not to mention her Kitchen cabinet (itself a replica of Wilson's with Marcie Williams and Joe Haines especially) – was the living representation of what Hailsham condemned: the use of parliamentary supremacy and majoritarian democracy to fit her own aims. Hailsham's solution was to propose a written constitution – a codified document – which would limit the powers of Parliament (i.e., of government) and reintroduce a real system of checks and balances on the structure. Like Thatcher with Victorian values, Hailsham thought that it was possible to allow the old constitution to flourish again. Essentially, he wanted to enshrine in law what had made the greatness of the country: faith in the natural balance of the institutions. Like Thatcher, he was wrong to believe that voluntary deference for the constitution could be easily retrieved. He was wrong too, to believe that rational deference to the constitution could be generated by a codified instrument of governance defined by law. The greatness of the structure had been its

⁵⁶ David Cannadine, *Class in Britain, op.cit.*, p. 173.

⁵⁷ Lord Hailsham, *Elective dictatorship*, London, British Broadcasting Corporation, Richard Dimpleby lecture, 1976 in: Kellner, Peter (ed.), *Democracy. 1, 000 Years in Pursuit of British Liberty, op.cit.*, p. 470.

ability to generate deference *in spite of* not being written down. Once codified, the constitution would make England just like any other country in which a certain level of deference would exist – like Shils had noted – but no longer organically linked to the old constitution. This is what made English deference so special and so unlike any other deferential society: the historical constitution. The great link with the past was founded on a form of mythical faith in what had made the nation great: its adaptability, its incremental moves, the instinctive link between constitution and people. Once written down – if this were even possible – the constitutional story would be fixed in time and lack most of its powerful malleable force and would have to appeal to a different type of magic (as in the case of the American Constitution).

Hailsham dropped his drastic proposal as soon as Thatcher became Prime Minister in 1979, and he became Lord Chancellor (1979-1987), but what he had denounced for Labour, had long lasting significance. He had analysed with razor-sharp accuracy how government, and especially a strong Prime Minister, could use the hidden mechanisms of the constitution and could rely on conventions to take on more power. By wanting to get back to the old constitution and the old values holding it, he had fed the criticism of the Victorian frame of mind by showing precisely where the problem lay: in the fusion between the executive and the legislative that Bagehot had explained with so much accuracy in *The English Constitution* and that Crossman had underlined in his 1970 lecture at Harvard. Such a fusion of powers – unknown in most countries with a codified constitution in which the separation of powers was the solution to balance power – was only possible in a country in which, to take Hailsham's words, "the limitations [...] are only political and moral".⁵⁸

Again, such an analysis could have been written to describe the programme Thatcher consistently followed in the 1980s. Some, mostly on the left, denounced her deliberate attempts to abuse the system from within, purporting to have rational deference for it but in reality having none. By virtuously proclaiming as absolute the principle of Parliamentary sovereignty, Thatcher made it possible to gather vast government powers. "This constitutional conservatism", wrote Gamble in 1995, "was accompanied by the deliberate overriding of many long-established constitutional conventions which had softened the impact of executive absolutism made possible by the doctrine of parliamentary sovereignty and the residual prerogative powers of the sovereign".⁵⁹ Like Wilson, Thatcher used private counsellors – part of her Kitchen cabinet – and appointed many of her own set to manage Quangos, effectively

⁵⁸ *Ibid.*, p. 469.

⁵⁹ Andrew Gamble, "The Crisis of Conservatism", *New Left Review*, 1/214, November-December 1995, p. 12.

shaping the system to her hand.⁶⁰ She also conflicted with the BBC or the Church on ideological grounds and resented what she considered as the patronizing ways of doing of the monarchy and those close to it. Under her premiership, no institution of the state was left unreformed as from the health service, to the civil service, via universities and the police, to massive privatizations, a new culture of public management based on the market and on performance at all cost was set to replace the Beveridge principles that had dominated since 1945.

Thus, the whole of Thatcher's Victorian rhetoric of values was like a paradoxical injunction to respect the principles of the old constitution resting on self-restraint, manners, mores and deference whilst increasing the power of the government, using the old of way of doing and undermining trust and deference for the system by transforming the state. Interestingly, a lot of actors of the left were in favour of state reforms but, in their case, it was to achieve greater equality, whereas this was not Thatcher's agenda. For Gamble, this was to have consequences in the 1990s:

The tone of Thatcherism was often anti-deferential and meritocratic. The really deserving individuals were those who were self-made, not those who were born to wealth. This lack of deference, both for established institutions and for established status and wealth, was part of Thatcherism's popular appeal, but it also ensured that the Conservatives became thoroughly estranged from many of the establishment elites which formerly had been their natural allies.⁶¹

Her anti-elite stance – of which, however much she disliked it, she was a member – as well as her refusal to accept the political conventions which did not suit her undermined trust in governance, further leaving even rational deference hanging on to nothing much by the 1990s. Once the ability to restrain oneself or to abide by the unwritten conventions out of deference for the system had been severely weakened, what remained was only either the constant self-moderation of those in power – who were more likely to abuse power – or constitutional innovation to prevent abuse by law.

Breaking with the old Victorian constitutional framework

The rise in the demands for pulling down the old constitutional edifice came from both sides of the political spectrum. On the Conservative side, if Hailsham had opened the debate

⁶⁰ See: David Marsh and R. A. W. Rhodes (eds.), *Implementing Thatcherite Policies: Audit of an Era*, Open University Press, Milton Keynes, 1992, 212 pages.

⁶¹ Andrew Gamble, "The Crisis of Conservatism", *New Left Review*, 1/214, November-December 1995, p. 13.

about the need for a written constitution, others such as the journalist Ferdinand Mount – for a time director of Thatcher’s think-tank, the Centre for Policy Studies – also took on the radical mantle of constitutional reform in the 1990’s. By then, what others such as the Liberal Leslie Scarman or the Thatcherite Nevil Johnson, had said in the 1970’s had become a reality. In his 1977 book, suitably entitled *In Search of the Constitution*, Johnson summarized how “the root of the trouble is now political, not economic and social: we have an old and tired political order under which it has proved increasingly difficult to solve serious economic and social problems.”⁶² Following in the footsteps of Hailsham, the solution was to set up a royal commission on constitutional matters and to introduce the language of public law in a country not accustomed to it. Such a necessity became more urgent with the centralizing power of Thatcher’s Prime Ministerial style of government. Even those who had been part of Thatcher’s circle, like Mount, became much more radical in the 1990s. Mount’s analysis, *The British Constitution Now*, came along as Charter 88 had already gathered momentum. Mount saw clearly that Thatcher had stretched to the limit her constant support of Parliamentary sovereignty to her executive benefit. Legislative sovereignty had showed its limits as the system was in dire need of balance and of control of the executive power. Belief in the structure – rational deference – could only be reached through a major rethinking of it. “The internal corruptions of the system are not all we have to contend with”, Mount summarised,

constitutional reform can no longer be brushed aside as a middle class hobby irrelevant to real politics [...]. For our situation is not that of a ramshackle but pleasant old house, in a sheltered inland spot, with recurrent but not serious problems of rising damp and other fungal infestation. We are right out on the promontory, at the mercy of wind and tide. And it is the strength of these tides that forces us to look at our constitutional arrangements in a quite different spirit from the spirit of the later Victorians. Their anxieties were profound and inspissated; but they are not ours.⁶³

So the problem was a double-edged one: on the one hand, there was a need to find solutions to adapt Britain to a globalised world and a European partner which forced constitutional changes on the country and, on the other hand, an urgent need for recovering pre-1911 balancing mechanisms whilst adapting them to a democratic framework to bring back trust and end political apathy. Mount was weary of “national traditions”⁶⁴, but it is striking how little he makes of the link between people and their constitution. By rejecting Bagehot’s outdated interpretation of the English Constitution, Mount remarkably also rejected what

⁶² Nevil Johnson, *In Search of the Constitution: Reflections on State and Society in Britain*, Oxford and New York, Permagon Press, 1977, p. 1.

⁶³ Ferdinand Mount, *The British Constitution Now. Recovery or Decline?*, *op. cit.*, p. 218.

⁶⁴ *Ibid.*, p. 256.

Bagehot had made of the use of deference. His solutions were pre-Victorian, in that he reached back to the seventeenth century to talk the language of those who had fought against unjust domination and sought, through constitutional debates, to defend their rights. In the 1990's, the abuse of power no longer came from a monarch but from an executive which killed the idea of legislative sovereignty and turned the people into dominated citizens for the length of a premiership.

Hailsham, Johnson, and Mount were all explaining that from the Parliament Act of 1911, the advent of democracy up to the membership of the EEC, the transformations had been such within the political way of doing things that it had had consequences on the nation too. Yet none of these thinkers really engaged with the complex link between people and their constitution as if the subject lacked seriousness. There is almost a Cartesian way of looking at the problems in their works which is at odds with the historical nature of the English Constitution. By rejecting the evolutionary way of thinking the political, the interwoven character of the English and their constitution was thrown aside. Mount, like Hailsham in 1976, thought that the only way to recover “flexibility in search of permanence” was to entrench in law a number of solutions but, like Hailsham, he was casting aside people and how they interacted with their system. His recommendations were threefold: “an entrenchment clause covering certain basic essentials of the constitution, a supreme court which included among its duties the interpretation and safeguarding of the entrenched provisions; an entrenched provision prescribing a fixed-term [...] for Parliament”⁶⁵. This was the only way for him to stop political apathy and bring back in the nation a desire to engage in constitutional matters again, like they had done long before the Victorians. Mount was trying to revive a seventeenth century tradition of thinking politics long gone. Interestingly, such views were symptomatic of how much deference had declined in English political thought: the only way of enchanting politics again was to rationally retrieve antiquated ways of thinking. Furthermore, as a Supreme Court was enacted in 2005 and a fixed-term Parliament Act passed in 2001, one can see that such decisions have not yet brought the positive changes expected. By rejecting or bypassing the Victorian deferential interpretation, Mount, unbeknown to him, sided with another explanation which, this time, was openly against deference and which came from the left of the political spectrum.

The constitutional reform movement which developed in the 1980's and became Charter 88, came from a number of left-wing intellectuals who wrote a ten-point manifesto

⁶⁵ *Ibid.*, p. 265.

defending a written constitution to “unlock Democracy”.⁶⁶ Most of their ideas – especially a Bill of Rights and the codification of the law – had their roots in the work of Leslie Scarman had developed in the Hamlyn lectures of 1974, published as *English Law—The New Dimension*. Scarman showed with particular prescience how the growing demands to secure human rights, joining the EEC, international obligations, regionalist demands, social changes, and a welfare state which had generated a number of expectations in terms of rights, had all helped to reshape the role of the English judiciary.⁶⁷ As a judge, Scarman had an accurate vision of what was happening to the common law and had identified very early on the pressures coming from abroad – “the Human Rights movement and the Common Market”⁶⁸ – and from within – “social, environmental, industrial”⁶⁹ – which were having profound consequences on the old constitution too. “Has the Common Law reached the end of the road?”⁷⁰ was the question Scarman asked in his introduction, reaching the conclusion that it needed to adapt and shed an old constitutional way of doing in an international world which did not follow the same rules. His advice was “to look to the new sources and fields of law and endeavour to retain the spirit of the old while abandoning habits of thought and action derived from a society that no longer exists”⁷¹. There it was: society had so profoundly changed – its irrational deferential the essence as the source of trust was gone – that the constitution no longer suited it. Like two pieces of a garment no longer going with one another, the new rationally deferential society – or even no longer deferential at all – was in search of a political structure to trust.

As the principles of the constitution such as the sovereignty of Parliament were abused by a strong and unchecked executive, trust could not be retrieved, and this only worsened under Thatcher. The Parliament Act of 1911 had led to an imbalance in the equilibriums of

⁶⁶ The ten points of the manifesto were the following: “Enshrine by means of a Bill of Rights, such civil liberties as the right to peaceful assembly, to freedom of association, to freedom from discrimination, to freedom from detention without trial, to trial by jury, to privacy and to freedom of expression; Subject executive powers and prerogatives, by whomsoever exercised, to the rule of law; Establish freedom of information and open government; Create a fair electoral system of proportional representation; Reform the upper house to establish a democratic, non-hereditary second chamber; Place the executive under the power of a democratically renewed Parliament and all agencies of the state under the rule of law; Ensure the independence of a reformed judiciary; Provide legal remedies for all abuses of power by the state and by officials of central and local government; Guarantee an equitable distribution of power between the nations of the UK and between local, regional and central government; Draw up a written constitution, anchored in the idea of universal citizenship, which incorporates these reforms”. See: David Erdos, “Charter 88 and the Constitutional Reform Movement: a Retrospective”, *Parliamentary Affairs*, 2009; 62 (4), pp. 537-51. <https://doi.org/10.1093/pa/gsp022>, accessed 22 March 2017.

⁶⁷ Leslie Scarman, *English Law—The New Dimension*, *op.cit.*

⁶⁸ *Ibid.*, pp. 9-27

⁶⁹ *Ibid.*, pp. 28-68.

⁷⁰ *Ibid.*, p. 1.

⁷¹ *Ibid.*, p. 88.

the power which had been further transformed by the democratisation process in the first half of the twentieth century. As trust had waned, the common law was no longer deemed sufficient to protect the freedom of the individual. After WWII, fundamental human rights – found in the 1950 European Convention on Human rights, based on the 1948 Universal Declaration of Human Rights – were written down to be protected by the law. Britain found itself constitutionally ill-adapted to these new demands, as its system had been based on trust, on a deferential nation, on an unwritten constitution, and on the common law. “It is the helplessness of the law”, summed up Scarman, “in face of the legislative sovereignty of Parliament which makes it difficult for the legal system to accommodate the concept of fundamental and inviolable human rights”.⁷² Something had been broken during the twentieth century which could not be mended: the only way out was considering how to best protect the nation through a written constitutional document protected and defined by law.

The left-wing thinkers, who drew on Scarman’s early analysis to set up Charter 88, rejected Thatcher’s way of modernizing the state, which they saw as both destructing for the social structure and relying on an outdated constitution which was abused. These thinkers were committed to a governance which was, in the words of Marquand – himself an architect of this new way of thinking – “law-based, rights-centred, pluralistic and, at least by implication, participatory”⁷³. Hailsham and Johnson were overtaken by a generation of thinkers who, far from wanting to restore a Whiggish Victorian constitutional tradition, considered it responsible for the constitutional limbo in which the country found itself. The old constitutional values, resting on deference, were an impediment to the progress of democracy in Britain. Writing in 1979, Tom Nairn, a member of the British New Left, summarized the situation of Britain just before Thatcher took over. In his eyes, “the nature of the state [was] the proximate cause of the British crisis”⁷⁴. He continued, explaining that it was “our constitution, our political and administrative system, and an associated penumbra of civil hegemony, powerful yet hard to define, which maintain society on its hopeless course”.⁷⁵ That Thatcher came to modernize the state along such lines did not change the fact that she used the “overall mixture [...] of anachronism and strength”⁷⁶ to her benefit whereas the left-wing thinkers were focusing on a radical transformation of the system.

⁷² *Ibid.*, p. 15.

⁷³ David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op.cit.*, p. 334.

