

Title: The Progress of Society: An Inquiry into an ‘Old-Fashioned’ Thesis of Walter Bagehot

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1. From natural condition to nature

Scientifically and politically, the nineteenth century is a fascinating era in many ways. Many of the social sciences that we are familiar with today came into existence during this period of time and other sciences were advancing at high speed. The nineteenth century also saw the rise of Darwinism as a new paradigm for the study of nature and man mans an integral part thereof. Perhaps for the first time in history, man was not to be studied as an exceptionally privileged species. Man would merely be one species amongst many within the ever-changing and dynamic system of nature. This Darwinian challenge fascinated many people, not only those working within the biological sciences, but also those outside of it. For example, Darwinism as a new way to study man was very popular within political philosophy. Many scholars were intent on removing the abstract principles and universal truths of early modern political philosophy in favour of understanding man’s nature through more scientifically-based methods. Walter Bagehot (1826-1877) was one of the leading exponents of this view.

In his time, Bagehot was a well-known politician and economist, as well as a prolific author on many subjects, such as literature, history, politics, economics, etc.¹ In particular, his study of the monarchy, entitled *The English Constitution*, still remains popular today.² Nevertheless, our focus will be on one of Bagehot’s other books, perhaps less well-known than *The English Constitution*, but one which still was highly influential: *Physics and Politics, or thoughts on the application of the principles of ‘natural selection’ and ‘inheritance’ to political society*.

Parts of this work were originally published in *Fortnightly Review* in 1867 and 1868 and a complete version subsequently appeared in book form in 1872. In Bagehot's time, the work was translated into seven languages and remained a well-known book for decades. A new English version was published just over ten years ago, indicating the continuing interest in Bagehot's work. *Physics and Politics* can be seen as one of the most remarkable attempts to think the intertwining of politics and Darwinism. In the reception of *Physics and Politics*, Bagehot's Darwinian approach is frequently emphasised. Many interpreters refer to it as 'an application of modified Darwinian doctrines to politics and the growth of societies'.³

In this article, we want to examine in what way a Darwinian framework of thinking is actually used in *Physics and Politics*.

A subsequent question could be how Bagehot's efforts to apply natural sciences to politics inspired Darwin. In the first edition of *The Descent of Man*, Darwin quotes four times from Bagehot's writings, which demonstrates his familiarity with them, and in one of his letters he praises Bagehot's book.⁴ However, as Thomas Cowles writes in 'Malthus, Darwin and Bagehot: A study in the transference of a concept', it remains unclear if, and how, Bagehot's *Physics and Politics* could have possibly been an incentive for Darwin to publish *On the Origin of Species*.⁵

Although an examination of the extent of Bagehot's influence on Darwin's work may be an interesting exercise as such, this article will instead focus predominantly on an examination of the extent to which Bagehot relies upon a Darwinian conceptual apparatus in *Physics and Politics*. An answer to this question will require a systematic and thorough investigation. First of all, we need to set the scene by establishing the framework of Bagehot's line of thought by providing a reading thereof. Once this horizon has been sketched, the work of other contemporaries of Bagehot, e.g. Henry Maine, will be necessary in order to see whether or not *Physics and Politics* can indeed be interpreted as a 'hard core' Darwinian book, or if its

inspiration is to be found elsewhere instead. For example, Bagehot's focus on progress and the idea that such progress is inherited over generations, appear to be Lamarckian rather than Darwinian, although it would perhaps be wise not to draw any hasty conclusions at this stage.

2. National character

In 1848, revolts by progressive groups in various European countries occurred against the established political order, the majority of which were based on the same universal ideals. Whereas their ideals were similar, the outcomes of such revolts differed from country to country. This phenomenon led Bagehot to the conclusion that national character is the most important factor in politics and that it would be absurd to believe that the same principles could be exchanged between nations. This thought drove Bagehot towards ethnology, biology and anthropology. Each nation goes through a process lasting several centuries, in which particular traditions are formed and characteristics are modelled. To understand what happens in a certain nation, one needs to know the particular process of (political) evolution that such a nation went through. This idea forms the main thread of *Physics and Politics*:

These are the sort of doctrines with which, under the name of 'natural selection' in physical science, we have become familiar; and as every great scientific conception tends to advance its boundaries and to be of use in solving problems not thought of when it was started, so here, what was put forward for mere animal history may, with a change of form, but an identical essence, be applied to human history.⁶

As is the case in nature, human (cultural, political) history is subject to certain laws and we need to discover these if we want to understand ourselves: 'Everyone now admits that human

history is guided by certain laws, and all that is aimed at here is to indicate, in a more or less distinct way, an infinitesimally small portion of such laws.’⁷ Bagehot is particularly interested in the transition from one cultural stage to another, as well as why certain nations advance whereas others do not. It would be reasonable to believe that the progress of man is a widely-accepted and universal phenomenon, but this is not the case. Certain nations are far ahead of others, Bagehot writes, and we have to understand why: ‘No doubt most civilisations stuck where they first were; no doubt we see now why stagnation is the rule of the world, and why progress is the very rare exception; but we do not learn what it is which has caused progress in these few cases, or the absence of what it is which has denied it in all others.’⁸ Therefore, politics are like physics and the principles of natural selection and inheritance can – and ought to – be applied to them:

