
It is now almost a generation since the appearance of Lord Chief Justice Hewart’s The New Despotism, with its fiercely uninhibited attack upon the then rapidly developing body of administrative law in the United Kingdom. Professor Keeton, Dean of the Faculty of Laws at University College, London, has over the years built himself a reputation as a legal scholar and writer; yet even without the direct association with Lord Hewart’s polemic which the publishers of The Passing of Parliament make on the jacket of the book, it is soon clear that Professor Keeton’s new book is another sample of that “anti-bureaucratic school of thought” of which (in Professor Robson’s words) Lord Hewart was “the crudest and most undiscriminating exponent.”

The burden of Professor Keeton’s complaint is familiar enough. Professor A. V. Dicey, the high-priest of English Constitutional Law at the turn of the century, had seen the English constitutional system of the day as resting upon two cardinal principles, the Sovereignty of Parliament and the Rule of Law, the latter principle often translated as meaning the supremacy of the common law, administered by the ordinary courts independent of the executive. As Professor Keeton now and many others before him have noted, Dicey’s thesis no longer corresponds to the actual facts of the English Constitution, marked as it is, in terms of present-day practice, by widespread delegations of legislative (rule-making) power to the Executive departments, and with the Executive increasingly removed, through successive Parliamentary enactments, from the possibility of direct control by the common-law courts. Facing the facts of the widespread transformation of working practices of government in twentieth century Britain under the impact of rapidly changing social and economic conditions, writers like Robson, Jennings, Friedmann, and Schwartz, have given more than passing attention to the problem of how the immense administrative machinery that has grown up with the modern complex economically-organized state can be accommodated to the traditional ideals of the free democratic society. Professor Keeton, by contrast, has eschewed pragmatic enquiries of this nature—he has not been concerned, as he eventually acknowledges, to canvass the “safeguards, actual or possible, which could check the relentless advance of administrative tyranny in Great Britain. Within the existing framework, such safeguards could not be effective” (p. 207). Instead, his work is confined, essentially,

to searching for the causes for the transformation of the English Constitution, as Dicey saw it, into the Constitution of the present day, and also to regretting, at some length, the fact of that transformation. In Professor Keeton's opinion it is not necessary to look very far for an explanation for the transformation of the English Constitution. "From the beginning of the nineteenth century, it has been assumed that political democracy is synonymous with the exercise of the vote by the adult population, male and (later) female. . . . If we examine the century and a quarter which has elapsed since the agitation leading to the first Reform Bill of 1832 reached considerable proportions, we can only conclude that the movement to invest the adult population of these islands with political significance has been substantially a failure. Voting was an act of some personal significance when electorates extended to a few hundreds, but the political significance of the vote has diminished with each extension of the franchise. . . . The Duke of Wellington was right when he hailed the first Reform Bill as the first stage of a flood which would eventually submerge the Constitution" (pp. 55-60).

But this was only the beginning according to Professor Keeton. "Once it is conceded," he suggests, "that the counting of heads, irrespective of what is inside them, is the criterion by virtue of which a choice is made between opposing policies, then it follows that a second chamber is an obstacle to progress" (p. 60). In this vein, Professor Keeton goes on to deplore the fact that the House of Lords has been "progressively deprived of all power to halt or even effectively to delay, the onward march of Collectivism." Likewise, he contends, "just as the extension of the franchise has diminished the significance both of elector and member, so also has the spread of popular education and the universality of the habit of newspaper reading reduced the significance of public opinion" (p. 61).

This attitude, so patently and (one must concede) so frankly anti-democratic, in the sense of anti-majoritarian, might seem, at first sight, to run counter to the first of Professor Dicey's two principles—namely the Sovereignty of Parliament, insofar as that involves the supremacy of the people as expressed through the enactments of their duly elected representatives. But Professor Keeton has an answer here. As he quite correctly observes, even the incomparable Dicey showed some signs of awareness in his old age "of the general trend of the changes which were taking place in our constitutional structure. It is possible that before his death he would have conceded that an 'unwritten Constitution is not necessarily superior to a written one. His 'Constitutional Law' in successive editions had shown a strange inability to recognize that the peculiar strength and stability of the American system owes something to the constitutional compact which is embodied in the American Constitution. Had he written his lectures thirty years later it is possible that he would have had a good deal more to say on this point" (pp. 7-8). Now all this, no doubt, is quite interesting speculation, but one is tempted to ask Professor Keeton how far it has any more
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significance than the usual prestige argument. In any case, treating it purely as a prestige argument, it is to be noted that Professor Dicey did some curious things in his old age—his support, together with Sir William Anson, of a revival of the long defunct royal prerogative powers during the Irish Home Rule crisis of 1913–14, stands as an example of how even eminent constitutional authorities may be persuaded to indulge in special pleading and to bend the considered views of a lifetime in the interests of partisan causes.