⁷⁴ Tom Nairn, “The Future of Britain’s Crisis”, *New Left Review*, I/113-114, January-April 1979, p. 49. See also: Tom Nairn, “The Twilight of the British State”, *New Left Review*, I/101-102, January-April 1977, pp. 3-61.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

Unlike right-wing thinkers such as Mount, Nairn focused on the link between society and state and how a sense of social obligation and a community spirit could transcend the rise of individualism. Effectively, the thinkers of the left – for Nairn was followed by a number of intellectuals such as David Marquand⁷⁷ or later on Will Hutton⁷⁸ and Anthony Barnett⁷⁹ – rejected any type of deference that they saw as contrary to a real democracy in which responsible citizens would make choices regardless of their respect for their past. Therefore, if most thinkers agreed by the 1980s that the old constitution was in dire need of reform, they disagreed on how. On the right, the idea was to recover trust which would generate rational deference, and on the left, the point was to have radical changes to get rid of the remains of a deferential society which prevented the blossoming of a modern democracy. Clearly, though, both sides were forgetting that constitutional reform would also have unforeseen consequences, which could not be undertaken lightly and that writing a constitution from scratch had never been done in England (except under Cromwell, which still marks the collective memory as a mistake to avoid repeating). It would also politicize the judiciary. The left interpretation was much more radical than the right-wing one, because it developed the idea that democratic modernity could not blossom until the old Victorian way of thinking and doing had been done away with. So what had made the force of the nation, its relying on its historical constitution, became a source of the problem to deal with. Loughlin summarizes the dilemma thus:

The modern constitution has as its object the office of government, while the traditional concept has that of the state. The modern concept distinguishes between government and society, whereas the traditional concept suggests that the manners, culture, and traditions of a people form the ‘real’ constitution of the state.⁸⁰

The modern concept also held the belief that a written constitution – a codified instrument of government – could provoke as much deferential love as the old one, relying on customs, old-fashioned practices, and conventions. This remains to be seen.

If, the Social Democratic Party made the constitutional question its own in the 1980’s, later on, as Charter 88 became a real force, it was also influential in the Liberal Democrat party as a way of imposing the policies of the centre-left through constitutional reform. The tensions which came fully into light at the end of the 1980’s – and in reaction to Thatcher’s

⁷⁷ David Marquand, *The Unprincipled Society: new demands and old politics*, London, Cape, 1988, viii-292 pages.

⁷⁸ Will Hutton, *The State We’re In* (1995), London, Vintage, 1996, xxix-370 pages.

⁷⁹ Anthony Barnett, *This Time. Our Constitutional Revolution*, London, Vintage, 1997, pp. xi-371.

⁸⁰ Martin Loughlin, *The British Constitution. A Very Short Introduction*, *op.cit.*, p. 12.

rule – were now between civic engagement and popular sovereignty vs. deference and parliamentary sovereignty. The manners, culture, and mores of the nation were no longer the point, as the only way to secure responsible and accountable governments was to subordinate them to a radical, nearly republican model of governance. The period of scandals under Major, known as “sleaze”, with cash for questions and further questionable behaviour on a part of a conservative class on the wane, gave the 1995 rebranded New Labour a perfect opportunity to drape itself in constitutional modernisation to further its aims. Remarkably though, as the New Labour’s “Cool Britannia” landslide was such in 1997, they did not need to rely on the Liberal Democrats anymore and introduced a constitutional settlement which focused on a stakeholder society and which used the remains of centralization to their benefit.⁸¹ What had started as a deliberate attempt to introduce into British politics a constitutional reform, which would radically reform the old Victorian constitution and introduce a real far-reaching democratic system in the interests of the citizens, ended with a New Labour constitutional settlement only partially accomplished in some cases, which introduced further instability into the structure. As for deference, it was not even part of the equation anymore – it was as outdated as the old traditional constitution.

Thus, there are two ways of seeing what happened from the 1970’s to the 1990s: either, that the continued demands for accountability in governance and participatory democracy were the long result of what should have taken place after the setting up of the democratic structure post-WWI – and further pushed by membership to the EEC – or that the traditional constitution was so ingrained within the fabric of society that it prevented them from becoming full free citizens – in the republican sense. Either way, not taking into account the role of deference in the structure had much more impact than has been generally recognised.

The end of deference?

The demands for constitutional changes recognised that the Victorian model of parliamentary government no longer played its role of checks and balances by dispersing power among several actors of the political game, but it also pointed at the fact that the constitution did not protect the rights of citizens very efficiently any longer, as government was no longer held accountable. As early as 1974, Scarman had made clear that maybe one of the solutions to this problem – also to square matters up with the common law – was to

⁸¹ See: Michael Rustin, “Revisiting Charter 88”, *Parliamentary Affairs*, 2009, 62 (4), pp. 568-79.

incorporate the European Convention on Human Rights into domestic law in order to guarantee such rights in the British structure and to make the supreme court emerge as an independent entity.⁸² But this was the very early recognition that the common law, working from precedent to precedent, keeping an inherited link with the past and guaranteeing the practical rights of the English, no longer fully fitted the post-WWII world⁸³. Human rights were now declared in a document, devoid of a national past, since these rights were dimmed as “universal”. Therefore, the concept of the common law was an oddity in a global world. The defenders of Charter 88, along with constitutional reformists and prescient lawyers, were also saying, in the 1970’s, 1980’s and 1990’s, that civil liberties could no longer be sufficiently protected in a system in which the executive had extended its powers too widely. The solution relied either on a rational codified structure, which was foreign to the English, or on making judges the sole trustees of fundamental rights – or on both. Transforming the old spirit of the constitution had an impact on its people.

The conservative philosopher Michael Oakeshott, for example, as soon as 1947 in his renowned essay *Rationalism in Politics*, had been the one to denounce most forcefully what he saw as a violence to the character of the English Constitution. He showed how,

the predicament of our time is that the Rationalists have been at work so long on their project of drawing off the liquid in which our moral ideals were suspended (and pouring it as worthless) that we are left only with the dry and gritty residue which chokes us as we try to take it down.⁸⁴

What Oakeshott explained was that there could never be any “general principles” or “theories” to rely on and, thus, the old constitution and all the little idiosyncrasies related to it, were a canvas on which to constantly apply the brush in an impressionist way. Such a flexible structure allowed the real citizen – that is, the one who wants to be a citizen – to attain a political education worthy of making him a true participant in political life. Oakeshott does not use the term deference but what he wrote in the essay “Political Education” captured the essence of the concept as he talks about “our tradition of political behaviour”. “Its principle is a principle of continuity”, he explains, “authority is diffused between past, present, and future; between the old, the new, and what is to come. It is steady because, though it moves, it is

⁸² Leslie Scarman, *English Law—The New Dimension*, *op. cit.*, pp. 81-2.

⁸³ The European Convention on Human Rights was incorporated into domestic law through the Human Rights Act of 1998.

⁸⁴ Michael Oakeshott, “Rationalism in Politics” (1947) in: Michael Oakeshott, *Rationalism in Politics and Other Essays*, Indianapolis, Liberty Fund, 1991, p. 41.

never wholly in motion; and though it is tranquil, it is never wholly at rest”.⁸⁵ Like in a modernized version of Burke, Oakeshott focused on how such traditions encouraged people to “participate in conversation”, as he wrote in “Political Education”, which was “at once initiation into an inheritance in which we have a life interest, and the exploration of its intimations”.⁸⁶ Oakeshott was one of those who refused to accept that a certain type of political language – now too often perceived as “mystical” or romantic – should not be used in reference to the British Constitution or the common law of England for example.⁸⁷ This is very significant as removing a way of talking about politics – in a literary or even in a poetical way – also denied the nation the possibility of expressing its constitutional heritage. Talking politics, even though it was part of the nation’s culture, was by then very much considered as a scientific – or rational – matter. In this sense, deference as an expression, was also most certainly rejected, later on, in the 1970’s because it carried a romantic meaning which bothered – not being factual enough – and which could not be easily defined precisely because it had a nostalgic and imaginative quality about it. “There will always remain something of a mystery about how a tradition of political behaviour is learned”, analysed Oakeshott, “and perhaps the only certainty is that there is no point at which learning it can properly be said to begin”.⁸⁸ Deference was exactly such a mystery: alive in a particular way in England, difficult to analyse, yet ever present in the very form and constitution of the state and in its English legendary past.

However, rational deference was dying along with the old Victorian constitution in the 1990s and on its ashes grew either radical democratic political demands (like those of Charter 88) or political deformations of these demands (like those of New Labour) which both rejected with contempt the traditional language of deference precisely because it prevented constitutional renewal. Pragmatism in politics was replaced by a theoretical, even clinical, language of principles and rights. One of the best examples is how a ministerial code of conduct slowly openly imposed itself in the 1990’s along with a new Code of Conduct for MPs and a *Civil Service Code* reminding civil servants of how they should behave – with “integrity, honesty, objectivity and partiality”.⁸⁹ It is quite striking that such basic principles

⁸⁵ Michael Oakeshott, “Political Education” (1951) in: Michael Oakeshott, *Rationalism in Politics and Other Essays*, *op.cit.*, p. 61.

⁸⁶ *Ibid.*, p. 62.

⁸⁷ See his footnote in the essay on “Political Education” in which he refuses the label that his ideas have “mystical qualities”. *Ibid.*, p. 61.

⁸⁸ *Ibid.*, p. 62.

⁸⁹ The Constitutional Reform and Governance Act of 2010 incorporated into law most of the ideas at the core of the Civil Service Code of 1996. See the present civil service code: <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>, accessed 24 March 2017.

of decency would have to be put down in writing for those who serve the state and for the people who have elected them, but the number of political scandals (of all nature) exposed since WWII, as well as lack of transparency in the civil service, made it compulsory to move out from the old gentlemen's way of doing things that had been based on guidance and deference to conventions and on a good dose of common sense.⁹⁰

If rational deference did not die in the 1990's, it was much more difficult to see it alive. Clearly, by then, what remained of the "English" ways had also been superseded by a community of British people, whose character – Britishness – proved very difficult to define and for whom the reference to the English past was either a symbol of domination or for which there was indifference. Deference no longer fitted anybody, nor any of the transformations of the constitution. It was equated with a language of civility and gentility in politics which was just outdated. English Deference was a concept without an anchor. By the 1990s, "being deferential" was mostly used to refer to the love of the nation for the monarchy but not even the monarchy – one of the great producers of deference and a pre-democratic symbol of the state – was safe from the language of rationalism.

The survival of deference to the monarchy?

The demise of deference had an impact on the type of monarchy people favoured. From the accession to the throne of the young Elizabeth II to the death of Princess Diana in 1997, the British monarchy underwent a major makeover that few would have imagined in 1952. What had started with a grand Anglican mystical coronation, in which the link between the anointed monarch and the people was interwoven in a common culture and a national life of the past, present, and future, nearly ended in the gutter of the populist lower press in 1997. English deference was linked to the monarchy because, as explained in the previous chapter, the sovereign was, and still is, both head of the state and Supreme Governor of the Church of England. As such, the monarch represents both the religion and the culture of its people and adds to it the aura of the historical attachment to the past. The role model represented by the Queen and her family was more than just moral; it was all at once cultural, religious, historical and national. In all these senses, the pressure on the Queen was enormous to conform to expectations which were super-human, especially in an age in which the media

See also the present Ministerial Code, with a foreword by Theresa May, which can be accessed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579752/ministerial_code_december_2016.pdf, accessed 24 March 2017.

⁹⁰ See also: Martin Loughlin, *The British Constitution. A Very Short Introduction*, op.cit., pp. 40-1.

sought better coverage of the actions of the Royals and infinite access to their private lives, pretesting democratic transparency. As Billig analysed with great clarity in his study *Talking of the Royal Family* (1992), by being highly exposed at the end of the 1960's and increasingly so in the 1970's, 1980's and especially 1990's, the monarchy did not lose its appeal because the "normality" of the monarch became a way for people to better identify themselves with this symbol of historical continuity.⁹¹ However, the loss of irrational deference in society is best perceived in the changing reaction to the monarchy over these years. The 1977 Silver Jubilee, taking place at a time of an acute financial, political, and social crisis, was the perfect opportunity to express rage at the establishment and at the monarch at the apex of it. This was best conveyed in the lyrics of the disillusioned Punk group, the Sex Pistols's *God Save the Queen* (1977): "God save the queen, The fascist regime, They made you a moron, Potential H-bomb". It was not only the debilitating influence of the system that the Sex Pistols were denouncing but also a whole culture of domination through tradition and class when, for some, there was not even a hope of a better future. But the lyrics were also saying that if there was no future for some, there would not be any future for anyone as anger and despair could turn people into imploding nuclear bombs who would take down the whole structure with them. The Queen was only a figure, a target who represented both the centre of the system and the top of the establishment. Such criticism was followed by a decade of mixed emotions for the monarchy oscillating between great national moments of what was said to be "deference", at the times of the celebrations of the royal weddings of Prince Charles in 1981 and Prince Andrew in 1986, and the recurrent republican criticism for the monarchy, which was most forcefully expressed in the books of Piers Brendon, *Our Own Dear Queen* (1986), Tom Nairn, *The Enchanted Glass* (1988), Edgar Wilson, *The Myth of the British Monarchy* (1989) and in that of Stephen Haseler, *The End of the House of Windsor* (1993).⁹² For all these writers – but it was most insightfully expressed by Tom Nairn – the only way to get rid of the monarchy was to achieve a revolution in manners and mores: "Real democracy will exit only when 'every man is, in his own proper-self, a king' – when the ordinary has become extraordinary, the humdrum been dissolved in glamour: when mortals step into the enchanted glass or its visions step down to join us"⁹³. But to their dismay, all of them were aware that their society would need to make a monumental shift to discard the remains of a feudal age

⁹¹ Michael Billig, *Talking of the Royal Family*, *op.cit.*

⁹² Piers Brendon, *Our Own Dear Queen*, London, London, Secker and Warburg, 1986, 244 pages; Edgar Wilson, *The Myth of British Monarchy*, London, Republic, 1989, x-227 pages; Tom Nairn, *The Enchanted Glass: Britain and its Monarchy*, Londres, Hutchinson Radius, 1988, 414 pages; Stephen Haseler, *The End of the House of Windsor: Birth of a British Republic*, London and New York, I. B. Tauris & Co. Ltd, 1993, vi-208 pages.

⁹³ Tom Nairn, *The Enchanted Glass: Britain and its Monarchy*, *op.cit.*, p. 126.

which still gave the public, in the words of Nairn, an “electric charge”⁹⁴ which politics and politicians cannot even come close to conjuring up. This tension between the irrational interest of the British for their monarchy and the fact that it was a constant conservative established presence looking backwards, grated on republican left-wing intellectuals.

By 1993, however, Nairn recognized that the “deference” for the monarch, along with the changes within society, had been modified too, much more than ever imagined. “What is it that has died?”, he asked at the Charter 88 conference on ‘The Monarchy, the Constitution, and the People’ in May 1993: “Not the sovereign or the institution, but the enchantment—a near-universal romance with the Crown, coloured by adulation and protected by a strong emotional taboo”.⁹⁵ Such a change was very rapid as, in less than 25 years, since the grand accession of the Queen to the silver jubilee of 1977, a profound and permanent alteration had taken place. It had already showed up at the time of the Silver Jubilee as the other side of the spontaneous street celebrations was the picture sleeve of the Sex Pistols’s own interpretation of the above mentioned *God Save the Queen*. The group used the official portrait of the Queen, blindfolded by a collage of the title of their song and the royal lips sealed by the band’s name – with all the obvious sexual connotations related to such a choice, in view of what the name of the group meant. The BBC banned the song from the radio and the TV, but it reached number two on their singles chart and has now become an absolute classic of Punk rock music – to the extent that its original anti-establishment stance has been turned upside down into a very established and lucrative one. This cover, designed by the artist Jamie Reid, became a standard for all sorts of paraphernalia to be bought in London by all, from anarchist punk lovers to London-loving tourists, since the 1980’s.⁹⁶

The fall from a quasi-divine monarchy in 1952 to a “brand” defaced by a Punk group in 1977 without further ado – as, in the end, the mass indignation calmed down – could not have been more hurried. It is impossible to imagine such a single’s cover being published by any newspaper in the 1950s and yet, in less than a quarter of a century, the monarchy had fallen from its pedestal. It carried on further, in the 1980’s and in the 1990’s, and this time along with Thatcherism. The reason for such a prompt fall from grace was best expressed by Bogdanor in 1997:

⁹⁴ *Ibid.*, p. 54.