One peculiarity of this age is the sudden acquisition of much physical knowledge. There is scarcely a department of science or art which is the same, or at all the same, as it was fifty years ago. A new world of inventions – of railways and of telegraphs – has grown up around us which we cannot help seeing; a new world of ideas is in the air and affects us, though we do not see it.⁹

By design, Bagehot begins his reflection on the origin of politics in the ‘preliminary age’ with the search for what kind of principles it is ruled by. He has no doubt about the principle of ‘natural selection’ and its predominance in early human history: ‘The strongest killed out the weakest, as they could.’¹⁰ Nevertheless, more is needed for society in order to found itself. The question is how to ensure people’s obedience. Bagehot assumes that a single government is required in this early age, ‘regulating the whole of human life.’¹¹ Church and state should function as one, and there is a need to create ‘a *cake* of custom’.¹² All of life’s actions,

Bagehot continues, are to be subsumed under a single rule and gradually a ‘hereditary drill’ teaches the early instincts of savage men. It may be logical that politics in this era forbids freedom of thought, which is not necessarily a bad thing according to Bagehot. Or rather, it is in fact perhaps a necessary evil for creating the mould of civilisation, and hardening the soft fibre of early man:

In ancient customary societies the influence of manner, which is a primary influence, has been settled into rules, so that it may aid established usages and not thwart them – that it may, above all, augment the *habit* of going by custom, and not break and weaken it. Every aid, as we have seen, was wanted to impose the yoke of custom upon such societies; and impressing the power of manner to serve them was one of the greatest aids.

And further on:

The rest of the way, if we grant these two conditions, is plainer. The first thing is the erection of what we may call a custom-making power, that is, of an authority which can enforce a fixed rule of life, which, by means of that fixed rule, can in some degree create a calculable future, which can make it rational to postpone present violent but momentary pleasure for future continual pleasure, because it ensures, what else is not sure, that if the sacrifice of what is in hand be made, enjoyment of the contingent expected recompense will be received.¹³

The ‘cake of custom’ or the ‘hereditary drill’ are the basis on which civilisation can evolve.¹⁴ Obviously, people need to be ‘drilled’ or a civilisation (or nation) can never be established.

Freedom is not (yet) an option here. A stable nation is based on unity and unity is based on adherence to the law, whereby all people act according to their status in the community. Only when a community is fixed and instincts are drilled, freedom or equality may arise:

What are called in European politics the principles of 1789, are therefore inconsistent with the early world; they are fitted only to the new world in which society has gone through its early task; when the inherited organisation is already confirmed and fixed; when the soft minds and strong passions of youthful nations are fixed and guided by hard transmitted instincts. Till then not equality before the law is necessary but inequality, for what is most wanted is an elevated *elite*, 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.¹⁵

Bagehot criticises modern politics, and especially the French revolution, for being unaware of its ‘physical’ history, its hereditary marks of ancient times, which are the a priori conditions for speaking about a nation or a civilisation today. What is needed first and foremost is a model that can be imitated by the common people. National character is based on that principle. Despite his biological perspective, Bagehot uses a rather psychological argument here to make his statement plausible:

At first a sort of ‘chance predominance’ made a model, and then invincible attraction, the necessity which rules all but the strongest men to imitate what is before their eyes,

and to be what they are expected to be, moulded men by that model. This is, I think, the very process by which new national characters are being made in our own time.¹⁶

Depending on its success, a model can survive and spread across the nation. Bagehot sincerely believes this unconscious imitation to be the principal force in the making of national characters.¹⁷ Although only minor evidence is provided, Bagehot assumes his hypothesis to be proven – it is clear that Bagehot’s book is not so much a piece of empirical research, but rather a speculative attempt at exploring the analogy between nature and man, physics and politics. Therefore it should come as no surprise that neither biological nor physical factors are scarcely touched upon in *Physics and Politics*, a fact of which Bagehot himself was very much aware.¹⁸ In addition, Bagehot also privileges morals above physics:

Mr. Buckle’s idea that material forces have been the main-springs of progress, and moral causes secondary, and, in comparison, not to be thought of. On the contrary, moral causes are the first here. It is the action of the will that causes the unconscious habit; it is the continual effort of the beginning that creates the hoarded energy of the end; it is the silent toil of the first generation that becomes the transmitted aptitude of the next. Here physical causes do not create the moral, but moral create the physical; here the beginning is by the higher energy, the conservation and propagation only by the lower.¹⁹

In ‘Walter Bagehot and the social psychologists’, Driver articulates what is at stake here: ‘The problem for which Bagehot attempted to sketch a solution was this: Assuming the truth of the doctrine of natural selection, how are we to account for the momentous *transition* from the

brute level of the struggle for existence to the human level of social organisation and co-operation?’²⁰ Let us examine this question in the next section.

3. *Psychics* and politics

In fact, Bagehot’s question is one of the key questions of political modernity: How did man leave behind his the natural condition and what was this condition like? It is the question asked by Thomas Hobbes, Jean-Jacques Rousseau, and many anthropologists, psychologists, and others. The question of this ‘transition’, as Driver calls it, is not original as such, but perhaps the way in which Bagehot approaches it could be referred to as exceptional.²¹ He describes the transition from the natural condition to modern society in three stages: the stage of pre-politics (the preliminary age), the stage of fixed politics (the fighting age), and the stage of flexible politics (the age of discussion). These stages overlap and there is no clear demarcation between them. In any case, not all nations across the world have made the same transition. Some groups have remained fixed, others have made continuous progress. In fact, Bagehot is very clear on this point: only few nations have made progress, most of them remain stuck in the age of fixed politics.

