THE PRIVILEGES AND RIGHTS OF THE CROWN


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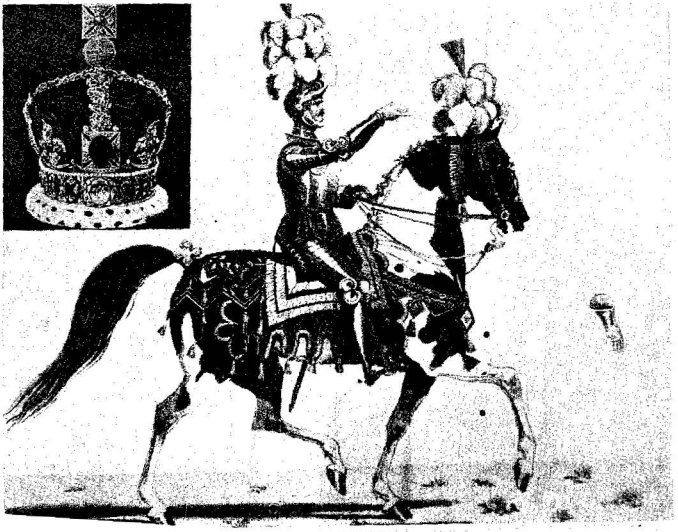

THE PRIVILEGES AND RIGHTS OF THE CROWN

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PREFACE

In our system of government the most important acts of administration of national affairs are carried out in the name of the Crown, laws are made by the Crown in Parliament, and justice is administered on behalf of the Crown. The King personally, it is clear, is and can be concerned only with certain aspects of these manifold activities, and it is the aim of this little book to deal with those aspects of our governmental system in which royal action is effectively brought into play, and to indicate those spheres in which his powers may be said definitely to be delegated for other authorities to exercise. We must speak, therefore, of the title to the throne, the royal accession and coronation, the provision made in event of royal incapacity, the status and rights of the royal family, the relation of the King to his Cabinet, his influence on governmental policy, his part in legislation, his relations to the Houses of Parliament, and his essential function as guardian of the Constitution. The King is also the fountain of justice and of honour, the head of the Church of England, and between him and his people there exists the essential link of protection and allegiance. The royal property, now of high value, must be described, and the terms on which it is from time to time surrendered to the people in exchange for a civil list.

For the self-governing Dominions there is little in the matter of government which the King can personally perform, but he serves the essential function of the link which maintains the unity of the Commonwealth; recent events, international and domestic, render requisite

the investigation of the character of this unity, and the issues of the divisibility of the Crown, the law of inter-imperial relations, and the claim to the rights of neutrality and secession.

These matters are dynamic, not static; on almost every issue of importance controversy runs high; dogmatism is out of place, but it may prove of service to indicate the problems, to state what seem the relevant facts, and where possible, to suggest answers. But at least this sketch may be useful as a guide to important questions of constitutional usage.

A. BERRIEDALE KEITH.

The University of Edinburgh,
April, 1936.

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THE TITLE TO THE CROWN

THE title to the Crown was originally conferred by election, but gradually it fell under the feudal rules of inheritance of land, and these rules, now abrogated in regard to land, still determine the destination of the Crown. Hence the Crown passes to the issue of the late sovereign, males being preferred to females, and the elder to the younger, while children are allowed to represent their deceased ancestors. In the absence of lineal descendants the Crown passes to the nearest collateral relation descended from the blood royal. In two respects only is there deviation from the rules governing the descent of land: there is no exclusion of the half-blood from inheritance, and among women the older takes the title, whereas land was shared by them as co-parceners. The succession therefore to His Majesty now stands as the Duke of York, Princess Elizabeth, Princess Margaret Rose, the Duke of Gloucester, the Duke of Kent, and his son.

But the rule of hereditary descent, which is derived from the common law, has not been exempt from modification by statute. Parliament, as the Succession to the Crown Act, 1707, expressly declares, has the absolute right to determine the succession to the Crown; nay more, in 1689 the two Houses of Parliament took it upon themselves to treat the throne as vacant through the flight of James II, and to settle the Crown and regal government upon William and Mary of Orange and to provide for its future transmission. The Crown was thus taken away not merely from a king, who might be

deemed to have abdicated by reason of his flight from the realm, but also from the innocent son of James II. Moreover, the exclusion of the issue of James II was perpetuated by the Act of Settlement of 1701, which assigned the succession in the event of the death of Anne without surviving child to the Princess Sophia, Electress of Hanover, daughter of Elizabeth, Queen of Bohemia, and granddaughter of James I, and the heirs of her body, being Protestants. The Electress failed to survive Queen Anne, and the succession passed therefore to her son George I, thence lineally to George IV, then collaterally to William IV, then to his niece Victoria, and thence lineally to Edward VIII. The disregard of hereditary right by the Act applied not merely to the issue of an unworthy monarch; Sophia was preferred to her brothers Charles Lewis and Edward, and to the issue of Henrietta, daughter of Charles I, to whom by hereditary right the Crown would have passed on the death in 1807 of the last surviving son of James II.

The passage of time must be regarded as having confirmed the validity of the proceedings by which James II lost his throne, and as having established the constitutional right of the two Houses of Parliament to vary and limit the descent of the Crown in the event of action by the King amounting to a violation of the fundamental relations between the throne and the people. The sovereigns who have reigned since James II must be deemed to have accepted as valid the exercise of power whence in the ultimate issue they derived the throne.

But the Act of 1701 did more than determine the succession. It provided for the future conditions subject to which the Crown must be held. Historical conditions explain why these conditions are directed essen-

tially towards securing that the holder of the Crown shall be a true Protestant. The King must join in communion with the Church of England; he was required prior to the enactment of the Accession Declaration Act, 1910, to make at the first meeting of Parliament after his accession or at his coronation a declaration against transubstantiation; it suffices now to declare that he is a faithful Protestant and will uphold and maintain the enactments securing the Protestant succession to the throne. He is, however, by the Union with Scotland Act, 1707, required as a fundamental term of the union to take and subscribe oaths for the preservation of the Church of England and the Church of Scotland; the former oath is now taken as part of the coronation oath which the Act of Settlement enjoins; the latter was taken by Edward VIII at the meeting of the Privy Council immediately following his accession, and its terms were modified so as to refer to the maintenance of the settlement of the Protestant religion as established by the laws made in Scotland. The alteration was due to the enactment of the Church of Scotland Act, 1921, the terms of which, by giving the widest power of alteration of existing legislation to the Church itself, might be deemed to render inappropriate the older form which referred to the church government established by law. The position of the sovereign under the Union is slightly anomalous; in Scotland the King regularly attends the services of the Church of Scotland. But the bond of union recognised by Parliament between the two churches is their common Protestantism; under this style they are linked together in the Roman Catholic Relief Act, 1829, as opposed to the Roman Catholic Church, and so strong was feeling in the eighteenth and early nineteenth centuries in

favour of the exclusive right of the Church of England to the style of Protestant that the Church successfully contended that the provision made in the Constitutional Act of 1791 in Canada for a Protestant clergy referred to its members only, to the exclusion even of the adherents of the Church of Scotland.

When feeling ran so strongly in favour of Protestantism it can easily be understood how it was held necessary to provide for the forfeiture of the Crown by any sovereign who became reconciled to the Church of Rome, professed the Popish religion or married a Papist; in such an event the people are absolved of their allegiance, and the Crown passes to the next in line of succession, being a Protestant. The terms of the enactment are manifestly wide and difficult to enforce; it is characteristic that no definition is attempted of the religious views of the royal spouse, and there is a complete absence of machinery for the determination of the fact of the loss of the throne by the sovereign. In essence the enactment is intended to render retention of the throne impossible in honour and good conscience by any person who prefers the doctrines of the Church of Rome to those of England; in fact, while the sovereigns have differed greatly in moral and religious outlook, no one of them has shown any tendency to adopt the Roman Catholic faith. On the other hand suggestions that the limitation should be removed have met with no general approval. The alteration of the form of declaration by the Accession Declaration Act, 1910, was generally accepted as a just act of courtesy to loyal Roman Catholic subjects of the Crown, but Parliament showed no inclination to waive the substance of the rule.

Certain difficulties, however, regarding the effect of the old statutes arise from the recent developments of

Dominion status. The union of the Crowns of England and Scotland in 1707 was accompanied by provision for the descent of the united Crown of Great Britain according to the terms provided for that of England in the Act of Settlement; one of the motives for union had been the danger that on the Queen's death the succession to the Crowns would have been divided. On the union with Ireland in 1801 the same principles were naturally applied to the Crown of the United Kingdom of Great Britain and Ireland. The sovereignty of the King, of course, extended over all those territories which had by settlement, cession or conquest fallen under the control of England or later of the United Kingdom, and in each of them he was king. But only by slow degrees was recognition given in the royal title to the existence of these territories. Fear of American resentment of the formal assumption of the style of Kingdom for the federation of Canada forbade acceptance of Sir John Macdonald's desire that the sovereign should become formally King of Canada, and it was India which first secured recognition in the adoption by the Queen of the style of Empress of India in 1877 as a decisive indication to her Indian subjects that she had succeeded to the glories of the house of Timur. In 1901 the rest of the King's oversea territories received due recognition when the royal title was made to run "of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India."