⁹⁵ Tom Nairn cited by Anthony Arblaster, “The Fall of the House of Windsor”, *New Left Review*, I/208, November-December 1994, p. 127.

⁹⁶ One cannot help remarking that even rebel groups with a propensity for self-mutilation and outrageous lyrics end up being swallowed up by the system in Britain.

Obviously the personal difficulties of members of the Royal Family and the intrusion of the media into their private lives have affected popular attitudes. But that is only a small part of the explanation. More fundamental has been the rapidity of changes in social attitudes. Deference is no longer, as it was until perhaps the 1960s, a powerful force in society, and the past is no longer seen as a source of authority or legitimacy. Instead, social attitudes are based upon a pervasive utilitarianism. An institution can no longer be defended simply by virtue of the fact that it has existed for a long time. It must also be shown that it fulfils some practical and useful purpose.⁹⁷

Here, the deference referred to is not only irrational deference but also rational deference, no longer palpable and only subordinated to the value of the monarchy. What had been lost was what Newby had analysed in agricultural workers – i.e. “the form of social interaction which occurs in situations involving the exercise of traditional authority”.⁹⁸ There is no mention here of a “mutual and harmonious interdependence”⁹⁹, but much more of an individualist vision of what the monarchy can give and what the people can take. This loss of a traditional way of interacting was most surprising because, on the one hand, those who hated the idea of the monarchy had even more reason to hate it and, on the other hand, those who went along with it, had forgotten why it needed to keep its mystical appeal. It had become a celebrity monarchy, a source of division when it should have been the centre of the system, above all, the incarnation of the nation at large.

This was expressed in a most disconcerting way at the time of the bizarre and most un-English outpouring of grief which followed the death of Diana, Princess of Wales, at the end of August and in the first days of September 1997. That moment presented a very distinct view of the nation. It remains, up to this day, a snapshot of an undeferential nation. As has been well-documented over the years, the depressing saga of Prince Charles and Princess Diana’s married life, from what was sold as a fairy-tale wedding in 1981 to their unpleasant divorce in 1996, allowed the media to indulge in a “celebrity culture” of the monarchy which verged on the indecent and which was all but deferential.¹⁰⁰ The death of the Princess in Paris, under distressing circumstances, unleashed emotions which twenty years later seem uncharacteristic of the nation precisely because they lacked the filter of deference. Princess Diana as the figure of the saintly fallen woman, rejected by a cold and heartless monarchy

⁹⁷ Vernon Bogdanor, *Power and the People. A Guide to Constitutional Reform*, London, Victor Gollancz, 1997, pp. 172-3.

⁹⁸ *Vide supra*. Howard Newby, *The Deferential Worker. A Study of Farm Workers in East Anglia*, *op.cit.*, pp. 416-7.

⁹⁹ Howard Newby, “The Deferential Dialectic”, *Comparative Studies in Society and History*, *op.cit.*, p. 145.

¹⁰⁰ Andrew Marr gives a good summary of these years and how “breaking every taboo left in royal circles, [Princess Diana] freely discussed the breakup of her marriage (‘there were three of us’), attacked the Windsors for their cruelty and promised to be ‘a queen in people’s hearts’”. Andrew Marr, *A History of Modern Britain* (2007), London, Pan Books, 2009, p. 517, pp. 516-20.

which always did its duty, was a suitable icon to be portrayed by the gutter press to whom she had willingly given her story to gain the nation's goodwill. The tabloids themselves were not short of a paradox as they had hounded her, including as she was lying dead in the car accident which killed her. Tony Blair tellingly found the expression the "People's Princess" but, with the loss of deference, had come a rise in populism. A great number, from politicians to the media barons, were guided by the same doctrine. In an article written at the time by a self-confessed left-wing republican, the author bitterly explained the unprecedented relief of mass emotions along these lines:

One of the hidden agendas may have been—as some suggested—a generalized regret for eighteen years of Thatcherism. I suspect that many people in Britain do now regard those eighteen years as being years of missed opportunity and a decline in public values; but, as opinion polls show, the British seem to want goodness and 'caring' without hard choices: the NHS, but low—or preferably *no*—taxes; better working conditions, but no trade unions; fair shares and better times for all, but no redistribution of wealth; a society stripped of deference, but *Hello!* magazine wall-to-wall. Grief for Diana expressed that perfectly. You could emote all you wanted without having to give anything up¹⁰¹.

This quotation is very revealing of a left-wing thinker nostalgic for an age in which rational deference – a type of civility – was still active because it had the ability to hold the nation in the nets of customary behaviours and traditional ways of mourning. The last sentence also indicates how the transformation of British society had achieved the feat of making people both irresponsible and the prisoners of their passions. What should have been the swan song of the monarchy – as the Queen herself was pushed by public opinion into expressing her grief for her estranged daughter-in-law – ended up being its validation. The reasons for not toppling the monarchy were no longer deferential but demagogic. Tony Blair's role in this crisis – himself, to use the expression of Prochaska, "a theoretical republican"¹⁰² – to protect the monarchy, was done over the populist remains of what the monarchy had been. As he declared on the morning of the Princess's death: "We know how difficult things were for her from time to time. I am sure we can only guess that. But people everywhere, not just here in Britain, kept faith with Princess Diana. They liked her, they loved her, they regarded her as one of the people"¹⁰³. He openly put the fallen princess on the side of the people against the institution of the monarchy. Times have changed and today this speech seems over expressive

¹⁰¹ Elizabeth Wilson, "The Unbearable Lightness of Diana", *New Left Review*, November-December 1997, 1/226, p. 141.

¹⁰² Frank Prochaska, *The Republic of Britain 1760-2000* (2000), London, Penguin Books, 2001, p. 221.

¹⁰³ The tribute of the Prime Minister, Tony Blair, to Diana, Princess of Wales, 31 August 1997, <http://www.bbc.co.uk/news/special/politics97/diana/blairreact.html>, accessed 26 March 2017.

– over passionate even – but it is notable how well it fitted the moment and how well received it was at the time. However, in the words of Elizabeth Wilson, “The myth performed the further task of *appearing* to address outworn privilege while actually strengthening it”.¹⁰⁴ It validated the existence of the monarchy.

In fact, the funeral of the Princess – rebranded as one of the people – was like a global exercise of demystification as the villains in the play were the real Royals, especially the Queen, forced to expiate the sin of refusing to play the part the nation’s mood wanted her to play. It was a case of “people vs. the establishment” in which there was very few space for shades of grey. It is here that rational deference was seen lacking, as emotions were expressed in waves of flowers, articles, and acres of TV coverage which are a strange testimony to the period. That Princess Diana herself was a member of the establishment, coming from an old aristocratic family and the mother of a future King, seems to have been lost somewhere during the 1990’s, when she openly portrayed herself as a victim of the clinical system behind the monarchy that she referred to as “the Firm”. The monarchy had to conform to the people’s wishes – whatever they were but especially as they were expressed in the pages of the tabloids and translated into the words of politicians. But in truth, it is thanks to the death of Diana, Princess of Wales, that the monarchy was able to take on a new lease as it had been chastised for its lack of initial reaction and had expiated its sins in the Queen’s highly unusual broadcast to the nation¹⁰⁵ and in a funeral service in which the Rroyal family were put through Charles Spencer’s tribute to his sister. One could be forgiven for forgetting that he was himself a godson of the Queen and the 9th earl of Spencer, as he boldly declared his sister as “Someone with a natural nobility who was classless and who proved in the last year that she needed no royal title to continue to generate her particular brand of magic”.¹⁰⁶ It is quite surprising with hindsight to see how easily such a blatant statement that the Princess was “classless” and the side remark of the Princess having been stripped of the style “Her Royal Highness” at the time of her divorce, were so easily accepted – the tribute was applauded in Westminster Abbey and even more so by the thousands of people outside. Even the main figures of the establishment were blurring the lines in the “them vs. us” situation, in which all were in search of a culprit.

The funeral of Diana, Princess of Wales, painfully exposed how fragile the monarchy was if pulled to one side and no longer embodying the unity of the nation. The Queen, at that

¹⁰⁴ Elizabeth Wilson, “The Unbearable Lightness of Diana”, *op.cit.*, p. 142.

¹⁰⁵ Frank Prochaska, *The Republic of Britain 1760-2000*, *op.cit.*, p. 220.

¹⁰⁶ Charles Spencer, Funeral Oration at Diana, Princess of Wales’s funeral on 6 September 1997, <http://www.bbc.co.uk/news/special/politics97/diana/spencerfull.html>, accessed 26 March 2017.

time, was at once the person to whom the nation would naturally have turned to in a period of deep sorrow, but was not able to, because the Queen herself had been too involved in the fate of her daughter-in-law. If deference had been alive and well, such a national outpouring of grief for a woman who had criticized the monarchy from within would have been perceived as an agitation with no direct consequence on the institution itself. The parallel here can be made with Queen Caroline, the estranged wife of George IV. Even though the King was not a popular figure and Queen Caroline had popular sympathy for her plight as his rejected wife, there was no noticeable decline in the deferential trust for the institution of the monarchy itself.¹⁰⁷ Conversely, Princess Diana's death rocked the monarchy in a way that no other monarchical period of crisis did. But, in the midst of the storm which surrounded her death, there was also a populist feeling at play which soon humanized the Queen into the grandmother of two young boys who had lost their mother and for whose benefit the nation, like a family, could accept reconciliation. Prince Charles also went from unfaithful former husband to the single father of young boys who needed support. The media also had to accept that they could no longer hunt down the Royals – and especially the two young Princes – in the way they had the Princess and over her funeral; thus came to pass a new stage in the link between monarchy and people.

This was a most interesting moment which marked both the dusk of old deference and, oddly, which allowed its new dawn, albeit in a much reduced scope. The monarchy is no longer something to look up to, to be morally encouraged by, to take comfort in, and to take a certain type of guidance from. No longer is it draped in the mystery of its sacredness, nor in its intouchability; it has become today a celebrity brand. So voluntary deference to it is seen as being transformed. In the words of Aughey, what the monarchy “means today is the celebrity value of a glamorous niche market. If the royals choose to live by it (and in Prince William they have the perfect product) the chances of the monarchy's survival are reasonable. It may not be magnificent, but it is a life. If they do not, then its days may be numbered”¹⁰⁸. If this opinion is to be believed, then voluntary deference to the monarchy is definitely dead because it no longer generates in people a desire bigger than themselves, to be used in a positive sense. The monarchy has just become another organ of reproducing famous people for being famous and appealing to much lower instincts in the nation. Nevertheless, there

¹⁰⁷ Jonathan Fulcher, “The Loyalist Response to the Queen Caroline Agitations”, *Journal of British Studies*, Vol. 34, No. 4 (Oct., 1995), pp. 481-502.

¹⁰⁸ Arthur Aughey, *Nationalism, Devolution and the Challenge to the United Kingdom State*, London and Sterling, Pluto Press, 2001, p. 52.

remain moments in which the monarchy – and especially the Queen – still can stir up emotions which bring out a disposition for the deference of old. The lesson of what happened in 1997 have brought on transformations which have been overlooked.

From then on, the monarchy accelerated the movement for its reform – already initiated in the 1990's with the "Way Ahead" group headed by the Queen¹⁰⁹ – which saw the monarchy focusing on allowing female members of the royal family to succeed on the same terms as men and on the possibility of repealing the 1701 Act of Settlement clause, which forbade any Catholic from ascending the throne and from being married to a monarch. Other decisions included keeping the Civil List very short (which had already seriously reduced in the previous decades) and allowing transparency of royal finances (a first document on royal finances had first appeared in 1993) to quench the criticism referring to the cost of the monarchy. There was an understanding that the monarchy represented the past, with an undemocratic nature and resting on outdated pillars, and that it needed reinforcement. Without deference came also the refusal of a hierarchical society and as the monarchy was at the apex of it, it needed to reinvent a democratic role for itself. For some, such a role could be a "people's monarchy" to use the words of Roy Hattersley in a BBC Radio Four programme, referring to Scandinavian monarchies.¹¹⁰ This was ignoring that the British monarchy took its force from its long past and from its link with its people as the incarnation of the nation at large.

The other great force of the monarchy, however, which was too often cast aside but which fitted the rhetoric of usefulness, was its link with charities. All of the representatives of the charities to which Princess Diana had given her patronage were invited to her funeral. This was extremely well managed, in focusing on a role useful for the future. Undeniably, the monarchy has shown great ability in carving out this new role for itself as a great charity patron since the 1960's. It has been able to connect to the people much more and much more directly than republican intellectuals critics have perceived. In the words of Prochaska, "because they despise privilege and deference, anti-royalists have failed to notice just how much the monarchy has stimulated the advance of public spirit, both practically and symbolically"¹¹¹. The way in which the monarchy has taken on the promotion of great causes and the defense of pluralism in society has been its greatest asset since the accession of the present Queen. Of course, this was already the case in previous centuries – the role of Prince

¹⁰⁹ See: Vernon Bogdanor, *Power and the People. A Guide to Constitutional Reform*, op.cit., pp. 188-9.

¹¹⁰ Roy Hattersley, "Monarchs to Measure", BBC Radio Four, Analysis programme, 27 May 1993. Also cited in: Vernon Bogdanor, *Power and the People. A Guide to Constitutional Reform*, op.cit., p. 193.

¹¹¹ Frank Prochaska, *The Republic of Britain 1760-2000*, op.cit., p. 224.

Albert in bringing on the Great Exhibition of 1851 was one such moment – but it is in the selection of the charities that the royals have chosen to support in the last 60 years that a distinct new picture has appeared: one of a caring monarchy, bent on defending responsibility in society, turned towards children, education, local initiatives, civic renewal, health, and well-being as well as working with the government to promote such aims. Such a link, which has deep roots within the social fabric of society, has maintained a core of people rationally deferential to the monarchy because they can see the good it promotes, employing its image in a most practical and popular way. This is something that Tony Blair could not ignore at the time of the death of the Princess, which very nearly corresponded with the beginning of his Premiership.

As New Labour was about to embark on a constitutional reform programme inspired by Charter 88 on which they had been elected in May 1997, Blair knew that he needed the monarchy to promote stability. But, this is where New Labour operated a reversal of the desires of Charter 88 by using its great majority in Parliament to introduce some of the radical reforms expected but leaving aside what should have been the shift in the mentality and the mores of the nation – the shedding of the Victorian frame of mind related to the constitution. In effect, as Bogdanor rightly notices, “the continued existence of the monarchy is of as much value to constitutional reformers as it is to constitutional conservatives”¹¹². Indeed, as the enduring face of continuity, the monarchy gave New Labour the stable and legitimate political canvas on which to implement part of the programme of Charter 88, leaving aside what should have been its transformative nature for republican left-wing thinkers, i.e. the advent of a republican form of governance.¹¹³ For all intent and purposes, the monarchy survived because it was still useful and emotionally soothing as ever and because there was still a base of rational deference – as witnessed in the respect for its charity role which has flourished since 1997.

Like the proverbial phoenix, voluntary deference underwent many transformations from 1972 to 1997: irrational deference all but disappeared and rational deference very nearly, as it was assailed by the utilitarian ideals of elements of society contemptuous of it. The constitutional reform programme defended by New Labour and implemented in the first ten years of the Blair Premierships from 1997 to 2007, unleashed new forces which – like the strange, over-emotional, undeferential expression of grief at the time of the death of Princess

¹¹² Vernon Bogdanor, *Power and the People. A Guide to Constitutional Reform*, op. cit., p. 197.

¹¹³ See: Michael Rustin, “Revisiting Charter 88”, *Parliamentary Affairs*, 2009, 62 (4), pp. 568-79.