Before Bagehot is able to answer why some nations were able to make progress and others were not, he has to explain how nations are made. What holds communities or nations together? What binds them? According to Bagehot’s theory, early politics is based on a firm law on which the creation of a collective character is based. Consequently, politics has a rather psychological starting point: it starts from a predominant type, a sort of model or *idol* who is worshipped, copied, and observed. Once the predominant type is determined, ‘the copying propensity of man did the rest’.²² This psychological aspect of the argument is remarkable for a study which explicitly makes biological claims.²³ Although the principles of

inheritance and natural selection are never far away, it is all about custom and character, even if it is conceptualised by analogy with ‘physics’: as a reflex in the nervous system, habit or custom becomes fixed and the human body becomes stored with acquired faculty and virtue. Man is an antiquity, a product of past ages, Bagehot writes, which means that his physical structure is the ‘book’ of his past development and successful adaptations. Biological theory offers us the ‘missing link’ in order to understand man:

I am, I know, very long and tedious in setting out this; but I want to bring home to others what every new observation of society brings more and more freshly to myself – that this unconscious imitation and encouragement of appreciated character, and this equally unconscious shrinking from and persecution of disliked character, is the main force which moulds and fashions men in society as we now see it.²⁴

For Bagehot, it is clear that the propensity to imitation also forms the guiding principle of nation-making. The imitation of preferred characters and the elimination of detested characters were – and are – at work among human kind.²⁵ No Darwinian idea in the strict sense of the word can be found in Bagehot’s arguments in favour of imitation as a guiding principle. The principle of ‘unconscious imitation’ is more psychological than biological and this holds true for the whole of Bagehot’s book. As Harry Barnes already wrote in 1922:

While Bagehot was thus influenced by the biological school to the extent of adopting some of its terminology, he correctly understood that fundamentally social processes were psychologically motivated in a manner analogous to individual actions. Bagehot thus attempted to reconstruct the history of political organization and institutions through applying psychology rather than biology as the key to the process.²⁶

Bagehot's starting point is that man tends to imitate his peers, especially those who have a higher social rank.²⁷ As quoted before, he describes it as the propensity of human to imitate what is before them, this being one of the strongest parts of human nature. This 'mimetic inclination' is what binds leaders together at an early stage in social evolution, resulting in a durable society. Due to our 'natural' mimetic inclination, we tend to accept the law which is imposed on us primarily by force: 'Ultimately, obedience bows to instinct rather than to force alone. Instinct becomes the leaven for the "cake of custom," upon the strength of which the survival of a nation depends.'²⁸

In *Physics and Politics*, 'nation' is equalised with 'national character', which is not deduced from biological characteristics, but from literature, style, ideas, and so on.²⁹ Unconscious imitation of characters or 'propensity to mimicry' is the common thread that eventually results in a national character.³⁰ As a consequence, nations did not originate through mere natural selection. Natural selection means the preservation of those individuals who struggle best with the forces that oppose their race.³¹ For Bagehot, such struggle does not mean primarily that certain nations will disappear, but rather implies that certain nations will make progress and others not.

4. Progress and providence

After having explained how politics originate and national characters are formed, it becomes a question of finding an answer as to why some nations survived and others declined. It is at this point that *progress* enters Bagehot's line of thought. Bagehot not only describes the different stages of civilisations as transitions, but he also arranges them on a scale of progress. Nations can make progress insofar as they are able to move from one stage to another,

commemorating the virtues of the past, but also capable of integrating new ones. Once again, Bagehot is very clear in the statement he makes: only those nations will make progress which preserve and use the fundamental peculiarity that was given by nature to the human organism as well as all other organisms. Matters become less clear when a law has to be pinpointed by which such peculiarities are presented (or not). At this point, Bagehot resorts to an ancient principle, entitled 'Providence', which one can scarcely describe as a Darwinian idea:

By a law of which we know no reason, but which is among the first by which Providence guides and governs the world, there is a tendency in descendants to be like their progenitors, and yet a tendency also in descendants to *differ* from their progenitors. The work of nature in making generations is a patchwork – part resemblance, part contrast. In certain respects each born generation is not like the last born; and in certain other respects it is like the last. But the peculiarity of arrested civilisation is to kill out varieties at birth almost; that is, in early childhood, and before they can develop. The fixed custom which public opinion alone tolerates is imposed on all minds, whether it suits them or not. In that case the community feel that this custom is the only shelter from bare tyranny, and the only security for what they value.³²

If the problem is why human beings make progress, Bagehot's answer seems to be that they make progress because they have a certain sufficient amount of variability in their nature. The difficulty is how to preserve this variability and at the same time install legality. If the beginning of civilisation is marked by a firm and fixed legality, then such legality is the very condition of its existence. It is the bond which ties it together. The problem is that such legality, i.e. the tendency to impose a 'cake of custom' upon all men and all actions, destroys

the variability implanted by nature. Bagehot argues that progress ‘is only possible in those happy cases where the force of legality has gone far enough to bind the nation together, but not far enough to kill out all varieties and destroy nature’s perpetual tendency to change.’³³