The creation of the Irish Free State by the agreement of 1921 destroyed the unity of Great Britain and Ireland, and necessitated an alteration of style. But the time was past when such a change could be made by British authority alone, and it was the Imperial Conference of

1926 which took the decision that the new state of affairs should formally be recognised by an alteration in the royal title. Under the Royal and Parliamentary Titles Act, 1927, therefore, the necessary change was made, and the sovereign became King of Great Britain, Ireland and the British Dominions beyond the Seas. All the Dominions assented to the change, but the actual carrying it into effect was left to the British Parliament alone. Naturally with the growth of Dominion status, attested by the declaration of that Conference of the equality of the Dominions and the United Kingdom, this position seemed obsolete, and on the recommendation of the Imperial Conference of 1930 the Statute of Westminster, 1931, expressly recites that "inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the throne or the royal style and titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom." It follows clearly from this declaration that as a matter of constitutional propriety any change in the vital matter of succession or style and titles cannot now be made by the Parliament of the United Kingdom alone, and the former sovereign authority over the succession no longer belongs in full right to the British Parliament. Doubtless the Parliament of 1931 had no power to bind its successors, nor indeed did it formally attempt to do so. The clause in question forms merely a preamble, serving as the most formal declaration of

constitutional principle but not even purporting to create law. None-the-less the declaration constitutionally must be regarded as a self-limitation of the authority of Parliament. Still more does it throw doubt whether the precedent of 1689, when the two Houses claimed the right to award the throne, could now be deemed constitutional. The Crown, it may justly be held, has acquired a constitutional safeguard against the action of Parliament. Any attempt of the two Houses to declare the throne vacant and to enact a new succession would now be a mere act of violence. Moreover the King could no longer be expected to accept from the British Parliament legislation altering the succession or the royal style and titles, unless he were assured that its operation would be dependent on like action being taken in the Dominion Parliaments. Nor is this result unreasonable. It is the price which the United Kingdom must expect to pay for the services rendered by the Crown as the one essential bond of union between the United Kingdom and the Dominions. Clearly the retention of unfettered control by the British Parliament over the succession would be a negation of the equality of the Dominions, and the Crown is the better able to sustain the rôle of the bond of imperial unity when it is removed from the immediate authority of any single part of the British Commonwealth.

On the other hand the statutory conditions which demand that the sovereign shall be a Protestant remain unaffected in law. If this limitation is to be removed, it must be dealt with by the Parliaments of the Dominions and the United Kingdom in unison. So far the matter has not evoked serious proposals for action, though the strength of the Roman Catholic Church in Canada and Australia would facilitate action there.

II

THE ROYAL ACCESSION AND CORONATION

THE moment the reigning King dies, his Crown is immediately vested in his legal successor; "the King never dies," is the maxim of the lawyers, and there is therefore no interregnum. The coronation is but a solemnity, but one of the highest value and significance, since it makes manifest the splendour of the royal office, attests the close connection of the people and their sovereign, and affords the King the occasion of a solemn recognition of his obligations to them. Moreover, the ceremonial is recognised as the time when the coronation oath contemplated by the Act of Settlement, 1701, falls to be administered.

The accession is notified publicly at the earliest convenient moment after the death of the King. The notification takes the form of a proclamation made by the lords spiritual and temporal, members of the late King's Privy Council, other principal gentlemen of quality, and the Lord Mayor, Aldermen and citizens of the City of London. It is clearly a distant relic of the recognition by the people of the King; it is not a meeting of the Privy Council, and after the meeting is over, the King proceeds to hold a meeting of that body at which the members are sworn. The Council issues directions for the proclamation of the King in the various parts of the Kingdom, and a like procedure is followed in the Dominions, with the significant exception of the Irish Free State, though both Houses of Parliament there duly passed addresses of sympathy with the family of the late monarch. At this Council also the

King took the oath to maintain the settlement of the Protestant religion as established by the laws made in Scotland, in a new form intended to accord with the wide freedom granted to the Church of Scotland by the Church of Scotland Act, 1921.

The actual ceremonial of the coronation is of high antiquity, and some omissions made in the case of the coronation of Edward VII, mainly in order to lessen the strain on the King, who had just recovered from a severe illness which had caused the postponement of the ceremonial, were made good in the coronation of George V in 1911. The first part is the essential presentation of the new sovereign to the people by the Archbishop of Canterbury and the Lord Chancellor, together with the great ceremonial officers of State; the recognition is accorded by the acclamations of the audience; the boys of Westminster School by tradition swell the acclamation, being trained beforehand to play the part of the crowd at a medieval coronation. There follow the celebration of the litany and communion and the delivery of a sermon. The Archbishop then puts the coronation oath; the King swears to govern the people of the realm and the dominions according to the statutes of Parliament and their laws and customs; to cause law and justice in mercy to be executed in all judgments to the utmost of his power; to maintain the laws of God, the true profession of the gospel, and the Protestant reformed religion established by law; to maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof as by law established; and to preserve the rights of the bishops and clergy of the Church of England and of the church committed to their charge. There follows the series of ceremonies

destined to invoke divine sanction on the people's choice, and to confer on the King a certain sanctity. The King is anointed by the Archbishop on the crown of the head, on the breast, and on the palms of the hands with consecrated oil; he is robed with special vestments, the colobium sindonis and the supertunica; he is presented with spurs and sword, the Archbishop girds on the sword which the King then offers at the altar as a symbol of justice, protection to the defenceless, and punishment of offenders. He is then invested with the armilla and imperial mantle, and is presented with the orb with the cross to signify that the whole world is subject to the Empire of Christ. On the fourth finger on the right hand is placed the ring, ensign of knightly dignity and emblem of defence of the Christian faith; then is placed in his right hand the sceptre with the cross, symbol of kingly power and justice, in his left the sceptre with the dove of equity and mercy.

The coronation proper then follows and the enthronisation, the archbishops, bishops and peers raising the King to his throne; the ceremonial is of great antiquity, Kingston bears record to the lifting on a stone of early Saxon kings, and the Scone stone of Scotland is still used in the modern coronation throne. Prior to enthronisation the King is presented with the Bible as the most valuable thing on earth, signifying wisdom, royal law, and the lively oracles of God. These ceremonies invest the King with the full regal dignity. Now seated on the throne he receives the homage of his peers; first the Archbishop of Canterbury for himself and the rest of the bishops, then the Princes of the Blood Royal, represented in 1911 by the Prince of Wales and the Duke of Connaught; then the senior of each of the five ranks of peerage, Duke, Marquis,

Earl, Viscount, and Baron. Each says the words of homage, which differ for a spiritual and a temporal peer, touches the royal crown, and kisses the left cheek of the sovereign. In this rite we can recognise the taking of the oath of fidelity by the servants of the Saxon King, and later by the great feudal vassals, which gave the sovereign assurance of a peaceful rule. The ceremonial thus carries us back to very early times; the anointing is a rite far older than Christianity, intended to confer strength on the sovereign, he is mounted on the throne in order to acquire the abiding strength of the stone which forms part thereof. The oath reminds us of the contractual element in Kingship; the homage of Church and laymen is given in return for assurances of good government and the maintenance of the rights of Holy Church; it survived even the high claims of divine right.

III

THE INCAPACITY OF THE KING

KINGS are mortal, and occasion therefore may arise from time to time to supply the place of the sovereign when for any cause he is precluded from action. Modern conditions of communication, the invention of the telegram and telephone, have, however, greatly simplified matters so far as the absence of the King from the United Kingdom is concerned. Not since 1732, when Queen Caroline acted as Guardian of the Realm during her husband's absence on the continent which he preferred to England, has such an office been filled. But as late as 1895 in contemplation of a prolonged absence of the Queen abroad the conferring of the style on the Prince of Wales was in debate. Lords Justices have similarly not been deemed necessary since 1821, nor is there seemingly any limit to the royal acts that may be done outside England, though there was a good deal of criticism of Edward VII, when he took the unprecedented course of appointing Mr. Asquith to be Prime Minister while at Biarritz. Edward VII, however, was always within easy reach, declining in 1906 the urgent request of the Canadian Parliament that he should pay a visit. His son, with his more imperial outlook, accepted the suggestion that he should hold a coronation durbar at Delhi, and during his absence in 1911–12 four Councillors of State were appointed to act for him.

The rules as to signature by the King have been regarded very strictly during the last two centuries. George IV was indeed permitted in his last illness to

allow a stamped signature to be used, but he was compelled to assent to each instance of its employment and his assent was attested by a confidential servant and high officers of State. To save the Queen the burden of signing army commissions, a special statute had to be passed, and, when later she resumed actual signature, the work so taxed her strength that 5,200 commissions were awaiting her signature at her death. Edward VII found himself compelled to resort to a stamp to be applied under his immediate authority.

In the grave illness of George V in 1928 it was felt necessary to pass an Order in Council authorising the issue of a commission permitting the Queen, the Prince of Wales, the Duke of York, the Archbishop of Canterbury, the Lord Chancellor, and the Prime Minister to hold councils, sign documents, and to do what was necessary for the safety and good government of the realm. But they were forbidden to dissolve Parliament, confer titles or peerages, or act in any matter in which the King had signified or they thought it proper that he should act. In January, 1936, a like procedure, but with the restriction of power to royal personages was followed, though the King proved too weak actually to sign the warrant for the commission, despite his gallant attempts. It never came into operation, owing to his death. The restriction to royal persons had already been observed in practice in 1928 in matters affecting the Irish Free State, the contention naturally being raised that the powers of the Crown in respect of the Free State could not properly be exercised by any British official.

Formerly provision has been necessary in view of the possible infancy of the successor to the throne; such an Act was duly made on the accession of George V,

but no regency has ever been necessitated by the accession of an infant since the time of Edward VI. It has, however, been necessary to provide a regency on the insanity of a king. It was proposed to do so in 1788, and, though the King recovered then, in 1811 his final relapse into insanity compelled the appointment of George, Prince of Wales, as regent. The position was highly anomalous, because there was no King to assent to the Regency Bill, but the defect was supplied by resolutions of both houses of Parliament, authorising the Lord Chancellor to put the Great Seal to a commission for giving the royal assent. In the crisis of 1688–9, when James II was declared to have abdicated, the two Houses had to act without royal approval, and to confer the throne on William and Mary.

