

The Constitutional Crisis of 2016: An Historical Perspective¹

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I. Introduction

Following the referendum of 23rd June 2016, as to whether the UK should remain in the European Union, the constitution has become the centre of public attention in a way not seen for over a century. Several issues have arisen: the status of the referendum; the authority of parliament; the power of the executive; and the rightful role of the courts. Each contains matters of interest and concern; all have provoked opinions and reactions as unexpected as they are, in some cases, crude in expression and ignorant in sentiment. But the issue of utmost constitutional importance, the issue at the very core of the constitution, is the status of the people and their relationship to parliament.

David Hume, the philosopher, historian, social theorist, writing in the 18th century observed:

Nothing appears more surprising to those who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission with which men resign their own sentiments to those of their rulers.

Hume went on to say it is all the more curious when you consider that power, raw power, is always on the side of the governed for ‘the governors have nothing to sustain them but opinion. It is on opinion only that government is founded.’

A constitution depends on the self-restraint of the people; self-restraint in not exerting their natural liberty; accepting instead the standards set by the constitution for the conduct of government. Hume thought two conditions were necessary and adequate for self-restraint and acquiescence. One is that the people are inclined to fall in with the settled way of doing things. The other, the more substantial, is provision of the ‘necessities of life’: if the system ensures the necessities of life, that is, essentially security of person and property, the people will exercise self-restraint and accept the constitution.

Questions may be raised about Hume’s claim, which is ultimately causal and empirical. Whether it takes account of the people’s concern to be ruled according to

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certain values and in certain ways is not clear. Nor does it seem to take account of people's inextinguishable desire to have some say in how they are ruled, to play some part in ruling. But Hume is not my subject. Rather, inspired by Hume, I want to examine the ruler-ruled relationship in the British historical context.

II. Is There a Crisis of the Constitution in the UK?

The title of this paper ought to end with a question-mark. For what does it mean to talk of a crisis of the constitution? I take it to mean simply: (i) the established principles of the constitution are under question, and (ii) there is no plan or vision for resolving the matter.

English history is rich in constitutional crises; one of the most important was 1647 in the wake of the Civil War. Similarities with the present are not wholly fanciful: old constitutional certainties in relations between king, peers, and Commons were overturned; the king was in captivity, the House of Lords abolished, the House of Commons in disarray. No one was quite sure what to do, how to re-establish the constitution and ensure effective government. The Putney Debates in October 1647, perhaps the closest we have to a constitutional convention, ended in confusion and contention, out of which Oliver Cromwell was able to seize power and govern for a decade as the kind of dictator we would now condemn.

And yet the crisis of the 1640s opened the way for, made possible, set in train, the creation of the constitutional order we now have. The House of Commons, being the only elected part of the constitution, was able to assert in the name of the people superiority over king and peers. This was a novel idea but it worked. The House of Commons, itself on the whole composed of the upper class, had its own motives, and neither intended nor foresaw the consequences of its actions. But, once having acted in the name of the people, as the elected representatives of the people, once having proclaimed the people as the foundation of constitutional authority, there was no turning back.

Along the road to a modern constitution, the 1640s are a turning point. That the people are in some sense the foundation of constitutional authority is true, as we saw with Hume. That is a political reality. The parliamentarians turned that political reality into a constitutional principle, to their advantage. But it was double-edged: on the one hand it gave parliamentarians a constitutional advantage over king and peers; on the other hand, in empowering the people, in accepting perhaps for the first time that they have a distinct place in the constitution, the parliamentarians unleashed a mighty force - a force the full unfolding of which would potentially lead to popular democracy, an unthinkable outcome. It had to be contained and much of constitutional history since is about its containment. To the extent there is now a crisis, it is about that same issue: the place of the people in the constitution.