In contrast with the ‘common sense idea’ about progress as a natural given, Bagehot argues that many nations did not make any progress. Why are there such differences in evolution and progress? How is it that certain nations advance, but others do not? It is at this point that Bagehot’s reasoning takes on a very Darwinian character. Bagehot mentions three laws.³⁴ The first one is that the strongest nations tend to prevail over others. According to Bagehot, this is the case in every state across the world. The second law states that within each particular nation, the most appealing types of character tend to prevail. Finally, the third law states that in most historic conditions, neither of these competitions is intensified by extrinsic forces.³⁵

In *Physics and Politics*, Bagehot limits himself to a discussion of the first law, the prevalence of the strongest nations over the others. In other words: What gives one nation an advantage over the other? For Bagehot, military force represents an important advantage in the struggle between nations. In answering the question as to why one nation is stronger than another, Bagehot finds his ‘key’ to the principal progress of early civilisation, as well as to some of the progress of all civilisations:

The answer is that there are very many advantages – some small and some great – every one of which tends to make the nation which has it superior to the nation which has it not; that many of these advantages can be imparted to subjugated races, or imitated by competing races; and that, though some of these advantages may be perishable or inimitable, yet, on the whole, the energy of civilisation grows by the coalescence of strengths and by the competition of strengths.³⁶

Man is obliged to be his own domesticator, and this is the reason why he differs from the rest of the animals. Man has to discipline himself. This leads Bagehot to conclude that the tamest tribes are the most obedient and therefore are at the first stage in the real struggle of life and the battle to be the strongest. What makes one tribe dominate another is its faculty of coherence: 'The compact tribes win, and the compact tribes are the tamest. Civilisation begins, because the beginning of civilisation is a military advantage.'³⁷ The point Bagehot brings out is 'simple', he says. The crucial prerequisite of a prevailing nation is that it should have moved from the first stage of civilisation to the second stage. Whereas permanence is most wanted in the first stage, it is more likely in the second. As long as we do not understand these alterations in civilisation, we will never be able to comprehend how progress is made by certain nations and not by others: '[...] a nation which has just gained variability without losing legality has a singular likelihood to be a prevalent nation.'³⁸

As nations are engaged in battle, they need to gain some sort of advantage in order to survive, so as to prevail. Early civilisations were successful when monarchic power was predominant and unsuccessful during 'rule of the many'. As long as war remains the main business of nations, temporary despotism is indispensable.³⁹ Bagehot does not hesitate to eulogise such war as something that generates what he calls 'the preliminary virtues' of valour, veracity, the spirit of obedience or the habit of discipline. If a nation possesses any of these virtues, then it will obtain a military advantage and increase the likelihood of them remaining in the 'race of nations'.⁴⁰

The abstract principle called 'progress' is promoted through the competitive test of constant war. The conflict of nations is initially a major force in the improvement of nations. This is the reason why parts of the world where war is absent do not make any progress, whereas most European countries do:

No one should be surprised at the prominence given to war. We are dealing with early ages; nation-*making* is the occupation of man in these ages, and it is war that makes nations. Nation-*changing* comes afterwards, and is mostly effected by peaceful revolution, though even then war, too, plays its part. The idea of an indestructible nation is a modern idea; in early ages all nations were destructible, and the further we go back, the more incessant was the work of destruction. The internal decoration of nations is a sort of secondary process, which succeeds when the main forces that create nations have principally done their work. We have here been concerned with the political scaffolding.⁴¹

Not only does Bagehot 'declare' why European countries, unlike others, have made progress, but in his eyes England is to be viewed as the model of choice for other nations. According to Bagehot, a nation like England has managed to survive many international struggles. England owes its success to the breeding of an instinct for obedience in the people. The degree of success determines the chances a nation will have of surviving in the race of nations. Easton summarises this point well:

Over the ages, in accordance with the law of the transmission of acquired characteristics in which Bagehot's generation believed, the process of natural selection weeds out those nations in which this instinct of cohesion fails to mature. But natural selection decrees, further, that having achieved national unity, those nations which permit the free development of knowledge and the free play of initiative will find themselves dominant in the struggle for survival.⁴²

A nation like England has reached the final age, the age of discussion, although Bagehot does not seem to have a high regard for the majority of his own people. While stagnation is the case in some nations, others – like England – yield to a slow and almost imperceptible progress. The age of discussion is modelled on a liberal society that permits the free exchange of ideas. While early civilisation is characterised by certain rigidity (age of status, age of fighting) and where no originality is permitted, contemporary civilisation is unfixed (age of choice) and discussion is the means of progress. Bagehot provides no real answer to why this should be so:

In a word, the temper of the age encouraged originality, and in consequence original men started into prominence, went hither and thither where they liked, arrived at goals which the age never expected, and so made it ever memorable.⁴³

Bagehot's argument is rather tautological: discussion improved humankind, because the age encouraged originality. Is this not the same as saying: discussion improves humankind, because humankind is ready for discussion? But no arguments are given as to why this is the case and why such a thing only happens here (and not in any other part of the world). Bagehot admits that he is unable to explain why a small proportion of humankind was able to enter the age of discussion and why the great majority of humankind was unable to do the same. It seems to be a mystery, even if Bagehot assumes that the causes which give birth to the enormous variety in individual character are similar to those which give birth to variety in national character:

[W]e cannot in the least explain why the incipient type of curious characters broke out, if I may so say, in one place rather than in another. Climate and 'physical'

surroundings, in the largest sense, have unquestionably much influence; they are one factor in the cause, but they are not the only factor; for we find most dissimilar races of men living in the same climate and affected by the same surroundings, and we have every reason to believe that those unlike races have so lived as neighbours for ages. The cause of types must be something outside the tribe acting on something within – something inherited by the tribe. But what that something is I do not know that any one can in the least explain.⁴⁴