Diana – have led to a renewal in rational deference which would not have been expected only twenty years ago.

Chapter 8

The “afterlife”¹ of Deference (1997-2016)

The old “historic” constitution could not survive after 1997. The manifesto on which Blair’s New Labour party had been elected clearly expressed a desire to bring in transformative changes to the constitution, especially to bring it in line with democratic demands for more equality and greater political representation. There was an intentional plan to make the constitution adjust to the social changes of the end of the twentieth century. This is why, for Bogdanor, “the constitutional reforms of the years since 1997 cannot, then, be understood in evolutionary terms. They represent nothing less than a revolution in our constitutional affairs, a radical discontinuity from what has happened before”².

A revolution certainly, but not a fully completed one as we are about to see. In terms of rational deference, the new British Constitution’s aim was no longer to rely on it in any way. The point was precisely to move away from the idea that only some were entitled to be in charge and to rationally pin down the constitution in a way which would limit the power of the executive, divide legislative powers with the regions, allow more independence to the judiciary, and give more power to the people. The question was then if the British were going to make theirs a global form of deference to a written constitution and written rights – in the Shilian sense that deference is present in one form or another at all levels of interactions –, or, if their special type of hierarchical voluntary deference, in line with their historic constitution, would just pass away with the changes brought on by devolution, the reform of the House of Lords, the Human Rights Act, the scrapping of the office of the Lord Chancellor, a directly elected mayor of London, and the Freedom of Information Act.

¹ This title is in reference to the following one: “Concluding note: the afterlife of a political discourse” taken from Alan S. Kahan, *Liberalism in Nineteenth Century Europe. The Political Culture of Limited Suffrage*, New York, Palgrave, Macmillan, 2003, pp. 193-200.

² Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 276.

Changing the constitutional rules was seen by a number of political actors as the only route towards accountable and democratic governments in which rational deferential attitudes had no place. This view was based on the same unsound reasoning which carried the idea that the monarchy would collapse, and a real republican regime would emerge, if only people could restrain themselves from being deferential. There is a double-edged flaw in such a belief: firstly, as convincingly shown by Shils, there is a need, albeit small, in everyone to defer; second, a characteristic English deference did play a positive role in allowing the growth of stable and free institutions in the UK. Therefore, identifying voluntary deference as one of the sources of the problem in the 1970's and considering its demise as an encouraging sign that people were more politically enlightened – as a number of thinkers on the left of the political spectrum did over the 1980's and 1990's – eliminated the need to analyse the role played by English deference in the old institutions, and represented a lacuna in political thinking. It also implied that the foundational principles, of the sovereignty of Parliament and the rule of law, no longer reflected the spirit of the British as a nation. The historic constitution itself, and voluntary deference to it, were perceived as anachronisms. Nationalist demands – and to a certain extent, populist demands too – needed to be met by realistic politicians. In truth, there was also a moral outlook at work in New Labour's reforms, shared by the Liberal Democrats and the framers of Charter 88. A rational new constitutional arrangement was to be a blueprint to protect people from their deferential selves – thereby, paradoxically, accepting the premise that deference was still alive while trying to kill it.

So, what was really the nature of the constitutional reforms undertaken under New Labour? What were the consequences for what was left of English rational deference and for the belief that the old constitution was the best example of the British spirit of liberty? This brings on two more questions: firstly, is there any point in referring to English deference after devolution? Secondly, how can the vote in favour of Brexit be read in the light of the constitutional changes which took place from 1997 to 2010?

New Labour's constitutional settlement

The constitutional revolution which took place after 1997 was supposed to address the idea, repeated by the advocates of Charter 88 who inspired the project, that people had a “right to change the rules” of the constitutional game.³ Politics was presented by New Labour

³ Anthony Barnett, *This Time. Our Constitutional Revolution, op.cit.*, p. 329.

as a special club in which only the members had the right to participate because they knew the unwritten conventions and little idiosyncrasies at work.⁴ There was nothing new in these demands, as the idea of a codified constitution had been in the air since the criticism against a dominant executive in 1970s, but, this time, New Labour was elected with a sufficiently large majority to implement its manifesto. The challenge, even though it was not put in such terms, was to solve the equation which opposed “parliamentary sovereignty”, still seen as too restricted, to “popular sovereignty”, as the people were not sufficiently involved in governance. On the one hand, New Labour recognised that the Victorian model of parliamentary government had been used by the executive to take on more power over the course of the twentieth century, whilst on the other hand, giving power to the people relied on a democratic settlement which would partially codify the old constitution for democratic reasons. As seen in the previous chapter, finding a compromise between parliamentary and popular sovereignty was rather difficult because one was exclusive of the other. Either Parliament remained sovereign or a new codified constitution took over, securing democratic rights in a much more direct way.

Unsurprisingly, New Labour never went all the way with their transformative constitutional project, but they did leave an incoherent set of changes which have radically modified the old constitution. In less than eight years, from 1997 to 2005, a number of often unrelated decisions were taken which gave body to a new constitution that only appeared ten years after New Labour had got into power. The first decision taken was that the Bank of England should be made independent from the executive to set interest rates, then followed in quick succession: devolution for Scotland, Wales and Northern Ireland in 1998 (after referenda were held in Scotland and Wales); the introduction of a directly-elected mayor and assembly for the governance of London (after another referendum) in 1998; the use of proportional representation for the elections of the devolved assemblies, the London assembly, and elections to the European Parliament; the possibility of directly elected mayors for local authorities; the incorporation of the European Convention on Human Rights into British law; the reform of the House of Lords; greater access to government information, transparency for donations to political parties; and lastly, reform of the office of the Lord Chancellor along with the creation of a Supreme Court.⁵ Some, like Nevil Johnson in

⁴ This is the way Vernon Bogdanor describes the old constitution. Vernon Bogdanor, “Magna Carta: The competing forces that cry out for a constitutional convention”, *The Independent*, 14 June 2015.

⁵ The following Acts were passed: The Referendum (Scotland and Wales) Act (1997), The Scotland Act (1998), The Government of Wales Act (1998), The Northern Ireland Act (1998), The Greater London Authority (Referendum) Act (1998), The European Parliamentary Elections Act (1998), The Human Rights Act (1998), the

Reshaping the British Constitution (2004), immediately recognised that the customary uncodified constitution had been reshaped – he even uses the self-explanatory term “deformed” – but not according to clear-cut constitutional principles which would fix former problems, including a centralized form of governance. For others, like Bogdanor, in *The New British Constitution* (2009), power had been diffused to other components of the state in a horizontal and asymmetrical way, but it had not sufficiently trickled down to the people vertically. In his opinion and in view of the complexity of the changes, the time had come for a constitutional convention to draw up a codified constitution which would make sense of the reforms as a whole. Such a constitutional framing had never been set up in times of peace.

It became clear, after Blair’s first (1997-2001) and second (2001-2005) mandates that in order to remain in power, New Labour was focusing much more on a pragmatic – verging on populist -- approach to constitutional change. Further changes to set the constitutional house straight might mean losing power. This is the reason why rethinking the national electoral system or holding the promised referendum on the Euro never took place. Handing power over to the people became less of a priority once the initial major reforms had been passed and once it became clear that such changes could mean losing a grip on Parliament. The old model of parliamentary government became much more comfortable to settle back into to conserve power. In the end, the political scientist Anthony King concluded in *The British Constitution* (2007) that the new settlement looked “a little bit like a bombed-out ruin left over from a major war”⁶ and that the best thing to do was to do nothing, just “to pause, to absorb the changes that have already taken place and reflect upon them”⁷. Essentially, this meant going back to the time-honoured fashion of adapting through incremental moves.

With the benefit of hindsight, what appears clearly is that the Bagehotian fusion of powers between the legislative, the executive, and the judiciary has been fundamentally distorted by the Blair reforms. The British Constitution had gone from a fusion of power, which made it so singular from other democratic regimes in the nineteenth and twentieth centuries, to a semi-separation of powers in the twenty-first century. At the heart of the three fused powers, with the monarch, stood the Lord Chancellor who was head of the judiciary, and who could sit as a judge, Speaker of the House of Lords, and a member of the Cabinet: his office and role were transformed with the Constitutional Reform Act of 2005. The scrapping of such an ancient role in the constitution, without any deference to a long-held

House of Lords Act (1999), The Local Government Act (2000), the Freedom of Information Act (2000), The Political Parties, Elections and Referendums Act (2000), The Constitutional Reform Act (2005).

⁶ Anthony King, *The British Constitution* (2007), Oxford, OUP, 2010, p. 351.

⁷ *Ibid.*, p. 365.

historical position, was proof of Blair's lack of understanding for the consequences related to getting rid of positions which had ramifications within the system. It looked as if government itself did not really understand nor care for the historical memory infused in certain central roles. The Act also created a Supreme Court and established a Lord Speaker in the House of Lords (elected in 2006). The creation of a Ministry of Justice⁸ in 2007 removed appellate jurisdiction from the House of Lords to the new Supreme Court – the Law Lords no longer physically sat in the House of Lords. The creation of an independent UK Supreme Court was the last move to sever the link which had existed between legislative and judiciary. On the legislative and executive front, the cabinet is still the organ linking both (Bagehot's "*hyphen* which joins, a *buckle* which fastens"⁹) but the reforms which took place – especially devolution or a directly-elected mayor of London – were set to curb the power of the executive and lead to a less centralized state.

The reality, though, is that the national government, which was previously elected to govern the UK, only governs parts of it after devolution and which parts are rather unclear. Power in the regions and in London are shared by Parliament, assemblies, and a mayor elected on a different basis than the national government, thus creating a discrepancy between the aims and the spirit of each region and the Union. Even if this was the case throughout the eighteenth and nineteenth centuries, when local suffrages for vestry boards or town governments were often different from the national suffrage (which was also not uniform before 1832), the points of the Blair reforms had been to simplify things, not to make them more nebulous. To summarize, in the words of King: "simple, the new constitution certainly is not"¹⁰. If one could defer to the old constitution precisely because it was historical and quaint, it was something altogether different with the new constitution which was even more complicated to locate and understand. If the idea had been to write down the rules of the game to encourage newcomers to play; in reality, the rules were too intricate and even contradictory. "The more arcane politics becomes", concludes King, "the more likely it is that many people – especially the less well educated and more socially isolated – will decide that politics is a game that others play and that really has nothing to do with them".¹¹ So much for New Labour's aim to breathe new life into politics. So much too for simplifying the old structure.

⁸ It was initially called the Department for Constitutional Affairs, in 2003, which was rather significant for a country with an uncodified constitution.

⁹ Norman St John-Stevan (ed.), *The Collected Works of Walter Bagehot, op.cit.*, vol. 5, p. 212.

¹⁰ Anthony King, *The British Constitution, op.cit.*, p. 351.

¹¹ *Ibid.*, p. 360.

Even Dicey's principles of parliamentary sovereignty and the rule of law, which had already been affected by the European Communities Act of 1972, were further shaken by the Human Rights Act of 1998 which gave a bigger role to the judiciary. Often seen as a "cornerstone of the new Constitution"¹², the act was passed to incorporate into domestic law, the European Convention on Human Rights. It did not create new rights as it only required that ministers should prove that each new legislation to be passed complied with the European Convention on Human Rights, but it did give judges much more power as they were now to interpret the law according to the Convention and issue a declaration of incompatibility if it did not (in order to respect parliamentary sovereignty). The act gave judges the right in law to interpret Acts of Parliament in view of the European Convention on Human Rights. In this sense, the Convention has become as good as a "fundamental" law – something that Dicey did not even consider as possible in view of the doctrine of the sovereignty of Parliament.¹³ Of course, in last resort, Parliament could still repeal the Human Rights Act – just like it could repeal Devolved legislation, or is about to repeal the European Communities Act – meaning that it is still sovereign in theory but, in practise, it is not at all as straightforward and much more complicated to implement.

The emphasis on the role of judges was the proof that it was thought (or believed) safer to rely on the judiciary as the protector of fundamental rights than on Parliament, as had traditionally been the case. Rational deference to the old ways was no longer sufficient: trust in politicians had been so badly affected over the twentieth century that relying on judges to protect human rights was deemed safer. This was also the recognition that there was a flaw in Dicey's two principles: there could appear a conflict between the rule of law and parliamentary sovereignty (the case of the demands of migrants nowadays comes to mind, for example). The judges, empowered by the Human Rights Act, are now the arbitrator of such rights. Nevertheless, they have to be particularly careful not to infringe upon the political sphere of Parliament. Conversely, Parliament has to be wary not to open itself up to the review of judges. Therefore, a third actor in the "sovereignty" equation has appeared, alongside Parliamentary and popular sovereignty: constitutional sovereignty. It does not rely on rational deference, the way Parliamentary sovereignty had done, because it does not need it in the same way either. Fundamentally, the Human Rights Act brought in a new culture within

¹² Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 53, pp. 53-88.

¹³ "The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English Constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament". A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, *op.cit.*, pp. 3-4.

the constitution, that of rational human rights, as opposed to incremental ones based on precedent, which had relied on voluntary deference. The act was the legal recognition of the end of a traditional way of doing and of thinking politics in the British Constitution. The latter was no longer seen as the exemplary model respecting individual liberties. It was no better – maybe even more dangerous for citizens – than other continental codified constitutions because it could be more easily abused by politicians who could take on more powers. Of course, as in the case of the USA, one can be voluntarily deferential to a codified constitution with rights guarantees but in the case of the UK, deference to the uncodified constitution had been based on trust and the fact that a codified instrument of government was not needed, based on old ways of doing in which power was given to those worthy of it and reciprocity of responsibilities were understood. The old constitution and its old spirit were no longer suited to the modern age.

The other important reform was the devolution of power to the regions of the UK started in 1998. If devolution meant trusting the regions to govern themselves on a number of regional subjects, it was also the sign that the opinion of the people was heard and that the decentralization of a power concentrated in London could take place. In the end, though, it also dispersed the notion of British nationhood to such an extent that the quest for what Britishness meant rose under New Labour.¹⁴ In the discerning words of Aughey, before the new constitutional settlement of 1997, “there was no need for an ideology of British nationalism – there was the British Constitution”¹⁵. Indeed, the old historic constitution, with its matter-of-fact approach to problems within the national Parliament, had succeeded more or less successfully in integrating the nationalist demands of the regions. Obviously, British nationalism was much more English than anything else, but this was obscured by the British constitutional drape. It also put popular demands at a safe distance, for Parliament and its elite were said to represent all the peoples of the Kingdom. With devolution, New Labour effectively divided the parliamentary sovereignty between Parliament and the regional assemblies, albeit in an uneven way according to each of the three other regions than England, and uncovered the fake unity of the old British Constitution. Blair’s party also used referenda to appeal directly to the people of the different regions. In effect, devolution made the possibility of the break-up of the Union, an option, by appealing to nationalist feelings. Here too, what was left of rational deference was fundamentally overtaken by a new political

¹⁴ On the link between Britishness and New Labour, see: Arthur Aughey, *Nationalism, Devolution and the Challenge to the United Kingdom State*, London and Sterling, Pluto Press, 2001, pp. 103-4.

¹⁵ *Ibid.*, p. 49.

narrative: this time, a self-confident regional-nationalist one (except for England). So, on the one hand, the Human Rights Acts created a new culture of rights and, on the other hand, devolution generated a resurgence of a culture of nations within the Kingdom. There was no place for English rational deference in this new narrative; in fact, the point was precisely to get rid of what was left of it.