IV

THE ROYAL FAMILY

THE Queen Consort is a subject, and with the final removal in 1935 of the qualifications placed on the legal capacity of women, her former distinction of being able to act as if unmarried (*feme sole*) has ceased to have any interest. She is entitled to have her own courts and officers, and to be represented in legal proceedings by her Attorney General or Solicitor General, but these privileges were not used by Queen Mary. Formerly, until the law of tenure was altered in 1660, the Queen was entitled to queen-gold, ten per cent. of any payment made to the King for pardons, privileges or other acts of royal grace, but this right was then swept away. In strict law it seems that, if a whale is captured in territorial waters, the head still belongs to the King, the tail to the Queen, the body to the taker. This quaint disposition was ordained by the ancient lawyers out of the chivalrous desire to present the lady with material for her wardrobe; with regrettable ignorance they forgot that the whalebone is found in the great creature's head. Of much more importance is the fact that provision for her on the death of the King is made in the civil list; £70,000 was thus provided for the use of Queen Mary.

The Queen is not entitled as of right to be crowned; that was decided in the melancholy case of the wife of George IV. But naturally this is normally performed. The ceremonial falls to the Archbishop of Canterbury, though by his consent Queen Alexandra was crowned by the Archbishop of York. Queen Mary was anointed

on the head, invested with a ring, the symbol of faith, crowned and presented with two sceptres.

The Queen during marriage is protected by the law of treason from attacks on her life or chastity, but ceases to receive that protection on widowhood. It is said that her remarriage requires the assent of the reigning King, but the assertion rests on what seems to be a spurious statute. If she marries, she does not lose her style and dignity as Queen.

The heir apparent is the eldest son, if any, of the reigning King, and he is invariably created Prince of Wales and Earl of Chester by Letters Patent, these titles not being inheritable. He is also by inheritance Duke of Cornwall, and as such entitled to the revenues of the Duchy of Cornwall, which have so carefully been safeguarded as to provide comfortably for their owner. Hence under the Civil List Act, 1910, of George V it was unnecessary to make any provision for the Prince of Wales himself, though an allowance of £10,000 was provided for any wife and £30,000 for a widow. Curiously enough, if the Prince of Wales should die, leaving a son, though the latter would be heir apparent and would be created Prince of Wales, the Dukedom of Cornwall and the revenues of the Duchy would not fall to him, but would revert to the King. The heir apparent is also by inheritance Duke of Rothesay, Earl of Carrick, and Baron of Renfrew in the peerage of Scotland, Lord of the Isles, and Great Steward of Scotland. The revenues of the Principality of Scotland, which are of minor importance, fall to him. His person and the chastity of his wife are protected by the law of treason, but in general their position is that of subjects, though an Act of 1795 makes special provision for the management of his establishment.

The King's eldest daughter may be heir presumptive, but never heir apparent, for her right to succeed may always be defeated by the birth of a brother; the proclamation of Victoria's accession similarly contained an express saving for any posthumous issue of William IV. She is normally created Princess Royal, a style enjoyed by Princess Mary, Countess of Harewood, and her chastity while unmarried is protected by the law of treason. The provision made for daughters of a King is usually £6,000 a year, as in the case of the daughters of Edward VII and of George V.

The other children of the King and the children of sons of the King are styled Prince or Princess, and by Letters Patent are Royal Highnesses, but this rank is not accorded to children of daughters, as in the case of the sons of Princess Mary. The retention of the style of Princess on marriage may be waived by the King, as in the case of Lady Patricia Ramsay, daughter of the Duke of Connaught. A special precedence in Parliament was conferred on the sons of the King by a statute of Henry VIII in 1539, which differentiates the position of a Duke being the son, grandson, brother, uncle, or nephew of the King from that of any other Duke by giving him precedence over the great officers of State. It is customary to make provision in the civil list for the sons of the King; thus in that of George V the sons were granted £10,000 a year while unmarried, with £15,000 additional on marriage.

By common law the King is held to have the charge of the education and care of the members of the royal family and the right to appoint their governors, instructors and other servants, over the head even of their parents. But the vague right to control their marriages claimed by the King has been replaced by a very

remarkable statutory enactment, which was procured from Parliament by the insistent demand of George III who used his influence unremittingly to secure its acceptance. No descendant, male or female, of George II, except the issue of princesses who have married into foreign families, if under age twenty-five, is capable of contracting a valid marriage without the previous assent of the sovereign signified under the Great Seal and declared in Council. Previous to this enactment the marriages of sons of the King, contracted without his consent, exposed the parties to punishment for contempt but were valid, and the King's motive for securing the enactment of the Royal Marriages Act, 1772, was to prevent the recurrence of alliances deemed unsuitable by his narrow intellect. The rule is still regularly adhered to, as in the case of the marriage of the Duke of Kent and the daughters of the Duke of Connaught. Some difficulty was caused in 1906 when the marriage of Princess Victoria Eugenie to the King of Spain was under discussion, since that necessitated her conversion to Roman Catholicism, and a vague but quite erroneous idea was current that the King was empowered by the Act to veto any marriage with a Roman Catholic. In fact, however, it proved unnecessary for royal assent to be given under the Act; Princess Beatrice had married into a foreign family, though her husband, Prince Henry of Battenburg, subsequently became a naturalised British subject, and therefore her daughter was free to marry whom she pleased. The King, however, despite the remoteness of the Princess from the succession, thought it necessary in view of her having become a Roman Catholic that she should formally renounce any right of succession.

After age twenty-five the royal power ceases to be

absolute, but a valid marriage can only be contracted in the event of the refusal of royal assent, if the descendant of George II notifies his intention to marry to the Privy Council, and if within twelve months thereafter the two Houses of Parliament do not declare their disapproval of the marriage intended. With the modern attitude of the royal family to alliances with members of British families the risk of any descendant having to have recourse to this procedure with negative results may be disregarded.

In view of the fact that at present the elder daughter of the Duke of York is second to her father in the order of succession, it is interesting to note the historical precedents for the position of a royal consort. William III declined to accept the throne except on the understanding that the whole regal power should be exercised by him, though in his absence from England Queen Mary might administer the regal powers and government, without prejudice to the validity of acts of State performed by her spouse overseas. On the other hand, Prince George of Denmark, husband of Queen Anne, was merely introduced into the Privy Council without being sworn, made a peer, and naturalised by special Act. Prince Albert of Saxe Coburg and Gotha was naturalised by Act of Parliament, was introduced into the Privy Council, but was not created a peer, Queen Victoria urging sound reasons against such a step. He was given precedence next to the Queen in 1840, and in 1857 the style of Prince Consort was conferred on him by Letters Patent. But he was merely in law a subject of the Queen, and not entitled to any procedural privileges; thus in 1849 he sued in ordinary form for the infringement of copyright which he possessed jointly with the Queen. In fact, of course, after the departure from office in 1841

of Lord Melbourne, he soon became the Queen's effective adviser ; in that capacity his impartiality between parties seems to have been perfect, and it was certainly his political insight and skill which enabled the Crown to acquire the remarkable influence which Queen Victoria was able to exercise throughout her life. But her violent antipathy, from 1876, to Gladstone was clearly wholly inconsistent with his standpoint of accepting as equally legitimate the government of either of the great parties in the State. Whether indeed his power would not have become too considerable is open to argument, but it remains eternally to his credit that during his last illness his prudence dictated the alteration of the protest of the British government against the taking of the Confederate envoys from the British vessel *Trent* so as to render it possible for the United States government to accept it without breaking off diplomatic relations.

V

THE KING AND HIS MINISTERS

1. *The Sources of Royal Power and Influence*

THE Norman Conquest of 1066 has left a definite impression on the position of the Crown, which is attested by the forms observed in every important sphere of our present government. All the most important executive acts are executed by ministers of the Crown, in many cases with the personal concurrence of the King; all legislation is passed by the King with the advice and consent of the Lords spiritual and temporal and Commons in Parliament assembled; the business of the Courts of Justice is conducted in his name. These forms carry us back to the time when William I by his victory at Senlac secured for himself unfettered power, executive, legislative and judicial. This plenitude of authority he could himself execute with the aid of his counsellors, but the growing complexity of state life little by little circumscribed his power. Henry VIII could still dictate the action of Parliament, but it overthrew Charles I, and the revival of the royal power in the hands of Charles II was followed by the overthrow of his brother. A wide measure of executive authority still remained which Parliament did not control, but the advent of a foreign dynasty accelerated a process already in operation, and under the Hanoverian dynasty from 1714 there was worked out the system under which action on the advice and responsibility of ministers accountable to Parliament was substituted for action by the sovereign at his discretion, subject to the necessity of obtaining from a suspicious Parliament the necessary funds to support

his governmental policy and such legislation as might be requisite to give it effect.

The merits of the scheme, which evolved with little conscious direction, are obvious. The executive government is brought into vital connection with Parliament, and friction such as marked the relations of William III with the House of Commons is eliminated. The government is carried on without the waste of effort involved in the United States through the difficulty of inducing Congress to give effect to the suggestions of the President and the inability of Congress to persuade the President to accept its policies. It takes something vital, such as the economic depression in the United States, to transform the governmental machinery into an instrument comparable with the British for effective action, and already, with the worst of the crisis over, the inherent difficulty of the co-operation of two independent authorities has reappeared.