Constitutions provide the framework of government: the rules and institutions. They are artificial constructions, created by one generation and inherited by another. They are neither timeless nor unchanging. Being artificial, constitutions on occasions fall out of step with society and politics, and hence opinion. Jeremy Bentham thought each generation should review the constitution to bring it into line with contemporary opinion. Indeed, the average life of a written constitution is nineteen years. Constitutions should not, however, change with the wind, for the wind, as with attitudes, can blow in different directions in the same day. A constitution, in providing stable and effective government, is meant to protect against the whims of the day, the fickleness of the press, the fashionable ideas no more permanent than the seasons, especially when such ideas encourage intolerance and oppression, the very things a constitution is meant to protect against. We need not fear change, but change creates uncertainty and incurs risk. To avoid such risk, we should first understand what we now have and how it came about. That is my present purpose.

Focusing on relations between parliament and the people, we should be clear about a few basic points. The sovereignty of parliament is a fundamental principle of the UK constitution and has been for centuries. Within the trinity of monarch, peers, and Commons, the House of Commons is the main part. The powers of the Queen and House of Lords gradually have diminished as those of the House of Commons have increased, so that it now has the final say on matters of law and policy. It must act as it considers best in the public interest, for the common good.

Among the many processes for gauging opinions of the people - petitions, addresses, complaints, and so on - the referendum has traditionally had no place. If considered a modern successor or addition to those other processes, the referendum raises no constitutional problem: parliament has a duty to consider it, take it into account, and decide what weight to give to it, the final decision being parliament's. If parliament considers a referendum binding on it, regardless of whether a majority of members judge the outcome to be in the best interests of the nation, then there is a dilemma. Parliament might try to escape the dilemma by holding the outcome to be in the national interest just because that is the opinion of a majority of those voting. That would be to accept, in effect, that the referendum is binding. To accept the referendum as binding would be a change of constitutional principle, an abdication of parliament's responsibility to determine what is best for the nation, all things considered. In allowing the people to decide directly a matter of immense importance to the nation would be to compromise both parliamentary authority and the principle of representative democracy on which it is based.

That would be a constitutional change of great moment. But, you may be wondering, what is the problem. We live in a democracy; democracy means that constitutional authority derives from the people; and the people should have the final say on matters of moment. We elect representatives to act on our behalf, but we are the principals, they the agents, the delegates. As principals, why should we not from

time to time reclaim our original authority? These are elementary questions that need serious consideration. The introduction of elements of direct democracy, that is to say, allowing the people to have more direct say over how they are governed, is a common feature of many constitutions. You may think the more direct democracy the better. The merits and demerits of more direct democracy and less reliance on representatives are issues of great and pressing importance; they raise matters of both high principle and practical consequences. They are not however my concern in this lecture. That is simply to understand better the UK constitution as it now is and how it came about.

I consider four issues:

- a) How the doctrine of parliamentary sovereignty became the foundation of the constitution;
- b) The place and meaning of democracy in the historical constitution;
- c) The relationship between parliamentary sovereignty and representative democracy;
- d) The relationship between politics and the constitution.

III. Nature and Origins of Parliamentary Sovereignty

According to Nigel Farage, the 2016 ruling of the High Court on the use of the prerogative to trigger leaving the EU is an affront to the *sovereignty of the people* [citation]. While this captures the mood of some, to others the concept of the sovereignty of the people is alien to the British constitution, which is based on the sovereignty of parliament, not the people.

Among national constitutions, especially those broadly democratic, the sovereignty of the people is proclaimed as the foundation of constitutional authority. Around 25% begin with the words: We the People, who go on to recite the constitution they have made. What could be a more confident display of popular sovereignty? From that the rest follows: parliament and executive institutions owe their authority to the people; parliamentary sovereignty does not exist. The British exception is written-off as an anachronism peculiar to British history and temperament, and in line with the refusal to adopt a constitutional text.