To summarize, since 1997, the country has become a “Union State”¹⁶ with diverse “asymmetrical” governing agreements for its regions, with a semi-separation of powers, founded on distinct nations and a new political culture – or even several political cultures according to the history of the four nations. Regional demands, which were supposed to have been quenched by devolution, were in fact reinvigorated to the extent that Scotland was able to hold an independence referendum in September 2014 and has shown very distinct ways of carrying its politics and its parties. The “British” state cannot be certain to have popular legitimacy any longer, making the prospect of a disunited Kingdom much more probable than ever before. In a sense, the old British Constitution textbooks of Bagehot, Dicey, and Jennings have been torn up, leaving a sense of unease as the far-reaching consequences of the new Constitution has not yet fully sunk in.

The unease is doubled by “a sense of bewilderment and frustration”¹⁷ because the other new reforms do not make as much sense as they were first expected to. To take only the 1999 Reform of the House of Lords, it has left a incomplete situation which neither pleases real reformers, who wanted a largely elected second House, nor those who wanted a fully selected one. All but 92 hereditary peers now sit in the House of Lords alongside archbishops, bishops, and selected Life Peers. The House of Lords is now in an odd state, forever frozen in the first stage of its reform, not to be touched in case it creates further disruption. In this case as in others, the way forward is still to resort to the old comforting way of incremental reform when the point was precisely to move out of such ways.

This new constitutional order was supposed to replace the aura felt for the old constitution with something greater: by the possibility for everyone to take active part in politics and, thus, to be the architects of a common project. Deference for the old constitution was given precisely because it was old; it is much more difficult to be in awe of a new constitutional arrangement, even more so if it is difficult to understand and worked by politicians whose decisions are tainted by political interest. Simply reforming the old

¹⁶ Stein Rokkan and Derek Urwin, “Introduction: Centres and Peripheries in Western Europe”, in: Stein Rokkan and Derek Urwin (ed), *The Politics of Territorial Identity: Studies in European Regionalism*, London, Sage, 1982, p. 11.

¹⁷ Ian Ward, *The English Constitution. Myths and Realities*, op.cit., p. 174.

constitution to semi-codify it and to make it less dominated by the executive could not make morality emerge in politics and put an end to public political apathy. Politics was and is not only about a rational instrument of governance: it is only the framework clothed by something else. The role voluntary deference had played in the old model had been, precisely, to give it flesh. In the transformations that the old constitution underwent since the 1960's, nobody seemed to have taken account of the positive sides of rational deference, certainly not New Labour.

The other result of New Labour's "shifting pattern of stratagems and *ad hoc* arrangements"¹⁸ for the British state is that England has been left to question its identity within the Union. England no longer represents the other nations the way it used to with the historic "Anglo-British"¹⁹ Constitution. Therefore, the question of deference which had been organically associated with the English and had given body to the old uncodified constitution since Bagehot can no longer be even understood for what it had meant. The reference to "deference" is now either always negative or reserved to explain the survival of the monarchy – without reference to the context of emergence of the concept and its changes in the twentieth century. Hence the fact that it has become a concept drifting along, believed to be easy to understand, without any useful function anymore. Nevertheless, precisely because this new Union State has become a "patchwork", there is space left for rational deference to survive on certain squares.

From a language of deference to a language of law

The fundamental difference between what has happened since 1997 and what had happened in the previous centuries, and which is directly linked to the question of rational deference, concerns the understanding of liberty. Moving from rights inferred from the past in the old constitution, to a legality of rights with the Human Rights Act in the new one, is considerably different: it effectively means that the old hierarchical voluntary deference is moving towards an egalitarian type of deference, found in the rhetoric of the seventeenth century republicans. It is as if, in the twenty-first century discourse based on civil responsibility, the common good, and constitutional reform, there was an attempt to retrieve the language of the great republican thinkers of the past, from Milton, Algernon Sidney to

¹⁸ Tom Nairn, *After Britain: New Labour and the Return of Scotland* (2000), London, Granta Books, 2001, p. 278.

¹⁹ Ian Ward, *The English Constitution. Myths and Realities*, *op. cit.*, p. vii.

James Harrington.²⁰ It was not a language of acceptance based on customs: it was the language of free men, with a different starting ground, who through democratic empowerment, cooperation and an identical starting position, would promote their equality and the values of their own harshly-defended liberty. In England, the Glorious Revolution did not alter the hierarchical structure of society, as Parliament became sovereign with a constitutional monarch relying on a voluntary type of deference. It was a structure of power which had distinct roots from egalitarian deference. There were those who governed and those who deferred hierarchically, accepting the aristocratic structure of society and building along with it. Therefore, if the rhetoric behind New Labour's constitutional settlement was integral to the future of a truly democratic and engaged people, it drew heavily on the republican legacy of the seventeenth century. It was also often at odds with the democratic collectivist language of the Labour Party – which explained Blair's constant tension between two different traditions. But this was another matter entirely.

The predicament is that New Labour under Blair and Brown created a semi-finished settlement that is both confusing and transformative. Marquand believes that “Constitutional reform at the end of the twentieth century, like suffrage reform in the nineteenth, was a process, not a destination”²¹. Certainly, but unlike the Reform Acts of the Victorian age, what has happened under New Labour has led to a profound shift in the nature of politics in Britain: it has attempted a return to the republican thinking of the seventeenth century, which focused much more on a law-dominated conception of the instrument of government and on its ability to generate civic morality. This is not only a revolution in politics but also in the nature of the British social fabric which emerged after 1688. The implications on what a liberal society means are far-reaching. Sir Stephen Sedley explains that this is thus the culture “of a society which aims not merely to be composed of free individuals but to be itself free”²².

However, even in a free society made up of free individuals, egalitarian deference has a role to play and perhaps, even more so in its ability to sustain a moral culture. The post-1997 reforms were neither fully a constitutional document empowering the people, nor an acceptance of parliamentary sovereignty which had given too much leeway to the executive: they were at a crossroads, having half pulled the house down with devolved power to the

²⁰ These men had defended the idea of a commonwealth founded on an equal starting position and on a more democratic nature than the constitutional monarchy which was set up after the Glorious Revolution of 1688. This republican language, along with John Locke's contractualist theory, crossed the Atlantic and successfully helped the Founding Fathers in their framing of the American Republic, which is law-based. Interestingly, egalitarian deference was alive there, as it allowed the notion that some would be in power and others would give them their assent. The structure also required enough egalitarian deference to work.

²¹ David Marquand, *Britain Since 1918. The Strange Career of British Democracy*, *op. cit.*, p. 374.

²² Sir Stephen Sedley, *Freedom, Law and Justice*, London, Sweet & Maxwell, 1999, pp. 5-6.

regions and relying, thanks to the Human Rights Act of 1998, on the judges to counterbalance the problems emerging from such an odd and unstable structure. This is also precisely the problem as judges are now expected to enforce laws which are supposed to promote a civic morality. The lawyers are all together expected to be the guardians and the educators of the nation which is problematic. It is problematic because lawyers should not be expected to revitalize politics single-handedly and because the common good is not about law only. There is something “romantic” (for lack of a better word) missing in the new arrangements and it is either, rational deference or republican/egalitarian deference. It is as if there is a reluctance to accept that “the constitution of a state cannot be sensibly divorced from the constitution of humanity”.²³ Therefore, the aim is to reconcile legal obligations and moral duties. Trevor Allan, professor of jurisprudence and public law, has been defending the subordination of the sovereignty of Parliament to the rule of law on such grounds. For him, there is no need for an incompatibility between the two founding principles of the old constitution as expressed in the new constitution: the rule of law does not need to be the rule of lawyers. A compromise is possible – in fact, not unlike the way it was in the old constitution. According to him,

Government must be held to a broadly consistent account of the common good it purports to espouse: it cannot discriminate unfairly between citizens by selective application of general principles it claims to honour. The equal dignity of citizens, with its implications for fair treatment and respect for individual autonomy, is the basic premise of liberal constitutionalism, and accordingly the ultimate meaning of the rule of law.²⁴

Such a liberal constitutionalism is best expressed in a society which defers to laws which are the expression of certain moral command, even if such laws are not easy to follow – they promote an ethic of virtue.²⁵ So, the process of rationalization of the old constitution was also an attempt to transform the original deferential constitutional mentality of the English on which the ancient model had relied, but the new constitution still needed the deferential mentality it wanted to get rid of.

In twenty-first century Britain then, the challenge is to recreate *artificially* English rational deference to the new constitution which is partly codified. Such a deference has to fit the nature of the new constitutional project, suit the four nations, and reflect the positive

²³ Ian Ward, *The English Constitution. Myths and Realities*, *op.cit.*, pp. 192-3.

²⁴ Trevor Allan, *Constitutional Justice: Liberal Theory and the Rule of Law*, Oxford, OUP, 2001, p. 2. See, the review of this book: Thomas Poole, “Dogmatic Liberalism? TRS. Allan and the Common Law Constitution”, *Modern Law Review*, 2002, 62, pp. 463-75. See also: Ian Ward, *The English Constitution. Myths and Realities*, *op.cit.*, pp. 190-3.

²⁵ Trevor Allan, *Constitutional Justice: Liberal Theory and the Rule of Law*, *op.cit.*, p. 6.

aspects of the past. Needless to say this is a very difficult project. As the new constitution is in transition – not yet fully codified and no longer what it was – it is not surprising that rational deference is also in a phase of transition. Whether it will ever be able to reflect the devolved nations is another matter, as deference was English and became Anglo-British, because the UK Constitution was imposed on the other three nations until devolution.

So, where does rational deference stand now? Is there not, as was witnessed after the upheaval of the Princess of Wales's funeral in 1997 for the monarchy, a renewal of a certain type of deference, characteristic of the English? Can the English imagery, which had given flesh and blood to the old constitution, now find a new egalitarian and democratic type of deference to match the new constitution of the Union state?

The consequences of the new constitution on rational deference

“The attempt to make our constitutional and political forms congruent with ideological forces, with our public philosophy, could prove one of the fundamental issues of our time”²⁶ concluded Bogdanor in *The New British Constitution*. There are many layers to this assertion: firstly, that there is (or ever was) such a thing as a British public philosophy; secondly, that the new constitutional and political arrangements can ever fit it; thirdly, that what kept the old constitution going was an unseen glue which has dried up and crumbled away. English hierarchical voluntary deference (rational and irrational) is linked to all three.

The first question to consider is why the new “constitutional and political forms” do not match the spirit of the British state. Undoubtedly, devolution has exposed the fragility of the idea of the United Kingdom and of a “Britishness” that was impossible to define. It would be fairer to say that the language of deference at work in the history of the country was, more often than not, embodied in an English past which was altogether often imposed to Britain as a whole, in the nineteenth century. The post-1997 devolution has had the effect of un-knitting this assumption and of forcing an end to “British” generalisations. Furthermore, the historic constitution which had been so successful in characterizing British nationhood, repatriated into the regions powers and parts of history which activated nationalist pride (a lot was made, in Scotland, of the reopening of a Scottish Parliament nearly 300 years after the Act of Union of 1707). Behind the old constitution lay a language of civility and gentility, to which voluntary deference was attached, but which had lost part of its meaning in the second half of

²⁶ Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 310.

the twentieth century and which was also linked to the “strict division of labour between [...] governors and governed”²⁷. In this sense, New Labour’s constitutional modernization project wanted both to rationalise governance and to modify mentalities all at once. It cannot be said to have succeeded precisely because the aim was fraught with tensions: destroying the traditional constitution and keeping it, all at the same time.

The second question concerns “the ideological forces” at work in Britain which deserve some attention in view of the rejection of rational deference. Antony King notices how “almost all of the men and women who took power in Britain in 1997 were teenagers during the 1960’s” and how “most of them remained deeply marked by the experience of growing up during that seminal decade”.²⁸ This decade, along with the 1970’s, transformed the way in which the link to power was perceived: openness, accountability, and participatory democracy were flung in the face of those who clung to traditional ways of doing politics and who relied on the establishment. Clearly, the revolution in mores took some time as the 1997 constitutional reforms crowned a number of changes which had started with, especially, a less narrow recruitment pool for the civil service, a timid alteration in the role of the judiciary in the 1960’s, the 1972 European Communities Acts, the use of a national referendum in 1975, and the curtailing of the role of the local governments in the 1980’s. As usual, the UK slowly woke up to the consequences of these decisions, which were transformative in their nature. What New Labour did in power was only to further push an agenda, based on an open social democratic contract, which had started a long time before, but they did so in a most confused way which ended up being at odds with what they had wanted. Or was it?

Twenty years after, there is an underlying malaise as to what New Labour’s programme really aimed at and what its results were. If in the 1960’s and 1970’s, the new demands were pretty clear – social equality, political openness, and more power to the people away from the established elite –, the message post-1997 was blurred because the reforms did not follow a logical set of plans. Besides, those who reached power in 1997 came to power with an egalitarian rhetoric which purported to crush the remains of rational deference but which in the end appears to have abused what was left of it to their benefit. There was another side to the open, pragmatic, democratic society rhetoric. One insider, Joy Johnson who was New Labour Campaigns Director up to January 1996 summed up the problem in May 1999: “the outstanding feature of this government is that its overwhelming desire to appease Middle England has led it to conceive policies not so much to solve a problem as to conjure an

²⁷ Anthony King, *The British Constitution, op.cit.*, p. 66.

²⁸ *Ibid.*, p. 67.

appearance”.²⁹ And she added chillingly: “As image-making becomes progressively blurred with policy development, politicians are moving from objective reality to a virtual world of their own creation”.³⁰ It is as if having lost deference, there was a need to “conjure up” new tricks to obtain obedience in other ways even to the extent of confusing spinning with politics. The case of the war in Iraq in 2003 and the gradual realisation that the public had been deliberately misled concerning Saddam Hussein’s weapons of mass destruction was a classic abuse of what was still a rationally deferential electorate (and the best proof that deference was still breathing). Even if there was a one million-strong anti-war protest in February 2003 in London, the public went along with Parliament’s decision to join the American invasion of Iraq, until the reality dawned that the facts were not what they had seemed. The results of the long overdue Report of the Iraq Inquiry were only published in July 2016, confirming that military intervention had been hurried and that ministerial discussion had not played its role in challenging the decision of the Prime Minister.³¹ The conclusions of the report are proof that “collective Ministerial discussion which encourages frank and informed debate and challenge”³² was not followed and did not force Blair and those around him to act in the open and democratic way he had professed to support. Blair and his men were the children of the 1960’s generation and were supposed to abhor what had been the appendage of the 1950’s, when for example, deferentially not questioning those in power was a rule. This was then – when irrational and rational deference were still present – whereas the invasion of Iraq took place in 2003, in a very different social and political world. So, in the end, the question remains: were the British public misled precisely because voluntary deference had been renewed after a long period of rejection? Francis Beckett made this point forcefully in 2010:

Religion, royalty, government: nothing was sacrosanct in the Sixties, and everything could be questioned. But we used up the time when nothing was sacred. The age of deference seemed to be over, yet the baby boomers, who now run things, have seen how useful deference is for the governing class and are bringing it back as fast as they can. The freedoms we fought for, we have rushed to deny to our children.³³

²⁹ Joy Johnson, “Spinner takes all”, *Red Pepper*, May 1999. Cited in: Michael Foley, *The British Presidency. Tony Blair and the politics of public leadership*, Manchester and New York, Manchester University Press, 2000, p. 197.

³⁰ *Ibid.*

³¹ <http://www.iraqinquiry.org.uk/the-report/>, accessed 1 June 2017.

³² <http://www.iraqinquiry.org.uk/media/247010/2016-09-06-sir-john-chilcots-public-statement.pdf>, p. 11, accessed 1 June 2017.

³³ Francis Beckett, “Young and Wasted”, *New Statesman*, 8 January 2010. <http://www.newstatesman.com/society/2010/01/remarkable-personal-free>, accessed 23 May 2017. This is also the point of his book: Francis Beckett, *What Did the Baby Boomers Ever Do for Us? Why the Children of the Sixties Lived the Dream and Failed the Future*, London, Biteback, 2010, xvi-218 pages.