While, however, it is established that the King reigns but does not govern except on the advice of ministers, there has never been any question of narrowly limiting the acts of government performed by the King. It is the desire and pleasure of the people to see the sovereign engaged in high acts of State, and government gains dignity and impressiveness from being conducted through the instrumentality of the wearer of the Imperial Crown. But it would be idle to expect that the sovereign would consent in his actions to follow blindly the promptings of his ministers; he is entitled to demand and to be given grounds for all that he is asked to perform, and this right secures for him the exercise of the power of criticism and of advice. It is far from the desire of his people that the sovereign should become a mere cypher, and to seek to reduce him to such a position

would involve a palpable loss to the State. It is of the essence of Parliamentary government of the British type that ministries should come and go, and that there should be frequent change in the head of the Cabinet. But the King remains, while ministers pass away, and he must accumulate an unrivalled experience of affairs, however little he may desire to obtrude his personality. Further, if the King no longer claims to rule by right divine, the prestige of monarchy and the trappings of court ceremonial secure from even the most pronounced adherents of democracy a respectful hearing for any expression of the royal views. As head of the army, the navy and the air force, of the civil service and of the Church, as the fountain of justice and the repository of the prerogative of mercy, as legislator and the source whence flow honours and dignities, the King commands a measure of respect which enhances enormously the weight of his opinion. If to these advantages of office the sovereign adds the authority derived from strength of intellect or character, it is easy to see how deeply he may influence the government of the day. It must, of course, be remembered that he enjoys the services of a Private Secretary and that the King and State alike doubtless owe much to the self-effacing work of men like Sir F. Ponsonby, Lord Knollys, Lord Stamfordham, and Lord Wigram. The importance of the office has been enhanced by the process, described below, by which in matters affecting the Dominions the King may be advised direct by Dominion governments.

The extent and character of the royal influence on government can best be understood by examining first the actions which the King personally performs under the modern form of government; secondly, the sources whence he derives the advice on which he acts; and

thirdly the measure of discretion and authority which remains with him in dealing with the advice tendered to him.

2. *The Character and Form of the King's Acts of State*

The acts of Government performed by the King fall into two classes according to their legal source. Those which are derived from the common law, that is from usage recognised by the courts of law, are styled prerogative acts, and the prerogative is neither more nor less than that part of the royal authority which is not conferred by statute. Once unlimited and paramount, in the course of time the prerogative has been defined by the courts and its ambit determined. Further it has been decided that the prerogative can be taken away by statute, for the King in Parliament represents the highest manifestation of royal authority and can define the measure of the authority to be exercised by the King without the aid of the two Houses. Moreover it has been ruled that, if statutory provision is made, the prerogative is so far superseded; thus, when a hotel was occupied for military purposes during the war, payment was held to be due for its use under the statute governing the taking of property for public purposes, though the Crown claimed that under the prerogative it was entitled to make use of any buildings to serve purposes of defence in war conditions.

Prerogative powers represent the older side of the royal authority, its responsibility for the maintenance of peace and order, for the defence of the realm, for the conduct of external relations; the social and economic functions which now are so vital a part of the business of the State are largely a modern development, and the functions conferred by statute on the King in these

matters are essentially formal, such as the making of Orders in Council dealing with important regulations, while the great mass of the work to be done is assigned expressly to the government department concerned, the Minister of Health, Labour, Transport or Pensions.

It is an inevitable result of the historical development of the kingship that the duties still personally performed by the King should be of the most miscellaneous character, varying from matters of fundamental importance to those of minor consequence. His powers as regards Parliament, the judiciary, honours, and the Empire will be described below, and it must here suffice to mention a number of his activities. The appointment of all the high ministers of State, from the First Lord of the Treasury downwards, rests with him; from him officers of the army and the air force derive their commissions, though naval officers hold theirs from the Lords Commissioners of the Admiralty, and in the older Universities of England and Scotland a number of Professors hold their appointments from him. The old power to preserve order in times of domestic upheaval or war by the issue of a proclamation of martial law has passed away; but the Emergency Powers Act, 1920, which arms the government with special authority to deal with crises such as the general strike of 1926, is brought into operation by a proclamation issued by the King, attesting his concern with the peace and security of his people in life and property alike. The external affairs of his country involve his constant interest and action; he issues letters of credence to accredit his representatives to foreign governments, and receives in audience ministers accredited to him by foreign powers; he grants full powers to negotiate treaties and signs ratifications of treaties when con-

cluded; war, peace, and neutrality in the wars of other countries are proclaimed under his signature. The representatives of the country in foreign lands are appointed by him, and he signs the exequaturs which permit the consuls of foreign powers to exercise their functions. The rights and liabilities of aliens in this country are regulated in essentials by Orders of the King in Council made now under statutory authority.

Defence again claims much of the King's attention; the Army and Air Councils, the Board of Admiralty are constituted by his consent, and as in the case of foreign affairs, all matters of importance are submitted for the information and approval of the Crown. But, though by historical tradition these issues claim special royal concern, they have come in the course of time to share their importance with issues of social and economic well-being, as well as problems of finance and trade. The days are long past since the King controlled income and expenditure, but the sums that are granted by Parliament are still granted to the King, and his formal order is required as a preliminary to the process by which the proceeds of the taxes which we pay are expended on the purposes which have been approved by the House of Commons. Though save for the making of Orders in Council comparatively few issues connected with the new activities of the State are brought before the King for formal action on his part, the ministers in charge of these departments are appointed by him, and they owe him the duty of bringing to his notice all matters of first class importance.

The forms in which the royal action in executive matters is expressed are now comparatively simple. The most formal are Orders in Council, which are used,

for instance, to regulate the exercise of belligerent rights in time of war; to prescribe the duties of aliens; to grant the benefits of the preferential tariff to exports from mandated territories; to regulate air navigation; to regulate lighthouse dues; and to effect many other purposes. The mode of passing such orders is simple. The King presides over a meeting to which three Privy Councillors at least are summoned, and the draft Order which is normally prepared by some government department is laid before him for approval. In certain cases the desirability of securing wide publicity results in the use of the form of proclamation, the terms of which are approved in draft by an Order in Council, and the document then is made public, bearing an impression of the Great Seal of the Realm as a token of its authenticity. This form is used for declarations of war or peace, or to declare emergency, or to notify changes in the coinage, which, formerly a royal prerogative, is now regulated by statute.

A third form of instrument is Letters Patent, also under the Great Seal, which are used to constitute the Commissions of the Treasury and the Admiralty, to confer certain Professorships, and to constitute corporate bodies. The same form is adopted for judicial purposes, including the appointment of judges, to authorise the royal assent to Bills of Parliament; to confer dignities; and to authorise a Dean and Chapter to elect a Bishop or the Convocations to alter Canons.

Appointments, when not made by Letters Patent, may be conferred by commission or by warrant signed by the King; such warrants are also regularly used to authorise the issue of Letters Patent, serving as an order to affix to the latter the Great Seal which is in the charge of the Crown Office controlled by the Lord

Chancellor. Writs under the Great Seal are employed to secure the election of members of Parliament and to summon peers to attend.

In the making of treaties special forms are observed. The negotiation and signature of a treaty are authorised by Full Powers granted to the British representative at a foreign court; this document bears the Great Seal, and is signed by the King on the authority of a warrant also signed by him, and in like manner the treaty is ratified by an instrument signed and sealed.

3. *The Responsibility of Ministers for the King's Acts*

These and other actions of the King in every sphere of his official activities are performed on the advice of ministers who for the royal actions are responsible to the House of Commons. The King himself is answerable to no power on earth for what he does, and that very fact places him under an absolute moral obligation not to act without advice, responsibility for which can be brought home to the giver. That the command of the King was no excuse for wrong doing was definitely established when under Charles II Danby was impeached by the Commons for action taken on his sovereign's express bidding. So definitely established is now the doctrine that as early as 1834 when Sir Robert Peel accepted office in the belief that his predecessor, Lord Melbourne, had been dismissed by William IV he asserted in Parliament in 1835 his duty to accept full responsibility for the royal action, though ex hypothesi it had been taken without even his knowledge. We know now that the King did not actually dismiss Melbourne, who had offered resignation which was in effect accepted, but the principle remains absolute, and it serves as a most definite limitation of

royal authority; the King cannot dismiss a ministry or cause its resignation unless he is able to replace it by another, for the business of the country must be carried on and it can only be conducted with the aid of ministers enjoying the confidence primarily of the majority of the House of Commons, and ultimately of the electorate.

Responsibility meant formerly liability to punishment at the instance of the Commons by sentence of the House of Lords through the process of impeachment, or by an Act of Attainder or of Pains and Penalties passed by both Houses and assented to by the Crown. But these proceedings may now be deemed obsolete, and the only penalty is loss of office and of public favour, should the House of Commons disapprove the advice tendered to the Crown.

In the case of most of the acts of the King the person responsible is definitely marked out by the rule of countersignature. From quite early times, though the King was largely above control, nevertheless paramount considerations of the necessity of preventing hasty action and of securing due record of royal deeds led to the rule that legal effect would only be given to documents bearing the royal signature, if authenticated by a seal and countersignature. Hence responsibility rests directly on the minister who countersigns a royal warrant or commission of appointment, and on the Foreign Secretary who countersigns the royal warrants for the issue of Full Powers and instruments of ratification of treaties. The matter is less simple in the case of Orders in Council, for the counsellors who are present need not be ministers, though one normally is, and they usually know nothing of the business to be transacted. But the matter is easily cleared up; it will be found in

every instance that the Order rests on the responsibility of some definite minister, in whose department it has been prepared and by whom it has been despatched to the Lord President of the Council with an application for its submission to the King in Council.

But apart from this individual responsibility there remains the responsibility of the Cabinet as a whole. Despite the rule of the solidarity of the Cabinet, which in theory means that the whole body is responsible for the error of one member, it is recognised that an individual may by resignation enable his colleagues to disclaim effective responsibility. The resignation of Sir S. Hoare after the repudiation by public opinion of the terms which with M. Laval he offered in December 1935 to the Emperor of Ethiopia, as a base for the settlement of the war between that sovereign and Italy, was held to excuse the Cabinet, despite its acquiescence in his action, from resignation in deference to the unanimity of public condemnation of this surrender of the principle of founding British foreign policy on the doctrine of strict adherence to the terms of the Covenant of the League of Nations. But that was an exceptional case, and normally all great issues in public affairs are decided by the Cabinet and accepted on its advice by the King, and responsibility then rests with the Cabinet rather than with any individual member.