As an academic writer, Professor Keeton may be criticized on a number of grounds. One characteristic feature of his writing is a predilection for the use of colored language—chapter headings like “The Road to Moscow,” “The Menace of Delegated Legislation,” “Taxation and Freedom,” and “Land in Chains,” it is submitted, would be rather more appropriate in a political pamphlet than in a scholarly treatise. He has something of a penchant, too, for journalistic overstatement, as where, in his chapter “The Road to Moscow” we are informed that the post World War II Britain has already “stumbled some significant part of the way along the road to Moscow.... To-day, in Great Britain we live on the edge of dictatorship. Transition would be easy, swift, and it could be accomplished with complete legality” (p. 33). Less pardonable, however, is Professor Keeton’s strangely facile approach to questions of historical causation. Thus he seems to represent the downfall of the Weimar Republic as being produced by the practice of widespread delegation of legislative and judicial power to the Executive. “The Social Democrats who were the backbone of the Weimar Republic, prepared their own downfall by the easy recourse to wide delegations of power to achieve social reform which an ambitious bureaucracy suggested to them. Hence it followed that although the judiciary of Republican Germany had a high sense of judicial independence (which was guaranteed by the Constitution) and although the German Republic and civil service was as able and incorruptible as our own, neither was in a position to offer prolonged resistance to the authoritarian onslaught” (p. 188). This curious over-simplification, ignoring as it does both the extent to which the judiciary and the civil service under the Weimar Republic harbored men of profoundly authoritarian sympathies and also the special role of the military, is paralleled by Professor Keeton’s singular inability to recognize that in the case of the United Kingdom there may have been reasons for the substantial exclusion in recent years of the Common-Law judges from control of the administration, going beyond mere malice of legislative majorities. After all, as the late Professor Laski remarked, in reviewing the past record of interpretation by the English Common-Law judges of statutes in the public law field,—“Anyone who considers the history of the statutes dealing with workmen’s compensation would, I conceive, find it difficult to avoid the conclusion that some of the judges, at least, misled by their no doubt unconscious dislike of limitations upon freedom of contract imposed by these statutes, minimized much of their force by interpreting away their safeguards. It is, I
think, also clear that in the history of trade union legislation, principles of the Common Law, previously unknown, were invoked to narrow their purposes in a way which defeated the clear intention of these statutes. . . . There is a discretion beyond the mere compulsion of words in the judicial interpretation of statutes. And this discretion, as I think, enables the judge to substitute his private notions of legislative intention for those which the authors of the statute sought to fill."

Mention of Professor Laski of course serves as a reminder that Professor Keeton is not the only one to raise a cry of despair at the present state of English constitutional government. It is not so long since Professor Laski himself gloomily foreshadowed the demise of Parliamentary government in England, as the area of agreement as to fundamentals among the major political parties progressively dwindled towards the vanishing point. Yet the social and economic changes introduced by the Labor Government after 1945 seem to have survived, in their essential features, the Conservative resurgence at the Elections of 1951. In part, of course, this is no doubt due to a recognition by the Conservative Party that the General Elections of 1945 had something of a plebiscitary character—the people had approved in 1945 at least the general outlines of the welfare state, and to that extent nothing would be achieved in 1951 by trying to turn the clock back. Principally, however, Professor Laski would seem to have underestimated the impact of the war as a levelling agent upon all segments of English society, plus the capacity of the English people for peaceful self-adjustment to political change. Professor Keeton, starting out presumably with the direct antithesis of Professor Laski's set of values, arrives at the same end result despondently concluding that "To-day, virtually our only remaining constitutional safeguard is the habit of tolerance and the existence of a powerful political opposition" (p. 133).

In consciously minimizing, as he does throughout his essay, the importance of the English political "temperament" in the day-by-day working of the Constitution, and in sighing for the verbal safeguards of a written Constitution, Professor Keeton is guilty of an interesting error for an English constitutional lawyer, particularly one so ready as he to make obeisance to Professor Dicey's memory. One of the master's basic teachings, after all, was as to the relation between law and opinion, and specifically, that constitutional formulae, however, rhetorical their ring, were meaningless except insofar as they had their roots in basic community attitudes of the community of the time and place. The garrison-police State may flourish the while, though its Constitutional instrument proclaims a sounding Bill of Rights! Professor Keeton's extreme preoccupation with positive-law prescriptions and his refusal to check them against a background of the law-in-action is one of the more surprising aspects of his work. This same essen-

2 Committee on Ministers' Powers, Report 135 et seq. (1932).
tial attitude of course underlies Professor Keeton's whole approach to the English Constitution—his harking back to the halcyon days of the eighteenth century in invoking the apparent praises heaped upon the English Constitution of that day by Montesquieu and Voltaire, glosses too readily over the essentially oligarchic character of a constitutional system that Mr. Disraeli was later scornfully to characterize as the "Venetian Constitution" of England. When Professor Keeton, therefore, informs us at the close of his volume that the choice is either "individual initiative and increased opportunity" or the "ant-like existence of the fully-integrated and planned State" one is compelled to ask,—Are these the only alternatives? Professor Keeton's strictures upon the welfare state suggest that he would cross swords not merely with Mr. Attlee and the Labor Party, but (in the light of the present Government's budget proposals) with Mr. R. A. B. Butler and the reconstructed Conservatives of to-day; just as Professor Keeton's criticisms of the results of the extended franchise necessarily involve his being at odds with Mr. Disraeli and the Young England group within the nineteenth century Tory Party. The answer for Professor Keeton therefore may well have to be—back to the Duke of Wellington and the Venetian Constitution! Others, however, may well conclude that so far as the United Kingdom is concerned the welfare state is, for better or for worse, here to stay, and that the real problem is how (that is to say, by what techniques) it can best be kept reconciled with the traditional values of the free democratic society. Unfortunately this is a matter in respect to which Professor Keeton, by his own choice, has not seen fit to give us the benefit of his scholarship and experience.

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4 Disraeli. Coningsby (1844).
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This book grew out of a projected study of business practices in the ancient Greek cities. Since it became apparent that an examination of security as the link between land and credit was a prerequisite for the larger study, the author, limiting this volume to Athens from 500 to 200 B.C., has here examined the outward forms of security transactions, the legal instruments, the kinds of real property offered as security, and the parties engaging in these transactions, both individuals and groups. The volume is thus the first of a promised series intended eventually to include a study of the business practices of the entire city-state world, in which there will be a full discussion of many problems to which only abbreviated consideration could be given in the present volume. The author declares his guiding methodological principle to be "concentration on the basic