Rather oddly, the type of deference referred to here is not rational deference, it is well and truly the type of irrational reference which was expected from the governed to those who governed in the Victorian age and which all but died away post WWII. It is a type of deference which is mostly based on traditions, conservative and not politically enlightened.

This is precisely the problem: what does the expression “deference” refer to nowadays? Is it a “culture of deference”³⁴ leading to political apathy, is it deference to a celebrity-like monarchy or media-celebrated lives, or is it a rational deference which could still be a force for good? Beckett’s point was to accuse Blair’s generation – those in power from 1997 to 2010 – of moral hypocrisy and of a lack of an ideological compass in politics. He was not the only one to make such a point. In *New Elites* (2006), the conservative George Walden analysed how “the egalitarian elites in politics, the media, business, the arts” have betrayed their own values and pandered to populism “by playing down to the lowest cultural levels in Britain”.³⁵ What Walden denounced was essentially a class of people with power and influence who no longer played the role an exemplary elite (patrician or not) should play in governance. Following very much what the philosopher Ortega y Gasset³⁶ had already observed in the 1920’s in Spain, Walden focused on how the anti-elitist elite embodied mass culture to portray themselves as close to the people, whilst leading a life very remote from them, to better appeal to them. New Labour epitomized such an elite which no longer followed a clearset of political principles, neither left nor right, and only held on to the “principle” of self-interested expediency, whilst purporting to remain in the centre for the common good. Politics was reduced much more to the form than to its substance – hence the importance of Blair’s spin-doctor in chief, Alastair Campbell, during his time in power. Walden focuses on the responsibility of Blair’s political group – the baby-boomers turned governors – to consider everything as acceptable as long as it got more voters, including if this meant a confused set of changes to the old constitution, morally dubious political decisions, or social conformism. New Labour and an “anti-elitist elite” in the media and the arts purported to be on the side of the people, but this was at odds with such momentous decisions as taking an unwilling country to war. If these moments show anything, it is precisely that rational deference to the system was not dead, that people went along with the

³⁴ In the report by Sir Thomas Legg entitled “Review of past Additional Costs Allowance payment, 1 Feb 2010”, the introduction refers negatively to a “culture of deference” allowing secrecy and abuses. See: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmmemest/348/appl.pdf>, p. 5, accessed 10 August 2015.

³⁵ George Walden, *New Elites: A Career in the Masses*, London, Gibson square, 2006 (new ed.), 304 pages. See also: George Walden and Nick Cohen, “The Anti-Elitist Elite versus the Underclass”, *Standpoint*, October 2011.

³⁶ José Ortega y Gasset, *The Revolt of the Masses* (1930), New York and London, W.W. Norton & Company, 1993, 190 pages.

decisions of the leaders they had elected and if they did show their discontent, they still obeyed and followed suit. Clearly, the degree of rational deference was not what it had been before the 1960's, or even in the Victorian age, but, it was still present in political life. It was also much more necessary than was openly admitted by those in power.

Equally problematic was the fact that the generation which came after Walden's New Labour's "false egalitarian elite" was no better in its inability to create "a public philosophy". In an odd way, the nation (re)turned to a pre-meritocratic generation of public school educated men, not unlike the comforting elite of the olden days. The new set of politicians– the Camerons, Osbornes, Johnson, and even Clegg – who took over from New Labour after 2010 with a Conservative/Lib-Dem coalition survived its five years in power, including when a referendum took place on the advent of the first-past-the-post in 2011 (both parties supported different sides) and when the Scots rejected independence in September 2014. All in all, the results of these referenda were very much in line with what Cameron's government had wanted – no change in the old electoral system and no break-up of the Union – can be read in the line of a continuing rational deference. Nevertheless, they did not erase the feeling that there was a lack of perspective concerning the consequences of the financial crisis and the setting up of a different political culture. It is no surprise then that the new constitution cannot yet match something – Bogdanor's "Public philosophy" – which has not yet fully emerged.

The reasons which are preventing this "common project" from emerging are linked to what has happened to the constitution in the last twenty years. King calls it "the paradox of discrepant power"³⁷ by which he means that the new constitution, along with a globalized world, have gradually stripped away the traditional powers and responsibilities of the Prime Minister and of the government. Those in command may want to appear influential and commanding, but over the last ten years, they have seen their powers reduced by the EU, the judges, the regional assemblies, and their own backbenchers. They have been partly the architects of their own emasculation because they are responsible for having given away some of these powers. They are also now the spectators of a globalized world which has a life of its own, in spite of them, and which impacts their citizens and their structures in ways which they cannot even plan. As a result, there is no longer anybody fully accountable in power, as line of responsibilities are less clear-cut, whereas this is precisely what used to trigger rational deference through trust.

³⁷ Anthony King, *The British Constitution, op.cit.*, p. 355.

Is English deference dead? The case of Brexit

Brexit is the consequence of an inadequate renovation of the old constitution resulting, after 1997, in a “mess”³⁸. Becoming a member of the EEC in 1973 most certainly added a layer of instability to the transformations which took place by injecting into the legal system constitutional changes which took a long time to be understood. Ignoring the central though declining role of the English deferential character in the British Constitution also meant that along the way, the changes in deference shaped the results of the future. Brexit happened because all of a sudden, thanks to the new constitution, people did not know what to be deferential to any more. Deference is not dead; it is just that people are in a state of confusion about where to apply it.

So where does the UK stand now? Can it still have common values, or has devolution led to the demise of the British state as an arrangement for the nations of the Union? Can the historical English disposition for rational deference be used again to unite the UK and take it out of the EU after Brexit? Or has the British state become an illusion in a country in which parliamentary sovereignty is increasingly challenged by the national popular sovereignty of the regions? Even more than the referendum of 1975, the referendum of 2016 is a serious challenge to the hierarchical structure and deferential acceptance of the traditional structure of power. The use of referenda further undermined the old constitutional way of doing politics by seeking the approbation of the nation on pieces of legislation generally put to the people in a manifesto at a time of a general election. Referendum introduced another layer of consent, at odds with the representative structure, which was like a trump card in the hands of the party in power, who was free to play with it to bolster its own political agenda (either to appease party feuds, a coalition partner or regional demands). While referendum is typically defended as a way of giving a direct voice to the people, it has too often been used as a political tool in the hands of a government seeking an indisputable result to shut down dissent. Referendum undermines more trust than it generates, for it verges on demagogy if the conditions of its exercise are not properly defined. In this sense, referendum has an impact on deference because it negates what rational deference stands for: faith in the representatives of the people and in the parliamentary structure. Even if in 2016, unlike in 1975, the referendum had been included in the Conservative manifesto³⁹, it introduced a direct appeal to the people – which is

³⁸ *Ibid.*, p. 345.

³⁹ The Conservative Party Manifesto 2015, p. 73. See: https://issuu.com/conservativeparty/docs/ge_manifesto_low_res/3?e=16696947/12317396, accessed 28 March 2017.

certainly good in a democracy – but which was an alien and corrosive element in a parliamentary structure.

At the end of his book on the new constitution, Bogdanor stated that: “In a democracy, the people are not only characters in the drama but also authors of that drama; it falls to them, therefore, to write the next scene in the play. What this means is that our constitutional future has yet to be written, and that it is the people who will have to write it”.⁴⁰ The vote in favour of the British exit of the EU, on 23 June 2016, was most certainly a major act in the UK historical play and the citizens of the four regions were the central characters. Suddenly, New Labour’s constitutional reforms appeared like a process in a much bigger setting in which British membership of the EU became an odd, 44-year-long parenthesis. Reflecting on the vote a year after, the historian Peter Hennessy, has likened Brexit to ‘an unprecedented geopolitical shift’⁴¹ which took place with a rapidity and a force which was not expected. “Never in our peacetime history have so many dials been reset as a result of a single day’s events”, he notices.⁴² He continues,

The only thing comparable in my lifetime is the end of the British Empire, which, like this, was a huge geopolitical shift. But getting rid of the British Empire was done over many, many years and by and large in the time control of the British government of the day. It left very few scars on us. But this is sudden. This is guillotine time. This is quite extraordinary and in peacetime British history quite unprecedented.⁴³

Indeed, Brexit could mean that the UK has democratically chosen a new path of no longer being an international main player and of willingly turning its back on its role in the EU, in an un-English isolationist way. But then again, is this the case?

As said previously, it is easy to re-read Brexit now that it has taken place. It is also easy to see that the uneasy relationship between the UK and the EU was, from the start, fraught with tensions. This would be both unfair and unwise to say that as, once in the EU, in 1973, the UK made enormous efforts to adapt itself to the EU. The UK was mostly a player who applied the rules of the European game and adapted its insular constitutional system to a continental one – a feat that no other EU country could match as the common law is uniquely characteristic of the English system in Europe. This is all too often and easily forgotten. Refusals and reproaches among EU partners took place in the open, certainly making the UK

⁴⁰ Vernon Bogdanor, *The New British Constitution*, *op.cit.*, p. 310.

⁴¹ Peter Hennessy, “Brexit: ‘An unprecedented geopolitical shift’”, <http://www.bbc.com/news/uk-politics-eu-referendum-36625209>, accessed 24 June 2017.

⁴² *Ibid.*

⁴³ *Ibid.*

a demanding player, but such attitudes and willingness to discuss the EU project – from Thatcher’s demand for a rebate in 1984, the Bruges speech in 1988, the many demands for opt-outs in the 1990s, to Camcron’s Bloomberg speech in January 2013 – were also opportunities to debate between friends and amend the federalist nature of the project. This should have been seen as an asset by the European partners: like a marriage of allies, in which the partners state clearly what they want their shared lives to be and in which strong disagreements are allowed and the sign of a healthy union. This was not the case but, perhaps, even more than the disunity within the EU, what Brexit has also exposed is the deep division within the UK itself.

This time, Northern Ireland and Scotland were clearly pro-EU, unlike the results of the 1975 referendum, whilst Wales and England voted to leave. Hennessy reflects how:

We know so little else about how it will play out, both in terms of the emotional geography of our politics and the emotional geography of our people. The referendum has revealed deeper fissures and deeper divisions than perhaps we realised were there. We know we’ve been a country ill at ease with itself for a very long time, with all sorts of divides, including those based on geography and wealth. But this process has thrown it into stark relief, and we’re going to have to stand back and take a long and careful look at ourselves. We will need to re-examine the kind of society we are and the kind of relationships we want in the world.⁴⁴

The reference to “the emotional geography of our politics and our people” points to how the four nations of the kingdom have different aims, different desires, and very different pasts which had been brought together to share a political mindset that was deferential to the old constitution. However, devolution under New Labour and now, Brexit, have exposed the differences bringing Hennessy to make such a statement. Paradoxically, joining the EEC in 1973 might also have allowed the UK to contain the tensions between the nations for a long time. If the devolution of 1998 was already the political recognition of such tensions, Brexit revealed a deeper separation between the characters of the peoples at the heart of the Union.

Up to the first demands for regional recognition in the 1960s – and not even taking into consideration the difficulties in Northern Ireland since the partition in 1922 –, the English dominated the Union through the Anglo-British Constitution, which imposed a certain version of history on the UK as a whole. Essentially, the English have been amazingly good at concealing their revolutions or transforming great upheavals into moments of evolution and well thought-out progression, remaining rationally deferential to their history. Absolute truth about the course of history is always a selective one (as are most histories) designed to

⁴⁴ *Ibid.*

reinforce a certain meta-narrative or to reinforce certain beliefs about society, politics, the self or the nation. Undeniably, too, the English have been much better at turning their mishaps into successes grounded in their traditions than other continental nations who, to take only the example of the French, showed absolutely no deference (whether rational or irrational) to their past and like the proverbial saying, threw the baby out with the bathwater. But the UK story has an English script which became even more difficult to follow by the other regions as the decline in deference moved on along with the changes to the constitution which glued the regions together.

Since the turn of the twenty-first century the possibility of a break-up of the union, an idea linked to devolution, has heightened nationalism, rather than diminishing it, as Blair hoped. A number of books were written about nationalism and the dismembering of the Union under New Labour – Nairn's *After Britain: New Labour and the Return of Scotland* (2000)⁴⁵ remains the most eloquent obituary of the UK. Some, like Simon Heffer's *Nor Shall My Sword: The Reinvention of England* (1999)⁴⁶, went as far as stating that devolution was an opportunity for English nationalism to rise again and to enact what New Labour's reforms had truly meant politically and constitutionally. Aughey is much more moderate, and he convincingly shows that English jingoistic posturing has its limits in an international context which has changed completely since the Victorian age but that "Britishness will survive so long as people in Scotland, Wales, Northern Ireland, but especially England, continue to believe in it and support it".⁴⁷ Thinking about breaking up the Union would be a loss for all involved. Nevertheless, in his opinion, the post-1997 constitutional settlement has recognised the end of what had brought the regions together: the old constitution. Reforming its nature had also had an impact on the party system – the FPTP – which had successfully (not in 1974 though) created sufficiently strong majorities, either Conservative or Labour, to "integrate the British people into a common political identity".⁴⁸ "This coincides with, indeed, had brought forth, renewed nationalist self-confidence", concludes Aughey. Perhaps, but it also points to new desires and habits among the nations which are no longer held together by a common constitutional culture dominated by England. English voluntary deference and the ways in which it evolved over the twentieth century, along with the historical constitution, have too often been ignored. Brexit showed that there was a distinct English way of thinking – even if

⁴⁵ Tom Nairn, *After Britain: New Labour and the Return of Scotland* (2000), London, Granta Books, 2001, xi-324 pages.

⁴⁶ Simon Heffer, *Nor Shall My Sword: The reinvention of England*, London, Phoenix, 1999, vii-137 pages.

⁴⁷ Arthur Aughey, *Nationalism, Devolution and the Challenge to the United Kingdom State*, *op.cit.*, p. 182.

⁴⁸ *Ibid.*, p. 61.

London as a great cosmopolitan city is a new island within the English pro-Brexit one –, unlike the Scots and the Northern Irish, because European issues were only inflating problems already present within the Union: essentially, questions of sovereignty, of ability to control one's political decisions (especially in matters of immigration and societal changes), and direct accountability.⁴⁹

So, there are four ways of understanding Brexit which involve deference on a national level, rather than the deference to the historical Constitution and to political leadership the way it used to be. Firstly, those who voted in favour of Brexit essentially out of rational deference for the sovereignty of Parliament and the old English-British past; secondly, those who voted for Brexit without any deference but who were mostly pushed by the desire to control immigration and the borders of the UK and who also rejected what they saw as Eurocratic Federalism; thirdly, those who voted to remain within the EU out of deference for incremental decisions taken by their politicians in the 1970's, pluralism, and Cameron's appeal to stay within and, fourthly, those who voted to remain not out of deference but only on the grounds that it would reasonably be better economically for the UK and for the defense of the rights of workers. These are four different conceptions of what the UK should stand for and of where it should go. Each current could be found in the various main parties, cutting through old alliances and ideologies. Nairn believes that it was England's narrow-minded inability to see how positively transformative the EU had been for certain nations of the UK – he uses the example of the Northern Irish Peace Agreement of 1998 – which has prevented it from moving out from its anglo-centric approach.⁵⁰ In 1999, he already talked about how Euroscepticism could be dangerous if unleashed:

If such a proto-nationalist mythology does indeed become the matrix for popular heartland resentment at decline and loss, and is farther aggravated by failure or marginalization, then of course serious problems could be posed. However, the most important cause of these will not be "Europe" or the misbehavior and self-assertiveness of minorities: it will be the failure and belatedness of central constitutional reform. Not that this will be much consolation to those caught up in the consequences.