4. *The King's Part in the Formation of the Cabinet*

Though ministers are responsible for the King's acts, the King has definite, though limited, means of securing that his views shall have weight with the Cabinet in framing the advice which is finally tendered for his acceptance. The Cabinet was at one time the mere instrument of the royal will, and its personnel

depended on the royal favour. It has now come to represent the choice of the electorate voting at a general election, at which it either renews the mandate of the government in power or indicates that it has ceased to possess its confidence, in which event the ministry tenders its resignation to the King. By conventional practice the rule is now established that, if a ministry dissolves Parliament and is defeated at the general election, it will resign office, so soon as the results are definitely established, without waiting for the meeting of the House of Commons to pass judgment on its actions, provided always that the result of the election makes it clear that some opposition party has a majority sufficient to enable it to form an alternative government. The rule is based on considerations of much cogency; it is contrary to the public interest that the power of government should remain in the hands of those who no longer can count on popular approval; hence the resignation of Mr. Baldwin forthwith in 1929. But, if it does not appear that another ministry can certainly be formed, the conventional rule of resignation has no application, and Mr. Baldwin in 1924 faced the verdict of the Commons, when the election had deprived him of his majority but left his party in possession of a greater number of seats than either the Labour party or the Liberals.

In the event of the resignation of the ministry it falls to the King to take the decisive step of selecting a new Prime Minister. It follows inevitably from the rule of responsible government that for once there is no one capable of offering advice which the Crown is bound to consider; the resignation involves the loss of the right to tender advice. The Crown may ask advice, but that is a matter entirely of discretion.

When the greatest Prime Minister of the nineteenth century retired in 1894, his sovereign was careful not to ascertain his views, and on her own responsibility the Queen selected Lord Rosebery for the office, though Gladstone himself would have suggested Lord Spencer, and Sir William Harcourt had reasonable grounds to claim the succession.

It is clear, of course, that this right of selection is definitely limited. The essential condition is that the person selected to form a ministry must be able to carry out this end, and accordingly the royal discretion is always limited by the necessity of having close regard to the feeling of the House of Commons. But it must be remembered that members of the Commons are intensely eager to take part in a ministry and the person who is commissioned by the Crown has a very strong lever to compel acceptance of his leadership in the shape of the control of offices. It was by this power that Sir H. Campbell Bannerman was able in 1905 to form a cabinet despite the initial reluctance of Sir E. Grey, Mr. Haldane and Mr. Asquith to serve under him in the House of Commons. Hence too it is hardly correct to hold that the King's selection of Mr. Baldwin in 1923 on the resignation from ill-health of Mr. Bonar Law, who tendered no advice as to his successor, was necessary, and that the passing over of Lord Curzon was dictated by conditions which he could not control. Lord Curzon himself had no doubt that the choice would fall upon him, and it may well be that, if he had received the royal commission, he would have succeeded in forming an effective ministry. That the King's exercise of his discretion was sound can hardly be doubted; it rested unquestionably on the plain fact that the strength of the opposition was to

be found in the House of Commons, and that it was right that the Prime Minister should there be present to meet the fundamental attacks on his policy. Doubtless the King was aware that there was strong support for Mr. Baldwin in the ranks of his party, but it is impossible to hold that the royal freedom of choice is a matter of the past. Inevitably it often happens that no real choice exists; Queen Victoria would not willingly have accepted Gladstone in 1880 or 1892, and in 1916 the selection of Mr. Lloyd George as head of the government was necessitated by the fact that only under him could an effective coalition be achieved. But, so long as human nature remains unchanged, when outstanding personalities are lacking as at the present day, the King must have a real discretion in the choice of a new Prime Minister.

A most signal proof of the powers and obligations of the Crown is afforded by the events of 1931. The ministry of Mr. R. MacDonald had adopted a reckless financial policy, which involved meeting the ever growing deficit in the unemployment insurance fund by borrowing. The danger of the situation at last was brought home to the Government by the report of the Committee on Economy under Sir George May, which by its frankness created widespread doubt abroad as to the stability of British finance. The necessity of balancing the budget became obvious to all competent politicians, but the efforts of the ministry to devise a scheme, under which increased taxation and diminished expenditure especially in unemployment would secure this result, came to grief on the stubborn opposition of the Trades Union Council, and the rank and file of the Labour party, who believed that the situation had been exaggerated and denied the necessity of accepting the

demands of the Bank of England. In the result the Cabinet itself proved to be divided; four of its leading members, the Prime Minister, Mr. Thomas, Mr. Snowden, and Lord Sankey were united in favour of drastic measures, while the other members, grouped under Mr. Henderson, declined to accept the necessity of the measures advocated. In the result the King arrived in London on August 23, and on the following day the Prime Minister resigned office, and was commissioned to form another government from which were excluded his former colleagues and which was at first made up of four Labour members, four Conservatives and two Liberals. It is easy to see that in this crisis the King had a wide range of possibility of action. The more obvious course was to accept the Prime Minister's resignation and commission Mr. Baldwin to form a ministry, and there can be no doubt that the latter could have succeeded in the effort, though he would have required to receive a dissolution of Parliament in order to be able to secure the necessary support in the House of Commons. Doubtless it was the disadvantage of an immediate election, and above all the advantage of the co-operation of the great parties, which induced the royal decision in favour of Mr. MacDonald. It was impossible to know at that time what the election of 1931 was to prove, that the Labour members of the National government were without any substantial following in the country. Not until 1935, therefore, on the resignation on the score of failing health of the Prime Minister, was the Prime Ministership formally conferred with general agreement on the real leader of the ministry, Mr. Baldwin.

The royal authority does not extend to the determination of the selection of the other members of the Cabinet;

it falls to the Prime Minister to make his own selection, though in the case of the Labour party it is now contemplated that the allocation of ministries shall not take place without consultation between the three bodies which control Labour policy, the party in Parliament, the Trades Union Council, and the Executive of the Labour Party. But there can be no doubt that the fact that the list of ministers proposed must be submitted for royal approval before it is finally decided upon secures the Crown the opportunity of taking exception to appointments of ministers if just grounds exist. Queen Victoria, of course, in this as in other matters asserted rights which it would not now be possible to maintain. She negatived the appointment of Mr. Labouchere and of Sir Charles Dilke after his appearance as a co-respondent in a divorce case; in 1892 she would not hear of Lord Ripon as Secretary of State for India, and she was both ready with suggestions for filling offices and not unsuccessful in securing Mr. Gladstone's acceptance of her wishes. Edward VII was less active in this regard, and intervened in 1905–6 only in regard to the political members of the royal household, a matter clearly within his constitutional rights. The adoption of this attitude of reserve was striking, for the new ministry was by far the most democratic which had ever been appointed, and one of its members, Mr. John Burns, early strained the royal patience by the issue of an election address advocating the abolition of the House of Lords, and a little later the King was forced to remonstrate through the Prime Minister regarding the terms of unrestrained abuse of the upper chamber indulged in by Mr. Lloyd George. He accepted, however, without demur his selection for the office of Chancellor of the Exchequer on the

reorganisation of the ministry after the death of Sir H. Campbell Bannerman.

5. *The King and the Policy of the Cabinet*

The essence of the relations between the Crown and ministers demands that there shall be complete confidence on either side. It follows therefore that the sovereign shall not go behind the back of his government in order to seek political advice, for such action destroys the reciprocal duty of confidence owed by the Cabinet to the sovereign. Though the principle is clear, it is plain that it is not altogether easy to give it full effect, and Queen Victoria, it must be admitted, was far from acting on the principle. From the time when she fell under the spell of Disraeli's flattery her sentiments towards Gladstone were so distorted that her actions were wholly unconstitutional. With the aid of her defeated Prime Minister she worked indefatigably in the effort to secure Lord Hartington as his successor, a plan foiled by Gladstone's very proper refusal to serve under so mediocre a minister, and only his death terminated her secret communications to her former adviser. Nor was she more loyal to Lord Rosebery despite his constant deference to her wishes. Instead she consulted Lord Salisbury, Sir H. James and others in 1893–4 with a view to forcing a dissolution of Parliament or the resignation of the ministry because it threatened to deal with the House of Lords. The excuse given by Lord Salisbury for giving her the advice which she sought is significant; he justified his action by the consideration that he was a former servant and a Privy Councillor. It is, however, plain that neither ground was adequate justification for his action; the right of a Privy Councillor to advise must be exercised

in a constitutional manner, when he holds official rank. So again the right of a member of the House of Lords to offer advice, even unasked, is a relic of an obsolete past, inconsistent with the modern constitution.

Edward VII's attitude was far more constitutional than that of his mother; while it is true that he invited apparently without the prior assent of his ministers the opinion of Lord Cawdor in 1909 on the right of the House of Lords to compel reference to the electorate on the Finance Bill of the government, after receiving the latter's view, he did not fail to obtain the concurrence of the Prime Minister in his interviewing the leaders of the opposition in the two Houses with a view to seeking some compromise. In this he followed the precedent set by his mother when with the assent of Gladstone she arranged for compromise between the government and the opposition regarding the disestablishment of the Irish Church in 1869 and the reform proposals of 1884, though his efforts had not the success which marked those of the Queen. It fell, therefore, to George V to seek to deal with the situation which had emerged, and it seems clear that his action in endeavouring to secure accord by private discussions with leaders of the opposition on the Parliament Bill in 1910 and on the Home Rule proposals of the ministry in 1914 was carried out with the full knowledge of his Prime Minister and with his assent.

It is, of course, impossible to demand that the King should never receive suggestions on public issues from persons not members of the ministry; the freedom of modern intercourse between the King and his subjects would render any rigid rule impossible, and the King's Private Secretary inevitably is the recipient both verbally and in writing of expressions of opinion by ex-ministers

and other public men, the substance of which may or may not reach the sovereign. But the essential rule is that in any issue of importance the sovereign shall not seek advice from persons in politics not members of his government, unless he has received the concurrence in such action of his Prime Minister, and such advice as he does receive must, of course, be discussed with the latter.