To this account must be entered two reservations. Despite We the People, the sovereignty of the people turns out not to be quite what is claimed. In many cases, the people are not sovereign at all; they are instead the source of sovereignty, while sovereignty itself is vested in either the nation or the institutions of government or both. The Republic of Turkey might not be the obvious model to cite, but its constitution captures the idea precisely and elegantly: the people are the source of sovereignty. Sovereignty is vested in the nation: sovereignty is exercised by the institutions of government. Many other constitutions have the same structure, while lacking the precision.

When sovereignty is analysed in this way, the UK is not so different. It was commonplace throughout constitutional history to acknowledge the people as the ultimate source of political authority, while sovereignty itself is vested in the realm, which became the king-in-parliament. For constitutional theorists, Hobbes, Locke, Smith, among many others, it was assumed that ultimate power lies with the people, that constitutional authority finally depends on the support of the people. And recall Hume: a constitutional order depends on the self-restraint of the people, self-restraint in the exertion of their raw power. It is correct to say that, in any constitutional order, the people are, in this political, practical sense, sovereign.

In grasping the distinction between the source of sovereignty and the bearer of sovereignty, it helps to keep clear the distinction between the constitutional domain and the political. First, by political action of the people, a constitutional order is created; once created it has its own logic and method, and is distinct from the political. Secondly, notice that sovereignty, in relation to the constitution is a legal concept; the power of the people, on the other hand, is a political fact. As political fact, the people have final power, while as a constitutional doctrine, parliament is sovereign.

The concept of parliamentary sovereignty, and the language to express it, are of fairly recent origin. But the idea of the king-in-parliament as the supreme constitutional authority is as ancient as the English constitution. As early as 1322, to take one example, the Statute of York makes reference to parliament as the king, the prelates, earls, and barons, and the 'commonalty of the realm'. [Clarke: 155]. John Fortescue in the 15th century drew a line between *dominium regale* from the dominium *politicum et regale*: the absolute king, who ruled as he wished, as opposed to the constitutional monarch, who ruled through parliament. By the time of the Tudors, a dynasty inclined to absolutist tendencies, the king-in-parliament was accepted as the final authority in the realm. Only later does sovereignty become the term to describe the constitutional reality.

But a word of caution: we should hesitate in reading back into history modern concepts and language. To the medieval and early modern mind, sovereignty was not the issue. The logic was different: the realm, the nation, was constituted by the three estates: monarch, magnates, and Commons. That the three should come together, in a complex relationship, flowed naturally from the organic nature of the society and, once together, signified its unity. The body politic modelled itself on the body natural; the king was the head, but without the other organs, the other estates, the body could not function and would be powerless. Only through corporate unity could the common weal be advanced and the body politic enjoy good health.

John of Salisbury, reflecting on the organic constitution, described graphically the body politic: the head the king, the arms the military, the belly the tax collectors, and so on, while the common people naturally were the feet. John goes on to say that if the feet stop working the body will be left to crawl along on its belly. The body can

work well only if the feet are well-shod; there is nothing worse, he warned, than a 'barefoot republic'.

Events of the 17th century - the Civil War, destruction and chaos, the Commonwealth of Cromwell, the Restoration of the Stuarts, and the Glorious Revolution - shattered what remained of the medieval notion of the organic unity of the realm. The beneficiary was the House of Commons. Its authority swelled while that of the king and peers shrank. The process, which had begun in the 1640s, ended in the early 20th century with the House of Commons emerging as the dominant and effective part of the queen-in-parliament, the other two being rendered essentially adornments. We saw how that process began with the House of Commons' contention that, being the elected chamber, the only elected part of parliament, it had a foundation for its authority lacking in the other two, one an hereditary monarch, the other a mixture of the unelected and the aristocracy. As the right to vote was extended between the 18th century and the 20th, the Commons' case further strengthened and became unstoppable.