Physics and Politics is fundamentally aporetic when considering its main thesis. Bagehot cannot explain why there is progress or even describe what progress really means. Perhaps the opposite would be more surprising, even though it was Bagehot's ambition to unravel this problem, enthused as he was by the progress made in the physical sciences.⁴⁵ However, to be fair, it must be said that Bagehot does not hide this failure from his readers:

But there is a preliminary difficulty: What is progress, and what is decline? Even in the animal world there is no applicable rule accepted by physiologists, which settles what animals are higher or lower than others; there are controversies about it. Still more than in the more complex combinations and politics of human beings it is likely to be hard to find an agreed criterion for saying which nation is before another, or what age of a nation was marching forward and which was falling back.⁴⁶

5. An ancient law

Our reading of *Physics and Politics* did not reveal any evidence that Darwin's evolution theory served as Bagehot's main point of reference in constructing his own theory. Darwinism

is obviously Bagehot's horizon of thought, a paradigm which he can resort to, despite the fact that a great deal of Darwin's precision is absent from Bagehot's interpretation and use of his work. The substitution of evolution for progress – only the latter implies improvement; the former implies no more than change or adaptation – clearly indicates that Bagehot owes much to Darwinian evolution theory, even if the core ideas of Bagehot's own theory can be seen as echoes from other conceptual horizons. This is aptly illustrated by the following quotation from *Physics and Politics*:

There was some strange preliminary process by which the main races of men were formed; they began to exist very early, and except by intermixture no new ones have been formed since. [...] And a second condition precedent of civilisation seems, at least to me, to have been equally inherited, if the doctrine of evolution be true, from some previous state or condition. [...] It is almost beyond imagination how man, as we know man, could by any sort of process have gained this step in civilisation. And it is a great advantage, to say the least of it, in the evolution theory that it enables us to remit this difficulty to a pre-existing period in nature, where other instincts and powers than our present ones may perhaps have come into play, and where our imagination can hardly travel.⁴⁷

Bagehot mentions 'some strange preliminary process', while Darwin develops detailed and precise arguments on the basis of very clear principles in *On the Origin of Species*. Although Bagehot refers explicitly to evolution theory, his use tends to be more generic than accurately based on specific theses in Darwin's work. As St. John-Stevas writes in his introduction to the *Political Essays*:

How, he asked, did society come about in the first place? And how was it that some societies continued to advance and prosper while the destiny of others was to decline and fall? How did a polity of rigid custom change to one of suppleness and flexibility? Bagehot found the answer by applying and developing the idea of natural selection to social growth. Evolution had been discussed since the publication of Robert Chambers' *Vestiges of the Natural History of Creation*, but it wasn't until the publication of *On the Origin of Species*, that its acceptance became widespread. *Physics and Politics* owes much to Darwin but more to Spencer, Tylor, Lyell, Lubbock and Wallace, and more still to Sir Henry Maine, whose *Ancient Law* had been published in 1861.⁴⁸

St. John-Stevas is not the only scholar who refers explicitly to the work of jurist and historian Sir Henry Maine, an author whom Bagehot frequently mentions in *Physics and Politics* and refers to as 'the greatest of our living jurists';⁴⁹ so does John Burrow in his chapter on Bagehot's thought in the context of nineteenth century English political and intellectual context.⁵⁰ Let us take a closer look at Maine's *Ancient Law*, since an exploration of Darwin's work did not yield satisfactory results in our explanation of the intellectual background of Bagehot's study, even though it initially seemed to be promising. The full title of Maine's book is: *Ancient Law. Its connection with the early history of society and its relation to modern ideas*. Herein, Maine develops the thesis that the history of political ideas begins, in fact, with the assumption that kinship in blood is the sole possible ground of community in political functions. In ancient societies, individuals were bound to traditional kinships by *status*, whereas in the modern world, individuals are free to make *contracts* with all kinds of people, even with those beyond kinship. While ancient law centres around status within groups, modern law is based on contracts between free individuals:

The movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place. The Individual is steadily substituted for the Family, as the unit of which civil laws take account. [...] Starting, as from one terminus of history, from a condition of society in which all the relations of Persons are summed up in the relations of Family, we seem to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of Individuals. In Western Europe the progress achieved in this direction has been considerable.⁵¹

Although Bagehot disagrees on particular points, he calls Maine's theory an 'adequate account of the true origin of politics' in *Physics and Politics*:

I do not myself believe that the suggestion of Sir Henry Maine – for he does not, it will be seen, offer it as a confident theory – is an adequate account of the true origin of politics. I shall in a subsequent essay show that there are, as it seems to me, abundant evidences of a time still older than that which he speaks of. But the theory of Sir Henry Maine serves my present purpose well. It describes, and truly describes, a kind of life antecedent to our present politics, and the conclusion I have drawn from it will be strengthened, not weakened, when we come to examine and deal with an age yet older, and a social bond far more rudimentary.⁵²