It follows further from the relations that must subsist between the King and his ministers that on all matters of governmental concern all that he says in public must be approved by ministers. The violation of this rule has been virtually unknown of late years. Matters have vitally changed since William IV could virtually censure in public the colonial policy of his ministry, moving even that long suffering body to energetic protest. The Cabinet for its part owes a reciprocal consideration to the King. However strongly it feels the action of its opponents or of the House of Lords, courtesy requires that the terms of the royal speech at the opening or close of Parliament shall be couched in terms of studious moderation, and deference to the feelings of the King has caused the faithful observance of this tradition even during times of considerable strain.

A point of difficulty arises in regard to the extent to which the government is bound to submit its plans for royal information, before discussing them in the country. Queen Victoria on this head entertained clear views; she strongly disapproved of Lord Rosebery raising outside Parliament the issue of reforming the constitution by taking from the House of Lords the right summarily to mutilate or to reject measures approved by the Commons. But there is much force in the retort

elicited even from the diplomatic Rosebery, who insisted that it would be undesirable to establish the principle that a minister before laying a matter before a public audience should receive the approval of the Crown, for such a principle would tend to make the Crown a party to the controversies of the day and would hazardously compromise the neutrality of the throne. Needless to say, the Queen was not persuaded, the less so since Lord Salisbury, whom she had consulted, assured her that Lord Rosebery had no constitutional right to announce a totally new policy on a vital matter without taking the royal pleasure, and that, if he failed to convince her of the wisdom of his policy, it was his duty to resign. But the doctrine is plainly preposterous, and Edward VII contented himself with the far more reasonable suggestion to his Prime Minister that subordinate ministers should not announce policies of which the Crown had not been informed; the offender was Mr. Lloyd George, who was understood to have announced the intention of the government to establish a ministry for Wales. It is, of course, clear that the matter presents difficulties. A government may wish to ventilate possible policies, which it has not matured to a shape for presentment to Parliament, and which it is not therefore anxious to bring before the King. The most that can be said is that with full confidence between ministers and the sovereign it should seldom happen that any policy of importance meditated by the ministry should fail to be mentioned to him, so that, if he should feel interest therein, he can secure that further details shall be placed before him.

In regard to matters which are ripe for action the position is essentially different. The Crown is plainly entitled to full information as early as practicable;

despite the passage of years there is nothing obsolete in the famous admonition addressed in 1850 through the Prime Minister to Lord Palmerston by Queen Victoria. The Queen demanded that her minister should state distinctly the policy for which he sought sanction, that he should not depart from the sanction given, that he should inform her of his discussions with foreign representatives before important decisions based on that intercourse were taken, and that drafts of despatches intimating decisions should be sent to her in time to enable her to express her views on them. Palmerston's recalcitrance resulted in 1851 in his loss of office, and the Queen's right was never thereafter called in question. Of course with the passage of time and the increased rapidity of the rate of despatch of public business much must be done with greater speed and informality than contemplated by Her Majesty who loved to work by correspondence, but it is still essential that the King should receive copies of all important Foreign Office telegrams and correspondence and that he should approve all decisions of importance.

In the conduct of foreign affairs the sovereign is traditionally deeply interested, and the Queen's close connection by relationship with nearly all the heads of governments in her time increased her determination to remain in effective touch with these issues. She was enabled thus to aid the policy of her ministers by private communications to foreign sovereigns, sent with the assent of her ministers, and to give them advice based on letters received from abroad. Thus in 1864 on representations from her daughter, the Crown Princess of Prussia, Sir A. Buchanan, and in 1870 Lord Augustus Loftus, were recalled from the Berlin legation. Her sympathies, on the whole, led

her to favour co-operation with Germany: hence her support in 1863 of the refusal of the ministry to lend aid to the rebels in Poland and her urgent advice to refuse intervention on the side of Denmark in the affair of Schleswig Holstein in 1864. But her distrust of Prussian policy induced her before Sadowa (July, 1866) to contemplate joint action with France and Austria. After the Prussian victory her efforts changed in favour of forming such relations with Germany as would deter France from hostility, but her ministers would not accept her suggestion. She intervened successfully in 1870 at their request to secure the withdrawal of the candidature of Leopold of Hohenzollern for the Spanish throne, and, when the genius of Bismarck still provoked France to declare war, she endeavoured to move the King of Prussia to accord generous terms to the defeated foe. In the same spirit in 1875 she was active in denouncing the German project of an attack on France. On the other hand in the eastern question from 1876–8 her own desire was to precipitate war with Russia, a desire deftly parried by Disraeli, though even he was confronted by threats of abdication if Russia were to appear in force before Constantinople. In her later years she was confronted by evidence of the growing enmity of Germany and the hostility of the Emperor to the Prince of Wales and his own mother, and in 1896–8 there are signs that she had come to fear British isolation and to contemplate the possibility of an entente with France and Russia. It was an omen of the future that she was careful to press that every consideration should be shown to France over the episode of Fashoda, and the retreat of the French government from a false position be facilitated.

The interest of the Queen in foreign affairs was

fully shared by Edward VII, and the retirement from office of Lord Salisbury, the determined apostle of insularity, enabled him to work in effective unity with his ministers for the formation of relations of abiding character with France, achieved in 1904 largely through the effective use of the sovereign's personal appeal to the French people. His influence was successfully used to prevent the deplorable incident of the Dogger Bank, when the Russian fleet in panic fired on British trawlers mistaken for Japanese war vessels, leading to war with Russia, and the entente concluded in 1907, which secured India from Russian menace, was in large measure promoted by him, while accords were achieved also with Spain, Portugal, and the Scandinavian countries. Needless to say, the sinister policy of encirclement of Germany ascribed to him by German politicians was wholly unknown to the King or his ministers, and he made earnest efforts to win over his nephew to co-operation for peace. While his efforts proved unavailing, his reign forms a classical instance of royal activity in harmony with ministerial advice. No opportunity to rival his father's success was afforded to his son, who had never established such contacts with foreign governments as had his father, and the late King's action in external relations was mainly based on ministerial advice. But it may be noted that his strict sense of constitutional duty prevented his urging intervention in favour of Constantine of Greece or after his death of George II, while to his influence may justly be set down the determination of that monarch on his recent restoration to adhere firmly to the rôle of a constitutional monarch in lieu of accepting the control of the royalist leader by whose energy he had been restored to power. The pardon extended shortly before his

death to the great patriot, M. Venizelos, reflects the true spirit of British monarchy applied to the conditions of Greece.

Mention should also be made of the unfailing courtesy of the sovereigns to the United States, of the wise restraint urged by the Queen on the advice of the Prince Consort in 1861, in the episode of the *Trent*, and of the friendly relations between Edward VII and President Roosevelt.

Royal activity has also been displayed consistently in the field of defence. Queen Victoria, however, was not happy in her attitude, for the Duke of Cambridge, her cousin, was a resolute opponent of reform, and under his influence she resisted the changes suggested by the Hartington Commission. It took all the tact of Sir H. Campbell-Bannerman to induce her in 1895 to insist on the Duke ceasing to be Commander-in-chief, and even then she insisted that the Duke of Connaught should be at no distant date awarded that office. Yet it must be remembered that she assented to the abolition of the purchase of army commissions, exercising at the instance of the ministry statutory power to do so, when a Bill for the purpose was obstructed in Parliament. Edward VII's interest in the army was of a far more practical and useful type. He insisted to the full on the necessity of consultation, and held up the pay warrant of Mr. Arnold-Forster until his criticism of the treatment of officers had been met, and he compelled that minister to apologise for failure to show him due deference in the form of submissions. To Mr. Haldane's schemes for army reform he gave unsparing support, though not unmingled with criticism; it is significant that he supported Mr. Haldane vigorously against opposition in the Cabinet,

but expected him to reassure him when his scheme fell under the criticism of Lord Roberts and others. In matters of high appointments he took special interest; he discerned the merits of and promoted the advancement of Haig and Kitchener, and his own brother fell under his displeasure when he refused to fall in with the wishes of his minister regarding the tenure of office as commander-in-chief in the Mediterranean. Nor did details evade his interest; uniforms and great-coats evoked fruitful comment, and the King's interest restored to the Duke of Cornwall's Light Infantry the red pagri granted to commemorate the red tuft granted to its predecessor, the 46th regiment, for distinguished valour in the American War of Independence in 1777. To his successor fell the duty of affording in the vicissitudes of the Great War the most unfailing support to his ministers and encouragement to his forces by his ceaseless interest in their welfare and achievements.

Though external relations and defence are the subjects, other than constitutional issues, which will be discussed below, in which royal influence has been mostly notably exerted, the rule that the sovereign must be afforded the fullest information on all governmental action, so that he may have the necessary knowledge on which to base advice, encouragement and warning, is applicable in every sphere. Queen Victoria's interest in imperial affairs was closely bound up with matters of defence, apart from her determined and finally successful efforts to secure the title of Empress of India, which was proclaimed on Jan. 1, 1877. Her deep repugnance to the evacuation of Candahar, when the forward policy of Lord Lytton was reversed by the Liberal Government, led to a constitutional struggle of much interest; at Osborne on Jan. 5, 1881, her

assent to the announcement in the speech at the opening of Parliament was won only after a plain warning that to disapprove was to eject the ministry, and that on the eve of the opening of Parliament was revolution; the indignant Queen complained that she had never before been treated with such want of respect and consideration in the forty-three and a half years she had worn her thorny crown. Her indignation was aided by unsound assertions of Prince Leopold and Beaconsfield that the speech was the expression of the royal views and not those of ministers, a view which had been recognised to be absurd as early as the days of Swift and Wilkes and which had been disowned firmly in the Queen's own reign by Peel in 1841. She resented also the retrocession of the Transvaal, and her indignation over Gordon's death led her into the indiscretion of a telegram *en clair* to her Prime Minister couched in unwise terms. Her sympathies with the difficulties of Indian princes led her to wish to cancel the death sentence pronounced in 1891 on the miscreant who procured the murder of the Commissioner of Assam at Manipur, but the Viceroy wisely remained firm, and the Secretary of State supported him. In matters of domestic interest her initiative was slight; she disliked women's rights, and would have wished to see education made more practical and better suited to the functions of the working classes; in this as in other matters she displayed her complete sympathy with the typical middle-class opinions of the day.