Progress from organic unity to the hegemony of the Commons was gradual. Organic unity gave way to the mixed and balanced constitution: from being united in an organic union, the three branches of government were now in competition, each seeking a role in government, each checking and containing the others. Charles I in 1642, in his last reply to parliament before declaring war, acknowledged the distinct and separate role of the Commons, albeit a rather limited one, perhaps for the first time:

--- the House of Commons (an excellent conservor of liberty but never intended for any share in government, or the choosing of them that should govern) is solely concerned with the - levies of monies [ie tax] (which is the sinews as well of peace as war.)

From that modest position, the House of Commons has over time moved from its role as defender of liberty to the supreme law-maker and the overseer of the executive.

IV. Democracy and the Constitution

To many, that progression is right and welcome. That the House of Commons, the elected branch, should prevail over and render obsolete the unelected nobility, monarch and magnates, together with the class structure they stand for, is surely a right response in the age of democracy. The Commons, the ordinary people, now, through their representatives rule themselves. Hume's question has lost its point: the many are no longer ruled by the few but rule themselves. The republican dream of a self-governing people has been achieved; democracy has prevailed. These are lofty ideals; let us consider what foundations they have in the British case, and what they mean in practice.

In 1559, John Aylmer, in defending the possible ascendancy of a woman to the throne, wrote:

The regimen of England is not a mere monarchy, -- nor a mere oligarchy, nor democracy, but a rule mixed of all these three ---. In the Parliament House - you shall find these three estates: the king or queen --- the noblemen --- and the burgesses and knights [which represents] the democracy.

It is hard to date exactly the emergence of parliament in this form. Aylmer was writing thirty years after the Reformation, in the design and enforcement of which parliament was part. By involving the House of Commons, and through it the people, the transformation could better be justified and managed.

Two issues warrant consideration: one the nature of this democratic element; the other its origins.

According to Charles Stuart, each of the three forms of constitution - monarchy, aristocracy, and democracy (he did unusually for the time use the word 'democracy') - have their 'conveniences and inconveniences'. Experience and wisdom have taught us how to mix the three 'without the inconveniences of any one', 'as long as the balance hangs even between the three estates'. If any one dominates, evil follows: from monarchy it is tyranny; from aristocracy it is faction and division; from democracy 'tumults, violence, and licentiousness'. The goods of each are just as plain: monarchy unites the nation by providing security abroad and against insurrection at home; aristocracy is the provision of counsel by the ablest in the realm; democracy is 'liberty, and the courage and industry which liberty begets'.

The King adds a warning about democracy. Take away 'subordination and degree' and the people become the mob. The mob leads to such horrors as the levelling of estates, loss of rights and property, and the distinction of families, which is bound to result in 'the dark equal chaos of confusion' and the long line of our noble ancestors in 'a Jack Cade or a Wat Tyler'. Note the warning: the people must obey the constitution for 'nothing stands between them and that "dark chaos of confusion" but the maintenance of the balance which men have made', that is, the mixed constitution. Left to themselves, that is, in a strong and direct democracy, the people are doomed to that fate. This was not new. The King was repeating an established line of constitutional thought: the people, although the foundation of a society, act responsibly through their representatives; but, left to themselves, they 'know not how to govern' and soon sink into the mob. A century later these words echoed in the mind of Edmund Burke and his contemporaries as they witnessed the mob howling through the streets of Paris. Similar scenes on the docks of Boston haunted John Adams and influenced the design of the new constitutional order.

The democratic element that King Charles, John Aylmer, and many others describe, was one part of the mixed constitution, but a thin and mean part at that. The democratic credentials of the House of Commons consisted in its being elected, but election by a small section of the adult population, and in conditions that were only occasionally fair and open. Several features are worth noting.

- a. Historically, there is no sense of the people governing themselves. The King and his council govern, while the House of Commons is there to be a moderating force on government.
- b. It was a form of representative democracy of a kind far removed from any sense of direct engagement of the people in affairs of state. Representatives, once elected, were not the agents or delegates of electors; nor could they act on direction or instruction; their duty was to serve the common good, the well-being of the nation.
- c. That the connection between this sense of democracy and the people is slight and tenuous is made plain when we consider its origins. It was not born of the actions of the people; it did not spring from popular agitation and argument, from popular movements over time. Medieval and early modern English society, like others in Europe, did not work that way. On the contrary, the democratic element of the early constitution originates as a constituent part of the unity of the realm. It is a long story, the gist of which is as follows.