Furthermore, the vote on the British exit out of the EU has exposed even more than expected that national sovereignty does matter very much to the English, and perhaps to the Welsh – much less to the Scots and parts of the Catholic population in Northern Ireland – and that, in the end, the European Union lacked legitimacy because it went counter to the UK national

⁴⁹ Aughey lists the following problems related to the EU: identity, sovereignty, self-government and legitimacy. *Ibid*, p. 171.

⁵⁰ Tom Nairn, *After Britain: New Labour and the Return of Scotland*, *op.cit.*, pp. 15-6.

Parliament. Parliamentary sovereignty was a metaphor for an English independent spirit which still deferred to its institutions in acknowledgment for their time-honored use – even if parliamentary sovereignty was criticized internally. What this also shows is that English rational deference is not dead: quite the opposite. The fundamental problem is that the values of liberty to which the English were most deferential were those found in the common law and the uncodified constitution. Lord Acton, in his essay on *The History of Freedom in Christianity* (1877), identified the importance of the common law as one the fundamental elements to have preserved a disposition for liberty, very different from on the one on the continent based on civil law. But the common law was only the reflection of “the same native qualities or perseverance, moderation, individuality, and the manly sense of duty, which give to the English race its supremacy in the stern art of labour, which has enabled it to thrive as no other can on inhospitable shores”⁵¹. Whether the English could have carried on without gradually including into their legal system a number of practices and ways of doing of the civil law is questionable. In an incremental way, the Anglo-British Constitution has also incorporated into its system other ways of doing throughout the twentieth century but perhaps, since the Human Rights Act, the balance has been tipped on the judiciary side, where a huge amount of power now lies. Brexit might mean a possibility for the national Parliament to regain the power to have control of its own laws, away from the EU, and especially from the power of its jurisdiction, the European Court of Justice. Perhaps too, Brexit and the tensions it has created internally within the Union might allow each region to make clearer what their futures, according to their own national mores and habits might be. By showing clearly that the English were different in their desires concerning the EU, an English renewal is also now open to create a new relationships with both the member states of the EU and its own regions. English nationalism need not be an outdated jingoism; it can also be English voluntary rational deference, which has many advantages. Aughey calls it “the calm and self-conscious moderation, this level headedness, this sang-froid (some say, insouciance) about the prospects of constitutional change which is quintessentially liberal and, in an obvious way, so very English”⁵². There is something romantic in such a description but it leaves scope for the English to make sense of the various constitutional settlements which took place in the

⁵¹ Lord Acton, “The History of Freedom in Christianity” (1877), in: John Emerich Edward Dalberg Acton, *Selected Writings of Lord Acton, Essays in the History of Liberty*, Indianapolis: LibertyClassics, 1985, vol. 1., p. 53.

⁵² Arthur Aughey, *Nationalism, Devolution and the Challenge to the United Kingdom State*, *op.cit.*, p. 167.

twentieth century and, in the words of Churchill in 1936, “give new interpretation to the archaic language of our fundamental institutions”⁵³.

Thus, if there is confusion as to where the UK will go on from now – how and when Brexit will take place, if the Union might break-up (now much more possible with Northern Ireland than with Scotland) – there is also hope that something English will emerge to make much clearer what Englishness is in the UK today. This will go hand in hand with making sense of the new shaky constitutional structure, the place of the UK in Europe, and its adjustment to a world in which globalization has reduced the power of politicians. Perhaps retrieving the noble and positive aspects of the old rational deference, this time for the democratic age, might be of use in a period of transition and best suited to its nature.

⁵³ Winston Churchill, “What Good’s a Constitution? Our Heritage of Freedom”, *Collier’s*, August 22, 1936, p. 93.

Conclusion

Rational Deference for the Democratic Age

“Old discourses never die”, writes Alan Kahan adapting a phrase from General MacArthur’s Farewell speech, “they just find a different context”¹. The same can be said of the discourse of English deference which can still be found, albeit most often confusingly to describe the relationship between people and their institutions in twenty-first century Britain. England and the other nations of the Union have irretrievably changed since the nineteenth century, and so has the Anglo-British historical constitution, but hierarchical voluntary deference has moved along with them in a new context. What was supposed to have died never fully died away and, in the uncharted context of Brexit, when the nation voted on very distinct lines, English rational deference lives on.

Hierarchical voluntary deference, as described by Bagehot in the nineteenth century, had two sides – irrational and rational deference – which both had a use at the time of the extension of the suffrage. Irrational deference was the disposition of those who followed tradition and submitted to power because it was congenial for them to do so in a certain context: it was politically unenlightened and generally based on conformity but comfortable. Rational deference was the disposition of those who made the independent choice to move out of customary ways of doing things, to question politics, to and choose through their enlightened reason the best way of behaving to power. Rational deference was, and still is, more rewarding but it is more demanding because with freedom comes responsibility to act and behave in certain ways. What is so specific to English deference is that it has grown accepting the hierarchical core on which it was based and of which the old constitution was the expression. Unlike the French, for example, the English did not reject the hierarchical structure of society in 1688, they worked with it to grow out of it. Unlike the Americans, their starting point was not egalitarian (for adult, property-holding, white males, anyway) but, the

¹ Alan S. Kahan, *Liberalism in Nineteenth Century Europe. The Political Culture of Limited Suffrage*, *op.cit.*, p. 193.

nation gradually moved out of irrational deference to either reject deference altogether in the second half of the twentieth century – whilst not being able to fully do so as Shils had demonstrated – or to accept to rationally defer to power along very old lines of conduct. So, what makes this type of rational deference so specific, even today? Fundamentally, rational deference accepts its other side – the irrational one – and even in a rational deferential person, there can be remains of irrational deference which are best expressed in the love of tradition and in the need for respecting the sources of power for their long historical traditions. The UK, unlike younger countries, adjusted from an aristocratic structure to a democratic one, keeping political traditions which run deep in the nation and still generate voluntary deference. Such a mindset can be equated to a virtue which elevates the individual who defers to power by helping him to focus on the greater aspects of his nation – essentially the historical ones, best represented by the monarchy nowadays but not only as the sovereignty of Parliament still means something, as Brexit as shown. In this sense, the way in which the nation has been transformed by immigration has not affected the old reserve of deference, which can be variable in its intensity according to the people settling in the UK or even in the various nations of the Kingdom, but it is still alive. Well into the second half of the twentieth century, the old historical and political constitution played the role of embodying the British nation, but since joining the EEC in 1973 and especially since the constitutional revolution of 1997, the constitution has been transformative to the very nature of the nation exposing certain tensions. There is now a deferential core without a clear constitutional expression, apart from the monarchy.

The UK finds itself at a crossroads, not simply because of Brexit: either it will move towards a codified constitution which will settle the “deformed” constitution created after the New Labour constitutional settlement, or it will decide to clarify – but this time incrementally, and through the judiciary – the most obvious difficulties created by devolution, the Human Rights Act of 1998, and especially the Constitutional Act of 2005. Or a combination of the two, as piecemeal parliamentary legislation and individual judicial decisions muddle along. Whatever the case, part of the constitution, or less likely all of it, will be codified, but this will depend on whether politicians and constitutionalists decide to act, perhaps through a constitutional convention, or whether judges are left to bring a new constitution to life through their decisions. In the first case – that of a codified constitution – one may wonder what the role of rational deference would play, as it has been so historically related to the constitution’s uncoded nature. In the second case – that of the gradual emergence of a new constitution through the work of lawyers and judges and protected by them – rational deference will still

be useful, although perhaps this time artificially maintained through an ability to appeal to the past and to its values whilst moving forward.²

The changes which have taken place since the first decisions for judicial review in the 1960s, along with the growing role of judges ever since this period, have fundamentally transformed the nature of the old spirit of the constitution and opened a new road for the judiciary to be much more involved in politics than was the case before. The judges themselves have changed as their power has grown, and they have become less deferential to the Diceyan description of the constitution and have taken on a new role for themselves. This remains an open question for the future because lawyers and judges were never supposed to take on the mantle of defending liberty in the constitution through legal means, let alone attempting to generate rational deference for it. Liberty and rational deference were the natural consequences of the uncodified structure and of the common law. “A constitution is not a mere manufacture, but the work of centuries”, wrote Hegel in *Philosophy of Right*,

It is the idea and the consciousness of what is reasonable, in so far as it is developed in a people. Hence no constitution is merely created. [...] In a constitution a people must embody their sense of right and reproduce their conditions. Otherwise the constitution may exist externally, but it has no significance or truth.³

This points to the importance of keeping the original spirit of a constitution precisely because of the memories of it which cannot be seen and will be irretrievably lost. Deference to judges as the guardians of the traditions has a long tradition in Britain. Unfortunately, as already pointed out in the last chapter, the spirit which animated New Labour in rethinking the constitution, after their election in 1997, was ambivalent, and this shows in what they kept of the older arrangements. The Union state created after the constitutional settlement of the Blair period has changed the memory of the constitution and is having an impact on the nature of the habits and mores of the nations of the Union. Whether the judiciary can now artificially generate rational deference for a national constitution which is anything but clear remains to be seen. Brexit only adds another layer to the problem which, in the end, might also be an aspect of the solution in forcing the UK to clarify its links and desires with the EU and with its various regions.

This raises two questions: firstly, can English rational deference still bring something to the British political narrative of the twenty-first century in the present state of the

² On this question see: Thomas Poole, “Back to the Future? Unearthing the Theory of Common Law Constitutionalism”, *Oxford Journal of Legal Studies*, 2003, vol. 23, pp. 435-54.

³ G. W. F. Hegel, *Philosophy of Right*, London, George Bell and Sons, 1896, p. 282.

constitution? Secondly, could English rational deference not become something akin to a moral duty in politics, regardless of the subject of codification of the constitution, which could be very useful in the indeterminate state in which the constitution finds itself and in the context of Brexit?

Rational deference in twenty-first century Britain

At the end of this study of English rational deference, it should be accepted that this concept need not be reduced to either a sign of servility or a form of old-fashioned Victorian submissive courtesy. Its rejection, or its toleration in the “deferential” crowds celebrating the Royal family, should alert us to the fact that there is a modern arrogance in rejecting what may have been positive in the past and is now looked down upon. Those who oppose deference – in reality, irrational deference – generally do so on the grounds that it should have no place in democratic societies. Nevertheless, if democratic societies are theoretically created on the basis of a community of equals, in reality, something impalpable always remains in the codes, the hidden signs, the behaviour of equals which recreate the conditions to defer. Even an anarchist defers to the writers he has been inspired by. Shils had shown that this was all the more obvious in the strong reverse feelings of shame, disrespect, and disgrace alive in democratic societies, which reveal the permanence of deferential attitudes.⁴ Thus, all the post-WWII thinkers and politicians who have denounced deference in British society as a culture of servility that was preventing the country from moving forward, have never taken into account the need men have to distinguish themselves but also to defer, and to find self-respect in common social acts, nor have they taken into account their own past. Rational deference allows a language of civility as it eases the conflictual relations which dominate political life. Shils was aware that such civility had a value in democratic societies precisely because it kept under control dangerous currents which could undermine the foundations of such regimes. One of the greatest threats he saw was the rise of populism, which “like ideological politics”, summarizes one his commentators, “was inclined to degrade political opponents into moral opponents, into traitors, [...], without rising to the level of political organization or intellectual coherence of genuine ideologies”⁵. English rational deference had such a role in allowing “civil dialogue”⁶ within the confines of the parliamentary structure where bagehotian government by discussion was seen as its greatest expression. Popular sovereignty and

⁴ Edward Shils, “Deference” in: *The Constitution of Society, op.cit.*, p. 144.

⁵ Stephen Turner, “The Significance of Shils”, *Sociological Theory*, vol. 17, n°2, July 1999, p. 143.

⁶ *Ibid.*

parliamentary sovereignty have two different aims, with different consequences – either equality or liberty, as we have seen.

Throughout the twentieth century, the UK has constantly been adjusting to the blossoming of a democratic structure within the confines of a hierarchical aristocratic framework. These two opposite poles have been moving alongside the social transformation of British society but never fully shedding the old moral and political mentality. New Labour's constitutional transformation, founded on the desire for a more egalitarian and democratic society, missed the point in reforming the institutions. Constitutional models can never work without taking into account the people who work them. This is even more true when those constitutions are badly conceived and superimposed on a structure which has itself evolved. The analysis of behaviour and moral sentiments, as well as the capacity to understand how men need recognition of others, is as important – if not more – than the political and constitutional framework of a nation.

Thus, the use of deference in democratic societies is much more essential than what has been generally accepted: it is precisely because men are considered for the value they have as equals in democracies that rational deference (or egalitarian deference, depending on the starting point of a given society), should be given its place. Such a type of deference does not coerce and does not dominate through customs, but it allows political disagreements to be met and rules to be followed without too many tensions, whilst respecting each as an equal. This is very paradoxical because it means that at one stage, in a democratic political situation, somebody has to decide and impose himself in the process, but that, at the same time, this does not affect fundamentally the integrity of the person deferring to him, who retains self-respect. This remains a very fine line to walk as this fragile balance can be questioned by an egalitarian rhetoric which can mistake deference for submission. Replacing “discussion with struggle”⁷ generates the loss of rational deference – this is precisely what happened in the UK after WWII. The generation which grew up in the 1950's, and especially in the 1960's, and the 1970's, started following their own judgment, rejecting the Victorian customs and behaviour so suggestive of domination. Along the way, they became indifferent to what had made their past and to how certain agreeable attitudes of simple deference, sincere or not, had polished them into democratic beings.

The language of rational deference is also often mocked nowadays because it is seen as a weakness in a global world in which gentility, civility, and reverence have a patronizing,

⁷ *Ibid.*

if not naïve, connotation. In the last twenty years, New Labour and the Conservative/Lib-Dem coalition have attempted to improve democratic participation – the use of referenda was one of their devices – but they have been oblivious to the fact that social indifference and political apathy are the result of a significant retreat of the positive values of rational deference. Being consulted directly at the time of a referendum only hides the problem which is that the ruled are expected to comply and the rulers to be deferred to, either for their expertise or just because they are in power. Deference goes both ways and in an unclear constitutional settlement, which has created more confusion than clarity, it is more needed than ever. Defection by those in power from the unwritten norms upon which deference to them rests undermines that very deference. In effect, the British are trapped as they cannot go back to the old historical constitution, nor have they got a codified document which would dust of the old parts and set right the new ones in law.

In such a situation, what remains of rational deference is of great value. Even if the deference given to the monarchy since 1997 is brandished as the sign that the British are still deferential, it is a poor substitute for what English rational deference used to really signify. There are two ways on understanding the remaining interest in the monarchy. For some it has acquired a specific form of celebrity culture – the celebrity value of a glamorous niche market⁸ – while for others it can still generate deference but with less of a mystical impact. Nevertheless, it still remains invaluable as the embodiment of an historical past which brings a great deal of the British together and in which the monarch still has a political role as the Head of State. The monarchy gives life to an Anglo-British past, which may not be acceptable to all the people of the UK, but which can be a force for good if it helps to focus on common positive national causes and on civic and moral behaviours. This can have a far deeper impact than expected as the causes embraced by the young Royals – “Heads Together” to fight against the stigma of mental health problems or the international Paralympic style “Invictus Games” for sick and wounded former servicemen – have shown in the last few years. Through such causes, the monarchy can move out of the celebrity niche and retrieve what rational deference can mean – essentially political virtue. It is difficult to explain such ideas without immediately being criticised for being an overzealous pragmatic, a patronizer or a condescending educator, but rational deference (or its counterpart, egalitarian deference) expresses the recognition of moral sentiments which create the social fabric on which a political and constitutional framework can work. Refusing to see this, or even rejecting it –

⁸ Arthur Aughey, *Nationalism, Devolution and the Challenge to the United Kingdom State*, *op. cit.*, p. 52.

because it has no place in egalitarian democracies – is a mistake which eventually destabilizes the very democratic fabric itself. The UK is facing a moment when its partial constitutional renewal does not fit its national behaviour and the mores and habits of its four nations anymore. The vote in favour of Brexit is the sign that something difficult to fully apprehend in British society is happening: it is not yet born and yet it is there, unclear, about to take form.