Edward VII's activities in the field of foreign affairs confined within narrow limits his concern with the Empire. On the question of the controversies raised by Lord Curzon as Viceroy he was content to follow the advice of his ministers, but he dissented strongly from

the desire of Lord Minto, supported by Lord Morley, to create a precedent by the introduction of an Indian to the Council of the Governor General, the final authority in matters of Indian Government. It was only with unfeigned reluctance and at the express recommendation of the Cabinet that he accepted the advice of his minister. In domestic issues he was strongly opposed to the movement for women's suffrage, and he regarded with no great enthusiasm the advanced democratic views of his ministry, but the constitutional struggle between the Houses absorbed his chief energies in domestic affairs.

On the other hand the affairs of the Empire occupied much of the interest of George V, who found time to visit India to be acclaimed as Emperor and to announce the policy of the transfer of the capital from Calcutta to Delhi, thus inaugurating a new era in the history of India. Constitutionally the episode was of high importance, for Parliament had not been consulted, and the assent of the sovereign to the change and the announcement made on his express authority precluded the possibility of party criticism, and might therefore be resented. In this as in other issues the King showed his determination wholeheartedly to support his ministers when he did so at all; no lack of support was shown either to the first Coalition of 1915, or the Radical transformation of 1916 either during or after hostilities, even when the franchise in 1918 was widely extended and women were included. It is undoubted that in the matter of Ireland his heart was deeply set on securing peace; doubtless it is absolutely true that the terms of the speech with which he opened the first Parliament of Northern Ireland on June 22, 1921 were used on the responsibility of the ministry, as by royal command

Mr. Lloyd George assured the House of Commons on July 29. But there seems sound reason for the belief that the effort to secure peace was warmly urged by the King, and he certainly accepted the treaty of December 5, 1921, with a measure of goodwill which would have been inconceivable in his father.

6. *The Limits of Royal Influence*

The royal influence, as we have seen, is far-reaching; the publication of the Letters of Queen Victoria and of the various Lives of Edward VII have revealed how little truth there is in the conception formed in 1867, by so acute a mind as that of Walter Bagehot, of the Crown as of high dignity but little efficiency in the constitutional system. Queen Victoria came to the throne when its prestige had been ruined by the insanity of George III, the vicious character of George IV, and the feeble-mindedness of William IV, and when its power had been undermined by the passing of the Reform Act of 1832, which at long last secured popular control of the House of Commons. The Crown could never regain power of the old sort; it could and did, thanks in part to the wisdom and skill of Prince Consort, achieve influence, and it is impossible to define the extent to which it may be exercised. Nor is such influence unconstitutional; it is picturesque to speak of the events of 1931 as a 'Palace Revolution' and of Mr. MacDonald as a 'King's favourite' and to describe the formation of the National Government as 'the greatest constitutional experiment since Party government was introduced'. But the truth lies rather with the declaration of Lord Passfield, who passed through the crisis as a dissentient from the policy of Mr. MacDonald, and who asserted that 'the King never went outside his

constitutional position'. The influence of the King is constitutional, because it is a natural development from the position which the constitution assigns to him; he acquires it from continuity in office, from access to the fullest information, from personal qualities, and from the enormous prestige attaching in British society among all ranks and classes to the person of the King. It is constitutional also because its exercise has public approval. The general election result in 1931 proved conclusively that, as Queen Victoria reflected despite her retired life with amazing precision the outlook of the middle classes who held political power, so the King, deeply familiar with a far wider range of the interests of his subjects than his grandmother, knew better than his critics what would appeal to the country.

What limits can be set to this influence? It is clear that it exists and can be exercised only in so far as it represents the views of a substantial section of the opinion of the country. Mere personal views would be without weight; at most a complaisant minister might decline to press on his sovereign an appointment unacceptable to him. Yet Sir H. Campbell Bannerman would not yield to the wish of Edward VII to have Lord Farquhar as Lord Steward, though it is hard to see what sound reason existed for thus refusing a personal wish of the King, and Mr. MacDonald in 1924 agreed that in future the office should cease to be regarded as a political office. But the real question is how far a ministry should be resisted on a matter of public character on which the King holds views shared by the opposition in politics.

There is agreement, of course, that the King is entitled to use all his influence to secure the assimilation of contending views. Queen Victoria's action in 1869

on the disestablishment of the Irish Church, and in 1884 on the franchise and redistribution issues has always won approval, as have the efforts of Edward VII to bring about accord between the parties on the issue of the House of Lords and the royal share in securing the abortive but earnest conference on the Parliament Bill in 1910 and on the Government of Ireland Bill in 1914. But how much further can the King go? He can, it seems, without definitely breaking with tradition, investigate the possibility of dividing the Cabinet. On this issue there has long been much divergence of view. The Cabinet is a unit; it gives its advice as a single whole to the sovereign and to Parliament alike. But it is clear that there is nothing to prevent the Prime Minister divulging to the King the existence and character of differences of view. Lord Palmerston indeed, and after him Gladstone, adhered to the rule that dissensions should not be revealed, but in 1885 the Queen asserted, doubtless correctly, that Melbourne, Peel, Russell, and Disraeli had given her such information, and there is abundant evidence that Salisbury, Rosebery, Balfour and Asquith were quite prepared to admit the existence in their Cabinets of conflicting views. It may be that Gladstone was right in denying absolutely the claim of the sovereign to be informed of the views of individual members; but in effect cabinet dissensions are easily enough known, and the sovereign who is in constant contact with individual ministers on the matters of their departments cannot fail readily to learn whether the policy presented to him on behalf of the Cabinet really commands its united support. If it does not, it would be too much to expect that a sovereign with strong convictions as to the welfare of the country should fail to exploit

differences with a view to securing a modification of the Cabinet policy. Queen Victoria in 1859 and 1864 had no hesitation in using Lord Granville in an effort to thwart the policy of Palmerston and Russell, when she believed that they did not command undivided support in their policy in the Cabinet, and the precedent remains.

A further means of influencing ministers unquestionably exists, though its constitutionality may be gravely questioned. Queen Victoria in the Russian crisis of 1877–8 was deeply opposed to surrender to Russian demands and unequivocally threatened abdication, if her will were not complied with. Her insistence secured capitulation by her Cabinet, which without the Sultan's leave sent the fleet to Constantinople with decks cleared for action and orders to fire on the Turkish forts if their passage of the Straits was denied. Thoughts of this way out of his difficulties seemed to have passed through the mind of her son in the crisis of the conflict between the two Houses. The force of such a threat might clearly be compelling. A ministry which persisted in a policy that the Crown would not sanction would clearly be placed in a very difficult position by abdication. It is plain that a dissolution must follow, and the sentiment for royalty in the country is such that disaster might well overtake the ministry held responsible. What is certain that the mere belief that abdication would follow would induce all the less advanced members of the governmental party to dissuade their leaders from proceeding with their policy. On the other hand, it must be remembered, abdication is *prima facie*, when not based on physical or mental failure, the attitude of a coward, deeply distasteful to sovereigns of a house which has never lacked courage, and, should

the ministry be sustained by the electorate, the monarchy would have received a fatal blow. It must, therefore, be held that abdication cannot be deemed a legitimate method of coercing acceptance by a Cabinet of the royal wishes.

There remains, therefore, for consideration the right of the Crown to remove the Cabinet from office, either by formal dismissal, or by the less drastic method of compelling resignation by refusal to perform some vital act of sovereignty, since ministers must either then acquiesce in the sovereign's decision or resign. The right of the Crown so to act is beyond question. The constitution contains no provision such as that of the French Constitution which places the President in the absurd position that he cannot act without the counter-signature of his Premier, so that strictly speaking he could not remove the latter from office save with his own co-operation. It is true that the last precedent of dismissal goes back to 1807, for the alleged dismissal of Melbourne in 1834 by William IV was virtually suggested, and certainly acquiesced in, by that remarkably easy-going statesman. But it would be absurd to regard the right as obsolete. All the conventions of the constitution which govern the existence of responsible government are valid only in so far as they deal with normal situations. There is always the possibility of the emergence of abnormal conditions for which the convention has no force. But it must be remembered that action against the will of the ministry means that, if it resigns, the King must be able to find other ministers, and further that these ministers must be able to secure a majority in the House of Commons, whether with or without a dissolution. The latter will normally be necessary, and if so the issue which

will be canvassed will in large measure become the action of the King. There is a classical instance of this in the analogous case of the Dominion of Canada, in which in 1926 the Governor General, the able and popular Lord Byng, felt bound to refuse a dissolution of Parliament to his Prime Minister. He was forced by the refusal of the Commons to afford support to the Premier who replaced Mr. Mackenzie King, to grant a dissolution, and at it the late Prime Minister concentrated so effectively on the constitutional issue of the intervention of the representative of the Crown that the new government was defeated decisively, and that too despite clear indications that, if the fight had been on the merits of the Liberal ministry, it would have gone down to disaster. It may at once be admitted that such a contest would seriously affect the position of the Crown, even if the new ministry emerged victorious. It might well be that the republican movement which for a time was strong in Queen Victoria's reign might be revived.

A further consideration to be borne in mind is the comparatively brief duration of Parliament; any erroneous policy of the ministry must in about four years or so come before the electorate for verdict, and there is wide agreement among politicians that the people judge well a *fait accompli.*

In any case many factors must be weighed, the character and date of the ministerial mandate, the subject matter involved, and the measure of urgency. Clearly, had the King disapproved of the policy of his government towards Germany in the crisis of March, 1936, it would have been a very grave step to accept the responsibility of refusal to adopt it, thus either compelling the ministry to accept an attitude which it disapproved or to resign,

with the resulting weakening of the government at a moment of grave danger of war. In such a case the responsibility of ministers and Crown alike is very grave, and the risk of compromise of an unsatisfactory character is always present.