By the 14th century, the three parts of constitutional authority were in place. The 'commonalty of the realm' was one of them. It consisted initially of knights and burghers who were summoned to the king's council, later the king's parliament, and whose duty it was to consent on behalf of the shire, later the towns and cities, to actions proposed by the king. It was usually a matter of taxation, where by established custom the consent of those affected was required. The consent of bishops and magnates, it came to be acknowledged, was not enough; the commonalty of tax-payers had to consent, which they did through representatives, not representatives they chose or elected, but representatives who could consent on their behalf.

As the Statute of 1340 abolishing tillage (a form of tax) recites: 'the common assent of the prelates, earls, barons, and other magnates, and the Commons of our said realm of England and that in parliament'. What began as consent of the Commons, was by the 16th century described as a 'democratic element'. Over the following centuries, the electoral base expanded, but the narrow democratic element remained much the same.

V. Parliamentary Sovereignty and Representative Democracy

Having seen how the concept of parliamentary sovereignty arose and the place of democracy in the mixed constitution, we should now note the conceptual link between the two, for together they are vital to the contemporary constitution. The link is this: members of the House of Commons, as representatives of the people, stand in a singular manner in the place of those whom they represent. 'Representation', having several senses, is prone to loose usage. In normal usage, the representative is in some sense the agent or delegate of, or spokesman for, the represented, suggesting a relationship of control and direction of the one over the other.

Representation in the constitution has a different meaning. Here the representatives become, stand in the place of, embody the represented. Its origins probably lie in the theatre: the actor becomes the character represented. That character no longer exists beyond the actor's re-presentation of him. The word itself holds the secret: we say 'representation' as if it were one word; more accurately it is two: 're-presentation' - presenting again some persona. The actor re-presents the character as he the actor thinks fit. The two - representer and represented - are merged, the one indistinguishable from the other; the one having no known features outside the representation.

Parliament, it was said, represents the people in this sense: parliament becomes the people. Members of parliament used to claim that when the parliament was assembled, meaning the House of Commons in particular, the whole people was assembled there in parliament. And since representatives constitute the people, the real people are outside parliament and have no constitutional identity, standing, or voice.

Parliamentary sovereignty now makes more sense. It is shorthand for the more complex social concepts I have just explained. Since parliament constitutes the people, the sovereignty of parliament is the sovereignty of the people. The people is then the true sovereign, but people in this special sense that they exist only in representatives.

There is another aspect to add. You may be wondering how to make sense of the idea of the people being present in parliament through their representatives. This again is a long constitutional story. It turns on the distinction between the real people, flesh and blood persons, *and* a corporate sense of the people. When parliament claims to constitute the people, it is using 'people' in the corporate sense. The corporate sense derives from Roman Law, from the *universitas* - the corporation. The word *university* is a descendant: the corporation that constitutes the collection of students and teachers. The Italians still say 'l'universita' degli studi' di Siena etc- the *universitas* of studies as opposed to all the other *universitas* - corporations. It is a way of creating

a distinct entity separate from its members. The modern corporation is another descendent: it has legal identity distinct from its owners.

From Roman Law to Canon Law, where it proved useful in solving problems of authority in the Church, the corporate concept of the people found its way into secular constitutional thought and proved to be most useful. The medieval king represents, embodies, stands for the realm; he acts for and on behalf of its members as if they were acting for themselves. As Commons replace king at the centre of constitutional authority, they take on the mantle of representatives of the people, the corporate sense of the people. While this concept would sound strange in the mouth of a modern parliamentary, the sovereignty of parliament cannot be understood without it.