In what is happening, being clear about how deeply intertwined the former constitution and an English disposition for deference were is essential. Firstly, the term itself has got to be retrieved from its negative connotation or general suspicion, and hierarchical voluntary rational deference needs to be defined as the behaviour of the free, independent, responsible Englishman of old, who respected others as much as he respected himself and expected trusted rulers to govern wisely. Secondly, deference cannot be disconnected from its social and historical canvas (hierarchical, like in the UK, or egalitarian, like in the USA) on which it should thrive and take its force (here, the case of the monarchy is important in the Anglo-British Constitution). Thirdly, it is very much related to the traditional language of civility but it also includes acceptance of fierce debate and conflicts, expressed in parliamentary governance. Fourthly, it is neither linked to ideology, politics, or religion, but much more to social mores and recognition (both of oneself and of others). Lastly, it should be related to moments in the history of a given nation, as done here. This study was carried out because there is something different from other western nations about a traditional hierarchically based British society out of which grew out a liberal democracy without a codified instrument of governance.

This being said, in a liberal democracy such as the one that the UK has become in the course of the twentieth century, rational deference is an ability which requires teaching and which is very much linked to the exercise of liberty. Describing deference as an art in society, Pierre Ansart says that if properly practiced, “it generates an equality in inequality which cannot be achieved elsewhere”⁹, thereby recognising that some nations have a greater disposition for it than others and that even in a society of equals, there are always inequalities in social interactions. He concludes that such deference “creates a specific meeting area in which the distance of complicity between partners allows the exercise of a controlled and freely given liberty. It is no longer the general obligation imposed by a hierarchical society, conversely, it is a rare and voluntarily discreet link which has the powerful charm of being

⁹ “La déférence ‘engendre une égalité dans l’inégalité qui ne peut se réaliser en d’autres lieux’”. Pierre Ansart, “La déférence ou le refus du pouvoir”, *Communications*, 69, 2000, p. 266.

free”.¹⁰ This is precisely the basis on which the old historical and political constitution of the UK worked. This brings us to what is essential in liberal democracies: “mutual consideration, fellowship, manners, civility”¹¹ and which is also linked to self-esteem. It is the lack of consideration for oneself, one’s backgrounds, and one’s roots, which leads to a lack of rational deference for others, and by extension, for the state. This has got a powerful meaning in a multicultural society in which individuals have to find their place between their uprooted past and the new world they were born into. The tension is ongoing.

A reassessment of the virtues of English deference

To summarize, the present study has attempted to seize the character of English deference at work in the Anglo-British Constitution since the Victorian age, but with particular emphasis on the conception of the old constitution. The initial aim was to try and show how such a concept as “deference” had a particular political meaning in the nineteenth century which was lost in the twentieth century, even to the extent that the concept was charged with being the cause of the inability of the English/British to question their government and become real citizens. In twenty-first century devolved Britain, “deference” has become a smoke-screen, devoid of sense, meaning whatever its author wants it to mean – generally the definition veers from “traditional respect” to “submission”, which is generally a good indication of its user’s political bias. Deference remains difficult to discern factually, resists being transposed into political data, and is kept at bay by political scientists who would rather leave it to sociologists, psychologists or even risk analysts.¹² In the last few years, philosophers but especially, lawyers because of their use of it in relation to the law, have reinvested the term and given it a new breath of life.¹³ It is now time for English political deference to be reinstated with a twenty-first century meaning.

¹⁰ “La déférence ‘crée un espace spécifique de rencontre dans lequel la distance complice entre les partenaires autorise l’exercice d’une liberté contrôlée et librement consentie. Elle n’est plus cette obligation générale qu’imposait une société hiérarchisée, elle est, tout au contraire, un lien rare et volontiers discret qui a les charmes puissants de la gratuité”. *Ibid*, p. 267.

¹¹ See: Eugène Enriquez, “L’effacement de la déférence dans les sociétés démocratiques”, *Communications*, 69, 2000, p. 199.

¹² See for example: Thomas J. Scheff, “Shame and Conformity: The Deference-Emotion System”, *American Sociological Review*, vol. 53, n°3, June 1988, pp. 395-406; Andrew Woodfield, “Reference and Deference”, *Mind & Language*, vol. 15, n°4, Sept. 2000, pp. 433-51; Cameron Anderson et al., “The Origins of Deference: When do People Prefer Lower Status?”, *Journal of Personality and Social Psychology*, 2012, vol. 102, n°5, pp. 1077-88; Eric W. de Kwaadsteniet and Eric van Dijk, “Social Status as a cue for tacit coordination”, *Journal of Experimental Social Psychology*, 46, 2010, pp. 515-25; Frank N. Laird, “The Decline of Deference: The Political Context of Risk Communication”, *Risk Analysis*, vol. 9, n°4, 1989, pp. 543-50.

¹³ See particularly: Avery Kolers, “Justice and the Politics of Deference”, *The Journal of Political Philosophy*, vol. 13, number 2, 2005, pp. 153-73; James M. Joyce, “Epistemic Deference: The Case of Chance”, *Proceedings*

If in the Victorian period, Bagehot had made it clear that deference – again, he meant voluntary deference, both rational and irrational – allowed the constitution to work by shielding away the real rulers from the eyes of an uneducated mass, he was very aware that this was only a fleeting moment which would pass with the extension of the suffrage. Bagehot, in the end, was proved wrong about the link between deference and a limited suffrage, but he correctly identified that there was a specificity to English deference related to the uncodified nature of the constitution and, to a lesser extent, to the incremental march of the common law. It is precisely in retrieving the real meaning of English rational deference that British politicians might stand a chance of answering the challenges posed by a globalised world, devolution, and political apathy. Rational deference properly understood is a virtue that the English could use to their advantage in the present post-Brexit context and in a world dominated by a great amount of violence in terms of social interactions.

The English understanding of deference is not linked to servility. On the contrary, it is a language of empowerment which goes hand in hand with pluralism and which is perfectly suited to the tensions undergoing British politics and society today. If, as King has surmised, “the world, Britain’s constitution and the whole British political system are far more complicated than they used to be”¹⁴, the best way to approach such transformations, in which no one is fully accountable in the way they were, is to resort to a common-sense pragmatic approach found in the expression of the self-reliance of old Englishmen. The system, more than a year after Brexit, seems disorientated. If the rise of a figure such as Theresa May initially seemed like the right “strong and stable” choice, this changed rather quickly. In the words of *The Economist*, “Her Britain is the Britain of the provincial Tory heartlands: a Britain of solid values and rooted certainties, hard work and upward mobility, a Britain where people try to get ahead but also have time for the less fortunate”.¹⁵ Replacing “Britain” here by “England” would be more adequate. She embodied the traditional values of Anglicanism (as the daughter of a vicar), which believed in strong-knitted communities in which morality, civility and decency were the greatest of virtues. In one of the TV interviews she gave with her husband in May 2017, the term which came back to describe the interview in the press was how “boring” and “banal” a couple they were, which is immediately reminiscent of how

of the Aristotelian Society, New Series, vol. 107, 2007, pp. 187-206; Aaron Stalnaker, “Confucianism, Democracy, and the virtue of Deference”, *Dao*, 12, pp. 441-59; Alison L. Young, “In Defence of Due Deference”, *Modern Law Review*, July 2009, 72, 4, pp. 554-80.

¹⁴ Anthony King, *The British Constitution*, *op.cit.*, p. 362.

¹⁵ “Theresa May, Tories of Tories”, *The Economist*, 22 April 2017, p. 28.

valuable a quality this can also be in politics.¹⁶ This was not the messianic appeal of Tony Blair, the boorishness of Brown, nor the cosmopolitan liberalism of Cameron; this was the England in which community spirit and “provincial certainties” are “an antidote to rootless cosmopolitanism”.¹⁷ But May quickly lost her appeal as her insistence to do “what you think is right”, quickly became “what *I* think is right” and a patronizing way of appealing to the duty of the deferential voter of past centuries. It was too much, too soon. May lost further appeal by her apparent indifference in the aftermath of the Grenfell Tower disaster in June 2017. Perhaps the only way forward is to expect less of leaders and rely on the electorate’s ability to develop an “ethics of deference” which will focus on the self-capacity of citizens to become responsible twenty-first century social and political actors. But how can such “an ethics of deference” emerge? Can it take ground on what remains of rational deference to be revitalised? Is there any point in trying to bring out a deference suited to the global democratic age, that the English are better suited than most to bring out because of their particular deferential past?

In 2002, the American law professor Philip Soper published a book entitled *The Ethics of Deference, Learning from Law’s Morals*¹⁸, in which he explained how the law may have authority but does not claim authority and that in western liberal democracies, citizens thus must find their own theory of ethics to respect the law as the expression of the general will. “The ethics of deference”, he claims, “is a requirement for giving weight to the normative judgements of others even against one’s own judgment about the correct action to take – a step that the principle of autonomy makes clear is far more extraordinary and requires more justification than ordinary civility”.¹⁹ Soper means one must give some weight to others’ opinions even when you think they are wrong, even if you think you have sufficient knowledge and they do not. The best solution is thus to defer rationally to the decisions of those who make the laws in the belief that the best has been done to comply “with norms enacted in good faith for the good of the community”²⁰. Soper wants to move sideways from “the standards theories of associative obligations”²¹ and make deference an ethical alternative

¹⁶ See: <https://blogs.spectator.co.uk/2017/05/theresa-and-philip-bored-the-nation-with-their-strong-and-stable-relationship/#>, accessed 27 May 2017.

¹⁷ *Ibid.*

¹⁸ Philip Soper, *The Ethics of Deference. Learning from Law’s Morals*, Cambridge University Press, 2002, xvi-189 pages.

¹⁹ *Ibid.*, p. 169.

²⁰ *Ibid.*, p. 170. Soper is attempting to find a middle ground between the work of Ronald Dworkin – who grounds political obligation on theories of membership and communities – and A. John Simmons – for whom associative obligations are mostly linked to personal connections, see: *Ibid.*, pp. 169-80.

²¹ *Ibid.*, p. 170.

– effectively on the very same lines as English rational deference in which self-respect and respect for others work closely together. Fundamentally, it is the idea that men can be politically associated and obey the rules of their community, not because they are compelled to do so by the law, – a Humean artificial morality –, nor because they conform to a tyranny of a majority – in the Tocquevillian sense –, nor even because they sacrifice their beliefs out of fear of their leaders, but because they can rationally take the decision that this is the best for them and for all at a given moment and in a given context. Soper concludes, “the argument for deference is not an argument designed to foster tolerance or sympathy for erroneous views; nor is it simply a call for more dialogue and debate. The argument for deference is an argument about *duty* – a claim about the *obligation* to defer, while dialogue continues and the jury remains out on the question of truth”. This is precisely what the Victorians did regarding their political constitution, including in the utilitarian ideal that “the obligation to defer must be measured against the harm my act of deference causes”²². Clearly, as the events of the twentieth century proved, such deference was abused, for example by Blair in the Iraq case, but the mistake of those who came to power post-WWII in the UK was to think that rational deference was one of the sources of the inability to reach a truly open democratic state. Reforming the old constitution and leaving it looking like a “ruin”²³ means that more than ever before, rational deference for the democratic age – or Soper’s “ethics of deference” – must be found anew. This focuses on practical ways: trust, responsibility and civility. These are not words which trigger an immediate sense of sparkle but liberal democracies rely on such middle-of-the-road ways to resolve the tensions between the possibilities of debate and the need for direct struggle.

Soper makes clear that “deference requires good faith on the part of the state, the promisee, those who have conferred benefits in the expectation of payment, and friends”²⁴. This is the “communities” that some leaders seem to want to focus on to change the relation between the union state and its different citizens. Trusting one another in “good faith” in liberal democracies to lead a common life together, is perhaps the most difficult but certainly the most rewarding as trust generates trust.²⁵ Soper’s “ethics of deference” has an English

²² *Ibid.*, p. 176.

²³ Anthony King, *The British Constitution*, *op.cit.*, p. 365.

²⁴ Philip Soper, *The Ethics of Deference. Learning from Law's Morals*, *op.cit.* p. 182.

²⁵ Interestingly, such a view of the possibility of an ethics of deference, is shared by others, such as Stalnaker, but this time by appealing to virtues found in Confucianism. In an article on the “virtue of deference”, the author explains how through the teachings of Confucianism, “deference to the ‘powerful’ when properly executed, can reconfigure their power as rightful authority, beholden to higher standards that justify, constrain, and direct their actions within a broader ethical outlook. See: Aaron Stalnaker, “Confucianism, Democracy, and the virtue of Deference”, *Dao*, 12, p. 458.

Victorian tone, which can lead to aversion, but if the UK is to remain a union, it will need to regain a sense of nationhood which will need to be founded on something else than nationalism. The mistake is to think that a codified constitution will ever give a sense of British nationhood back, after devolution was given to the nations of the Kingdom. If the old, historical constitution could single-handedly sum up the romantic and political idea of the United Kingdom, it no longer exists. It is doubtful whether a codified document could ever deliver this in any case – or perhaps if it were vague enough. Fundamentally, King is right to say that it is urgent to do nothing, because “there is no need for written constitution” in a country not facing a major threat, because “there is no popular demand for either a convention or a written constitution”, because even if a convention did work something out it might not be the best solution and because since the 1960’s the constitution has been forced to evolve constitutionally at great pace.²⁶ Therefore, the best option is to deferentially have faith in the system to find its own and old balance anew.

Moreover, as the monarchy can no longer be expected to be the only satisfactory symbol of state in a democracy and to continue bringing magic on tap – the way it used to do in pre-1960’s – something is bound to come out of the changes which have taken place in the constitution since 1997. Even if the Golden and Diamond Jubilees of the Queen were undeniable moments of celebration along with the celebration of the Queen’s 90th birthday in 2016, the monarchy itself has shown a sense of its own limitation after the post-1997 odd drama of Princess Diana’s death. The royal generation coming next will never be able to match with the same mystique the Queen’s link with the past forged, thanks to a remarkably long reign, but it can generate rational deference for the monarchy by moving towards causes which bring the nation together in ways no politician can ever hope to do so, and alongside politics.

The really big challenge ahead for future British politicians lies in making sense of what happened to their old constitution in the midst of negotiating the British exit from the European Union. In time-honoured fashion, pragmatism and common sense, along with rational deference for the constitution can help to fix Anthony King’s list of “the long-term financing of the devolved parliaments, the issue of Scottish and Welsh representation at Westminster, the constitutional status of the House of Lords, whether a distinction should now be drawn between constitutional and non-constitution acts of Parliament and whether there should now be an agreed convention concerning the occasions when national referendums

²⁶ Anthony King, *The British Constitution, op.cit.*, pp. 363-5.

ought to be held”²⁷. It is no wonder that being themselves stuck in a union state no longer able to shape their society and to accommodate their regional and multicultural differences, the UK could not accept another Union – the European Union – with even lesser clarity, shrouded in secrecy and undemocratically accountable. Brexit was fundamentally not about the adequacy or inadequacy of the institutions of the EU, but about the inadequacy of those of the UK.

In the end, it is to themselves that the British people as a whole will have to turn to and (re)gain a collective destiny which can be shaped in spite of the constitutional changes. To attain this end the only way forward will be by embracing Britain’s historic deference and recognising its worth, with the help of politicians who will be able to (re)generate trust and faith, with pride for a past which has shaped the Kingdom, and with a sense for the civil art of politics which has made Britain’s charm and its strength.

²⁷ *Ibid.*, p. 365.

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