According to Bagehot, Sir Henry Maine accurately describes a particular kind of life which is antecedent to our present politics. What Bagehot and Maine share, in particular, is their

conviction that progress can be detected in society or at least in certain Western societies, although Maine seems to be more cautious on this point than Bagehot. Maine does not simply accept progress, but tries to study its nature and fill in the gaps in our knowledge in relation to progress. We should understand how law develops over time and more specifically how Roman law developed. Maine mentions the difficulty of stating exactly why Roman law is more advanced than Hindu law. Nevertheless he also indicates, amongst other things, that the difference between them lies in the fact that the former is based on a firm code, whereas the latter still falls victim to “irrational imitation”, engrafting in itself ‘an immense apparatus of cruel absurdities.’⁵³ In *Ancient Law*, Maine makes a distinction between the few progressive societies and the many stationary ones:

It may seem at first sight that no general propositions worth trusting can be elicited from the history of legal systems subsequent to the codes. The field is too vast. We cannot be sure that we have included a sufficient number of phenomena in our observations, or that we accurately understand those which we have observed. But the undertaking will be seen to be more feasible, if we consider that after the epoch of codes the distinction between stationary and progressive societies begins to make itself felt. It is only with the progressive that we are concerned, and nothing is more remarkable than their extreme fewness.⁵⁴

Bagehot may have had this in mind when he stressed that progress is the exception and the stationary is the rule.⁵⁵ Although advanced peoples and nations can live on in the old-fashioned habits of stationary societies, a distinction can still be made between them. In fact, Maine also refers to the national character Bagehot writes about so often:

One of the rarest qualities of national character is the capacity for applying and working out the law, as such, at the cost of constant miscarriages of abstract justice, without at the same time losing the hope or the wish that law may be conformed to a higher ideal.⁵⁶

The legal development of a nation is a barometer for its progress. In dealing with the question of progress, legal evolution is crucial in addressing the question whether or not – and if so, in which way – any progress has actually been made in one society or another. According to Maine, only few societies have been able to make such progress, which is something we have previously observed in our reading of *Physics and Politics*. Although Bagehot's interest in the transition from one cultural stage to another, as well as the question of why certain nations or national characters advance and others do not, appears as a legal question in *Ancient Law*, the similarity between them remains quite striking.

6. Of progress and transformation

Although a very detailed and close reading of Maine's and Bagehot's oeuvre might prove instructive, it falls outside the scope of this article. From our reading of the conceptual framework of *Physics and Politics* up to this point, we can conclude that Maine's *Ancient Law* seems to offer a more suitable key for interpretation than the one provided by an analysis of the Darwinian conceptual apparatus. The fundamental difference between Darwinism and these two books is that whereas Darwin unravels the problem of evolution, Maine and Bagehot pose other questions. Instead of asking how processes have evolved, they inquire into progress and transformation. Darwin mentions progress at the end of *On the Origin of*

Species, expressing his belief that in the long run, natural selection would lead to progress, but progress as such is not a concept overtly present in his work:

As all the living forms of life are the lineal descendants of those which lived long before the Silurian epoch, we may feel certain that the ordinary succession by generation has never once been broken, and that no cataclysm has desolated the whole world. Hence we may look with some confidence to a secure future of equally inappreciable length. And as natural selection works solely by and for the good of each being, all corporeal and mental endowments will tend to progress towards perfection.⁵⁷

Darwin does not even mention evolution in his discussion of embryology. As Peter Bowler summarises in ‘The changing meaning of “evolution”’: ‘[H]e saw the term as suitable for describing a general historical process or sequence of events, rather than a reflection of the progressively orientated embryological meaning.’⁵⁸ In *On the Origin of Species*, Darwin speaks about natural selection and adaptation, but there is little reference to evolution, not to mention progress.

The difference between the use of evolution by Darwin on the one hand and progress and transformation by Bagehot on the other, is quite evident and it would therefore be misleading to call *Physics and Politics* an application of Darwinism. As we saw earlier, part of the work’s inspiration lies in Maine’s *Ancient Law*. However, the key to reading *Physics and Politics* in its intellectual context is not merely to be found there. Jean-Baptiste de Lamarck, and following in his footsteps Herbert Spencer, for instance, addressed transformation and progress in detail. Lamarck did so in his *Philosophie zoologique* (1809) and Spencer in

‘Progress: its law and cause’ (185, as well as many other texts.⁵⁹ Spencer, in particular, is frequently quoted in *Physics and Politics*.⁶⁰

In *Philosophie zoologique*, Lamarck developed the concept of the transformation of species into several new ones, as well as the continuous improvement that takes place in relation to every transformation.⁶¹ In his turn, Spencer, was one of the first not to restrict the notion of progress to human history, but to expand it to the whole universe. In ‘Progress: its law and cause’, he speaks of a universal tendency towards increasing the heteronomy and complexity that are at work within in biology and physics, but also in sociology and psychology:

The advance from the simple to the complex, through a process of successive differentiations, is seen alike in the earliest changes of the Universe to which we can reason our way back; and in the earliest changes which we can inductively establish. [...] From the remotest past which Science can fathom, up to the novelties of yesterday, that in which Progress essentially consists, is the transformation of the homogeneous into the heterogeneous.⁶²

What Spencer calls the ‘law of progress’, to which the organic and inorganic worlds conform, is also conformed to by human activities. The whole of Spencer’s text is a continuous chain of examples taken from different scientific realms, so as to make this ‘law’ thesis plausible in an inductive way. By applying progress to all human and natural processes, he offered his readers a fascinating world view in which evolution in society and nature could be explained by reference to a single law.