The social dilemma created by the double sense of the people should not be overlooked. The House of Commons, having relied on its ties to the real people, having aroused in them a sense of their place in the constitution, then had to prevent the people, the real people, from taking control, as the Levellers in the post-war years threatened. The corporate notion of the people is a fiction, the sustaining of which, in the face of growing political awareness, occupies much of later constitutional history.

VI. Between Politics and the Constitution

By the late 18th century, the constitutional concepts I have explained were settled. The sovereignty of parliament as supreme legislative authority was undisputed. Within the mixed constitution, the House of Commons was in the ascendant. Democracy had a place, a small place. Parliament represented the people, in the sense that it embodied the people, a corporate notion of the people. The real people had no place in the constitution. Having no status or standing, constitutionally they did not exist. Parliament could act in the name of the people, while keeping the people out of the way in the constitutional wilderness.

But of course the people, the real people, the final holders of raw political power, cannot be ignored or defined out of existence. Constitutional concepts are fictions, constructions of the mind, of someone's mind. Their purpose is to form institutions and justify a set of rules for the exercise of political power. In this case the rule by the few of the many. But, as Hume pointed out, a constitutional order, and the power structure it entrenches, has nothing to support it but opinion, the opinion of the people, the locus of ultimate power. By the 18th century, the people were beginning to question the constitutional order, the fictions on which it was based, the power relations it supported. The constitutional arrangements came under scrutiny, the rule of the few under pressure.

The question then as always was: why should the people accept, exercise self-restraint, and curb their natural power with respect to a constitutional order, from

engagement in which they were excluded. Why be content with such a mean sense of democracy when, across the Channel, the French were displaying the true power of the people and offering a very different constitutional vision? And yet the British system remained intact; the mixed constitution, with its stunted sense of democracy, survived. How and why it survived, although at times touch-and-go, is a complex matter that I cannot now consider, except to comment on one aspect, namely, how the representatives, the parliamentarians, confronted the rise in popular agitation and the consequences for parliament as the sovereign, representative body.

The 18th century was the high watermark of parliamentary deliberation on the nature of the constitution, and the place of the people. Members of the House of Commons such as Fox, Pitt, and Burke, to name just a few of many, engaged with the central issue in a manner and with a seriousness not seen since. The issue was plain: the relationship between parliament and the people. Although the constitution was settled, parliamentarians knew it was a contingent and fragile settlement; they understood the tension between the constitutional concept of a sovereign representative parliament and a growing political awareness among the people, the real people. But was it adequate and could it be justifiable in light of political events at home and abroad; could it cope with and withstand the demands of a constitutionally conscious people?

Within the general question of the relationship between people and parliament, three themes were prominent.

- a) First: by political necessity, the voice of the people *outside parliament* had to be heard. Practical issues had to be settled. Such as: how should parliament take account of that voice, whether expressed at election or by other means? Should it be bound by a clear expression of public opinion? Was parliament bound by electoral mandates, or should it reserve the right to act as it thought best, even if that were contrary to the mandate or public opinion otherwise expressed? Behind such practical matters lay deeper divisions about the merits of the constitutional order.
- b) Second: whether the democratic element of the constitution ought to be expanded, a fuller sense of democracy embraced?
- c) Third: whether the people should be acknowledged as the true seat of sovereignty; and, if so, what would be the constitutional consequences?

Space allows just a few brief comments.

Parliamentarians of the time demonstrated an understanding of the issue – the relationship between parliament and the people – an understanding of a quality, in my opinion, unmatched in later debates. Influenced perhaps by David Hume, whose writings they would have known, parliamentarians of the eighteenth century understood the fragility of the constitutional order. They grasped the unavoidable tensions between rule by representatives, aware they had nothing but popular opinion to support them, and the wish of the people to have more control over their own destinies.