If Bagehot uses evolutionary ideas to explain the growth of law and applies them to the question of the growth of society, he transfers Spencer’s and Lamarck’s theories of acquired physical characteristics, with some modification, to the mental, moral and social spheres.⁶³

This particular point, rightly stressed by St. John-Stevas, is also crucial to understanding the theoretical clue offered by of *Physics and Politics*. As a consequence, the conclusion has to be that the concept of evolution used by Bagehot is definitely not Darwinian. As Driver writes in ‘Walter Bagehot and the social psychologists’, Bagehot does indeed refer to evolution theory:

But this was achieved, it must be remembered, by interpreting evolution in Lamarckian terms (derived from Spencer’s early writings) rather than in purely Darwinian terms. There is a Darwinian gloss on the essay, it is true. But it might have been essentially the same without *The Origin of Species*.⁶⁴

The ideas of continuous progress in nature and society, and the inheritance of acquired traits or habits in certain nations or civilizations, are based on an expanded concept of evolution which is completely absent from Darwin’s work, but which is all the more prominent in the works of Spencer and Lamarck.⁶⁵ After Bagehot analysed the means by which progress is obtained, he writes the following:

[It] may be summed up in Mr. Spencer’s phrase, that progress is an increase of adaptation of man to his environment, that is, of his internal powers and wishes to his external lot and life.⁶⁶

Beyond this, as we have seen previously, the force of the Darwinian conceptual and scientific apparatus – to explain why certain species do survive and others do not, to explain biological variation in nature, etc. – remains absent from *Physics and Politics*. Bagehot fails to provide an answer to key questions, such as ‘Why is there progress?’ and ‘Why do some nations advance while others do not?’ and ends up providing tautological replies, e.g. progress is

made by certain nations because certain nations made progress.⁶⁷ Bagehot can only ‘save’ his theory by reason of the principle of ‘Providence’, so as to explain why certain nations do survive and others do not.⁶⁸ After all, Bagehot views nature as a means of explaining psychological and social processes. It often seems as if he finds an alibi in nature in his attempt to explain why society and civilisation have evolved in a particular way:

Nature is like a schoolmaster, at least in this, she gives her finest prizes to her high and most instructed classes. Still, even in the earliest society, nature helps those who can help themselves, and helps them very much.⁶⁹

Using nature to describe a certain evolution differs completely from explaining in the strict sense of the word why it evolved in that particular way. Although Darwin was able to do this for natural evolution, Bagehot has to admit that he cannot do likewise for progress in society or the evolution of national character. This should not be construed as a criticism of Bagehot, but should rather be seen as proof of the difference that exists between *Physics and Politics* and Darwinian thinking. Perhaps *Physics and Politics* established a framework for the application of biological principles to political society, but it definitely did not do so for the application of natural selection.

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Notes

¹ For a sketch of the ‘author’ Walter Bagehot within the context of English political thought of nineteenth century, see John Burrow’s ‘Sense and Circumstances: Bagehot and the Nature of Political Understanding’. In: *That Noble Science of Politics: A Study in 19th Century Intellectual History*, edited by J.S. Burrow, S. Collini and D. Winch. Cambridge: Cambridge University Press, 1983.

² Walter Bagehot, *The English Constitution*: Watts, 1964.

³ St. John-Stevás, Norman. *Walter Bagehot*: Published for the British Council and the National Book League by Longmans, Green, 1963, 8.

⁴ Darwin, Charles. *More Letters of Charles Darwin: A Record of His Work in a Series of Hitherto Unpublished Letters / Ed. By Francis Darwin ... And A.C. Seward ...* . London: John Murray, 1903, 298.

⁵ Cowles, Thomas. ‘Malthus, Darwin, and Bagehot: A Study in the Transference of a Concept’. *Isis* 26, no. 2 (1937), 346.

⁶ Walter Bagehot, *Physics and Politics*. New York: Cosimo, 2007, 34.

⁷ Bagehot, 2007, 35.

⁸ Bagehot, 2007, 102.

⁹ Bagehot, 2007, 9.

¹⁰ Bagehot, 2007, 22.

¹¹ Bagehot, 2007, 24.

¹² Bagehot, 2007, 24. See also further on in *Physics and Politics*: ‘In ancient customary societies the influence of manner, which is a primary influence, has been settled into rules, so that it may aid established usages and not thwart them — that it may, above all, augment the *habit* of going by custom, and not break and weaken it. Every aid, as we have seen, was

wanted to impose the yoke of custom upon such societies; and impressing the power of manner to serve them was one of the greatest aids' (Bagehot, 2007, 99-100). And finally: 'The rest of the way, if we grant these two conditions, is plainer. The first thing is the erection of what we may call a custom-making power, that is, of an authority which can enforce a fixed rule of life, which, by means of that fixed rule, can in some degree create a calculable future, which can make it rational to postpone present violent but momentary pleasure for future continual' pleasure, because it ensures, what else is not sure, that if the sacrifice of what is in hand be made, enjoyment of the contingent expected recompense will be received' (Bagehot, 2007, 90).

¹³ Bagehot, 2007, 24, 99-100 and 90.

¹⁴ See also Spring, David. 'Walter Bagehot and Deference'. *The American Historical Review* 81, no. 3 (1976), 256.

¹⁵ Bagehot, 2007, 26.

¹⁶ Bagehot, 2007, 29. For a comment on 'chance predominance', see Burrow, 1983, 173.

¹⁷ Bagehot, 2007, 30.

¹⁸ Bagehot, 2007, 117-118.

¹⁹ Bagehot, 2007, 14-15.