Opinions were divided, with some arguing the traditional line that sound and effective government was best achieved within the mixed constitution, others that parliament could no longer resist the wishes of the people. It is true that the results at the end of the 18th century were fairly much to sustain the status quo, the mixed constitution, the notion of parliament as the sovereign representative authority, a limited franchise, and in general a minor role for the people. But things could have gone the other way; many argued for a fuller place for the people, a stronger notion of democracy.

Pitt and Burke were eloquent in defence of the mixed constitution and minimal democracy, partly because it worked well; and partly because history paints a bleak picture of direct democracy, to which the howls of the sovereign French mob, ringing through the kingdom, were living proof. But for the horrors unfolding before their eyes, the direct result, parliamentarians thought, of direct democracy, the case for constitutional reform could have won the day. Some like Burke, who had earlier moved tentatively towards fuller democracy, in light of the spectacle of the French experiment, were driven into obstinate opposition. The French revolution was a sobering lesson and a major force against constitutional reform. The French influence on British opinion is hard to over-state; without it the balance between people and parliament might have been adjusted.

The mixed constitution seemed a safe and reliable refuge from the unpredictability of change. The mixed constitution, after all, allowed the people to influence the course of parliamentary affairs, but without controlling them. Representative government, Pitt argued, ensures 'conformity of the sentiments of the people and their representatives'. That such platitudes beg the question, and are not an accurate description of the relationship, hardly mattered in the climate of the time.

The voices for change were equally eloquent and equally compelling. Fox was consistent over a long parliamentary career in arguing the case for the sovereignty of the people and hence a fuller constitutional role for them. Amongst others of similar mind, Thelwall's view states the case concisely: 'representative democracy is no democracy at all'.

To those in favour of the status quo, the founding of another constitutional order at the same time, that of the USA, must have been of some comfort. James Madison, the principal architect, opted for a republic rather than a democracy, after weighing the merits of each. In a republic the people delegate government to 'a small number of citizens elected by the rest.' Its virtue is:

to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, and whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.

The consequence may be:

that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves.

There is no mention of the British system, but take away monarch and peers, and Madison's solution to the core constitutional question is essentially the British solution. And now that monarch and peers have been reduced to ornaments, the match is even better.

The 19th century and the first part of the 20th are held to be the age of reform. Beginning in 1832 and culminating in 1928, by a series of Acts of Parliament, universal adult suffrage was achieved. That was a major advance, for the power to elect and remove representatives, or governments, is a fundamental principle in its own right. It leaves intact, however, the relationship established in the late 18th century, between the people and the elected, the representatives. The rise of political parties, arguably, distanced the people even further from parliament, but I shall not go into that here.

VII. Concluding Remarks

To conclude with three points.

First: you may be wondering why I have said little about the merits of the referendum. Two reasons. One is that while it raises issues particular to itself, it is best approached, its merits and demerits judged, within the broader people-parliament relationship. The other reason is the referendum is one among several ways of adding to the people's constitutional position. If reform is in the wind, all ways should be considered.

Second: nor have I said anything about populism, which is supposed to be sweeping through Europe, the USA, and elsewhere. If by populism we mean 'an ideology that separates society into two antagonistic groups: the pure people and the corrupt elite, one consequence is to place the people - representative relationship under scrutiny.'

Third: the people - parliamentary relationship, anyhow, is coming under scrutiny, which is likely to become more intense. All I hope to have shown is how that relationship came about, how it came to be the foundation of the constitution of the UK. It is an historical legacy, a social invention, a response to historical events. Many consider that it has contributed well to the creation of a reasonably stable and peaceful society; a society of reasonable liberty and tolerance. On other grounds it may have failed, other needs and aspirations may not have been met. Representative democracy is neither the end nor the apogee of constitutional history. It has secured a place in modern societies, having served their ends at various stages in their history;

it has produced social goods of worth. But societies change as the attitudes of the people change. Perhaps they are no longer content with a minor place in the constitution and hence in the political process. The remedy may be constitutional change. If so, let it be considered and deliberate, neither by ambush of an irresponsible parliament, nor by creeping in the back door as a thief in the night.