²⁰ In Hearnshaw, F.J.C. (ed). *The Social and Political Ideas of Some Representative Thinkers of the Victorian Age*. New York: Barnes and Noble, 1950, 202.

²¹ In Hearnshaw, 1950, 202.

²² Bagehot, 2007, 30. See also: Bagehot, 2007, 63.

²³ Therefore, Ernest Barker once suggested that the title of Bagehot's book ought to have been *Psychics and Politics* (quoted in Hearnshaw, 1950, 201).

²⁴ Bagehot, 2007, 66.

²⁵ Bagehot, 2007, 68.

²⁶ Barnes, Harry. 'Some Typical Contributions of English Sociology to Political Theory'. *American Journal of Sociology* 27, no. 5 (1922): 574.

²⁷ Easton, David. 'Walter Bagehot and Liberal Realism'. *The American Political Science Review* 43, no. 1 (1949): 23.

²⁸ Easton, 1949, 23.

²⁹ In *Physics and Politics*, there is an obvious analogy between literature/fashion and nation-making: 'A patronage of favoured forms, and persecution of disliked forms, are the main causes too, I believe, which change national character' (Bagehot, 2007, 62)

³⁰ Bagehot, 2007, 63, 68.

³¹ Bagehot, 2007, 62.

³² Bagehot, 2007, 40.

³³ Bagehot, 2007, 46.

³⁴ Bagehot, 2007, 34.

³⁵ Bagehot, 2007, 34.

³⁶ Bagehot, 2007, 38.

³⁷ Bagehot, 2007, 39.

³⁸ Bagehot, 2007, 45.

³⁹ Bagehot, 2007, 47.

⁴⁰ Bagehot, 2007, 52-53.

⁴¹ Bagehot, 2007, 54.

⁴² Easton, 1949, 23.

⁴³ Bagehot, 2007, 106-107.

⁴⁴ Bagehot, 2007, 117.

⁴⁵ Bagehot, 2007, 133

⁴⁶ Bagehot, 2007, 131.

⁴⁷ Bagehot, 2007, 89-90.

⁴⁸ In ‘The Collected Works of Walter Bagehot. Vols. V-Viii: The Political Essays’, V, 51-52.

⁴⁹ See Bagehot, 2007, 15, 21, 22, 48, 90, 92, 102. Bagehot only refers to Darwin twice, without quoting him directly.

⁵⁰ Burrow, John, 1983, 164.

⁵¹ Maine, Henry Sumner. *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas*: Murray, 1901, 168-169.

⁵² Bagehot, 2007, 22.

⁵³ Maine, 1901, 20.

⁵⁴ Maine, 1901, 22.

⁵⁵ Maine, 1901, 24.

⁵⁶ Maine, 1901, 75.

⁵⁷ Darwin, Charles, *On the Origin of Species*. Harvard, Harvard University Press, 2000.

⁵⁸ Bowler, Peter J. ‘The Changing Meaning Of “Evolution”’. *Journal of the History of Ideas* 36, no. 1 (1975): 103.

⁵⁹ See for instance Lamarck: ‘Dans le même climat, des situations et des expositions très différentes font d’abord simplement varier les individus qui s’y trouvent exposés; mais par la suite des temps, la continuelle différence des situations des individus dont je parle, qui vivent, et se reproduisent successivement dans les mêmes circonstances, amène en eux des différences qui deviennent, en quelque sorte, essentielles à leur être; de manière qu’à la suite de beaucoup de générations qui se sont succédé les unes aux autres, ces individus, qui appartenaient originairement à une autre espèce, se trouvent à la fin transformés en une espèce nouvelle, distincte de l’autre’ (de Lamarck, Jean-Baptiste de Monet. *Philosophie Zoologique Ou Exposition Des Considérations Relatives à L’histoire Naturelle Des Animaux*: Reinwald, 1907, 43-44). For Spencer’s text, which focuses entirely on progress: Spencer, H.

(1902). *Selections from 'The data of ethics,' 'Social statics,' 'Education: intellectual, moral and physical,' and 'Progress: it's law and cause.'* New York; London, Street and Smith, 153-197.

⁶⁰ For instance, Bagehot quotes Spencer from his 'Principles of biology' (see Bagehot, 2007, 125 and Spencer, Spencer, 1880, *First principles*. London, Williams and Norgate. §374.

⁶¹ Lamarck, 1907, 199.

⁶² From 'On Progress, it's law and cause' in Spencer, 1902, 175. Bowler rightly argues that Spencer is inspired here by Von Baer, as Spencer himself informs us in his *An autobiography* (Bowler, 1975, 106, note 43).

⁶³ See also St. John-Stevas, 1963, 52.

⁶⁴ Hearnshaw, 1950, 216.

⁶⁵ As Thomas Munro has clearly argued in 'Evolution and Progress and the Arts: A Reappraisal of Herbert Spencer's Theory'. *The Journal of Aesthetics and Art Criticism* 18, no. 3 (1960), 294 and following.

⁶⁶ Bagehot, 2007, 132.

⁶⁷ See note 43 and the quotation in the text.

⁶⁸ See note 31 in 'The development of a psychological approach to politics in English speculation before 1869'. Driver quotes an interesting passage from Thomas Edmond's *Practical, moral and political economy*, in which Edmond's use of the principle of providence anticipates Bagehot's thesis. (Driver, in Hearnshaw, 1950, 266)

⁶⁹ Bagehot, 2007, 134.