The King may, of course, urge a government whose views he regards as out of touch with the electorate to refer the matter to the people by referendum, or, as normal in British politics, by a dissolution. This obviously is a much less extreme use of royal power than dismissal or enforced resignation, for the government can go to the country with all the advantages that appertain to the ministry in office. But naturally the ministry may demur; the acceptance of the need of an election twice in 1910 was partly due to the change in the person of the sovereign, partly to the fundamental character of the constitutional change involved which rendered the ministry amenable to the royal wishes. It is significant that in 1914 the ministry would not dissolve, and the Crown was not in a position to force it so to act, for the critical situation in Europe demanded that the country should not be distracted by a general election. In the same spirit of prime regard to fundamental interests, the King did not accept the urgent request of many Conservative politicians that he should take advantage of the incident of the resignations of officers of the cavalry brigade stationed at the Curragh in Ireland rather than act against the anti-government forces in Ulster, to dismiss the ministry and empower a Conservative government to appeal to the country.

The most vital issue arises on questions of the alteration of the constitution; in regard to these the King holds a special position which will be discussed below.

VI

THE KING, PARLIAMENT, AND THE CONSTITUTION

1. *The Crown in Parliament*

PARLIAMENT had its origin in the counsellors summoned to advise the King, and traces of its origin persist in the fact that the Houses meet by royal invitation, sit in the royal palace of Westminster, are opened by royal permission, and continue in working at the royal pleasure. It is now customary to dissolve Parliament by a royal proclamation which provides for the summoning of another; an Order in Council is passed directing the issue of writs to summon the peers, and to the returning officers of counties and boroughs to procure the election of members of the Commons. The Crown again is the authority to prorogue Parliament, which may be done by the King in person or normally by a Commission appointed by the King. The Crown again assents to Bills passed by the Houses; in this case also the duty is normally delegated to three Lords by a Commission signed by the King; in their presence the titles of the Bills are read, and the Clerk of the Parliaments declares the royal assent in Norman French. The opening of Parliament is marked by the delivery of the King's speech which is, as we have seen, essentially the work of ministers and indicates the programme of legislation before the Houses; the closing of the session is the occasion of another speech summarising the work effected and commenting on any other matter which seems desirable to the government.

In these matters the action of the King is normally formal, but since Edward VII revived the practice it

has become normal for the King in person to deliver his opening speech amid the splendours of a formal gathering of the House of Lords; not since 1886 had Queen Victoria consented so to act, and even then the speech was read by the Lord Chancellor. The closing speech is still delivered by Commission. On no other occasion may the King address the Houses. Other communications are essentially formal, relating to requests for supply or placing at the disposal of Parliament some royal property right or prerogative, for it is the rule that special royal sanction should be given to the discussion of any matter such as a Bill for the creation of life peers or for the reform of the House of Lords which affects directly the royal prerogative.

2. *The Prerogative of Dissolution*

The summoning of Parliament annually is essential in view of the fact that the army and air force are governed by an annual Act which must be renewed if it is to remain possible to maintain these forces, and that the appropriation of revenue is essential if the government is to be carried on; failure in these matters is unthinkable, but the King could compel action were it being delayed. The real element of personal action is involved in the grant of a dissolution otherwise than towards the close of the normal period of a Parliament's existence, now fixed by the Parliament Act, 1911, at five years. The action of the King cannot be automatic, and it must constitutionally be based not on the advice of the Prime Minister alone. When Mr. Baldwin in 1935 insisted that the decision of the date of dissolution rested with him alone, it must be understood that the Cabinet had advised and the Crown had assented to a dissolution, leaving the Prime Minister to fix the actual

date. It would clearly be a most dangerous increase of the already excessive power of the Prime Minister were it to be left in his hands to decide on a dissolution over the heads of his colleagues, and even against the wishes of the majority.

On many occasions the right of a minister to recommend, and of the Crown to grant, a dissolution is plain. If a ministry resigns on defeat, as did that of Lord Rosebery in 1895, or for lack of cohesion and a constructive policy, as did that of Mr. Balfour in 1905, or on the defection of a large section as in 1922, the incoming government must clearly dissolve if it is to be able to carry on business. But the more usual course is for a defeated ministry to dissolve and appeal for a popular verdict in its favour, as Edward VII would have wished Mr. Balfour to do in 1905, as Gladstone did in 1886, and Mr. R. MacDonald in 1924. The last instance is a crucial example of the exercise of the royal discretion. The Prime Minister was only the head of a minority party, which had held office with the support of the Liberals. Mr. Asquith had clearly indicated that in such a case in his view the Crown retained a full discretion as to its action when asked to dissolve, and he doubtless felt that an offer to him to form a government would have been in order, following the practice in Dominion parliaments at that time in like circumstances. But the King took the sound view, which the result of the elections amply confirmed, that the time was ripe for the decision of the issue by the people. He thus added strength to the view that only in the most remarkable circumstances is it right for the Crown to refuse reference to the electorate, who are in the ultimate issue the true holders of sovereign authority. In the same way the Crown will sanction a

dissolution even soon after an election if the proposal is dictated by the desire to secure the verdict of the people on a new issue which has become urgent; thus in 1923 Mr. Baldwin asked for and received a dissolution which unexpectedly disapproved his request for a mandate to move towards protective tariffs. The dissolution of 1931, which was much resented by the Labour party, was clearly necessary after the formation of the National government, for that ministry was anxious to embark on what proved in 1932 to be a definite policy of the protection of industry, leading inevitably to further complication of the most difficult economic situation of Europe. The dissolution of 1935 was partly justified by the convenience of date, but mainly by the plea that the ministry desired to have a clear mandate as to the line of foreign policy to be adopted in view of the difficulties created by the Italian onslaught on Ethiopia in violation of the League Covenant and the Kellogg Pact. As in the case of the election of 1900 which was ascribed to partisan motives, its critics naturally thought that the dominant motive was to capitalise the desire of the public to uphold the League of Nations in favour of the ministry, whose policy on unemployment had impaired its popularity. It is, in any case, clear that the Crown could not with any propriety have refused the request of the ministry in either case. A dissolution is also plainly proper after any great electoral change, as in 1868, 1885, 1918 and 1929.

In one case, however, it is clear that a dissolution should not be asked for; if asked for, it should not be accorded without serious consideration. If a ministry goes to the polls and is defeated, it is patent that it cannot ask for another chance to secure power. But the same principle applies, though less simply, to the case where

a ministry wins a hollow victory at the polls and shortly afterwards finds itself in difficulties. Then the question of granting or refusing a dissolution is really difficult. The only effective criterion is to ask whether from the existing Commons a government can be formed which can carry on the administration for a reasonable period without itself having to ask for a dissolution. If one can be secured, then a dissolution may properly be refused. If not, then a dissolution should be accorded. It was on this point that in the Canadian case of 1926 Lord Byng went wrong. His action would have been entirely justified if Mr. Meighen had been able to carry on the government without a dissolution, and it seems clear that the Governor General acted under the belief that this would be the case. As matters actually worked out, Lord Byng was forced to give to Mr. Meighen, whose ministry had been disapproved by the Commons, the dissolution which he had refused to the undefeated Mr. King.

The question remains: In what circumstances, if any, can the King insist on a dissolution of Parliament without giving his ministers justification for resignation and the undertaking of a campaign against the monarch's unconstitutional action? The answer seems clearly to be that such action is permissible only if the ministry puts forward some vital issue on which the people were not consulted effectively at the general election. It is patent that this statement leaves abundant room for debate, but the complexity of all issues in politics negatives any simple solutions of such problems. We cannot, however, accept the doctrine that a ministry once elected is at liberty to create its own policy; we may agree that it is certainly not bound to submit to the electorate full details of its projects; it suffices to

indicate clearly the intention to deal drastically with the powers of the House of Lords without submitting the text of the Bill *in extenso*. The idea of a rigid mandate is contrary to sound principle, for Parliament has the essential function of debate, and to attempt to take this away is to lessen seriously the value of Parliament. In most cases, however, there can be comparatively little doubt as to the mandate, but the Crown can always plead for a dissolution if there be legitimate doubt. The dissolution of 1910 cannot be said to have been unconstitutionally extracted from ministers. The issues which were to be decided were so far-reaching that nothing short of dissolution would have made the will of the country clear. On the other hand, after the passing of the Parliament Bill and after the discussions in the country of Home Rule, no government could have been expected to dissolve once more on the Government of Ireland Bill. Doubtless the measure was altered considerably in its passage through the House of Commons, but all that was done was fairly within the essential nature of the measure.

It is, however, clear that, if in any case the Crown should feel unable if a Bill is passed to accord it assent, the proper course would be to intimate this to ministers and urge them to dissolve Parliament in order to secure the verdict of the country. It is, indeed, sometimes said that the royal veto of Bills is obsolete since it has not been exercised since 1707, but this statement merely means that measures have been taken in the past to secure that no Bill shall be presented for the royal assent in such a form that the Crown would refuse to accord it. Queen Victoria had no hesitation in warning Lord Derby in 1859 that she would never consent to sanction the creation of an army in India distinct from

that known as the army of the Crown, and in the long run, though not at the moment, her aim was assured. Lord Halsbury on Nov. 5, 1913 made it clear, as Mr. Bonar Law had done on Jan. 24, that in his view the King had the right to refuse assent to the Government of Ireland Bill and that he should exercise that right.

3. *The King as Guardian of the Constitution*

The controversy over the Parliament Bill and the Government of Ireland Bill suggests a problem of fundamental importance. To what degree is it incumbent on the King to safeguard the constitution from alteration not endorsed by the full assent of the people? It is one of the fundamental characteristics of the British constitution that it has no provision for a special procedure in the matter of altering the constitution; it was this characteristic which provoked the famous declaration of De Tocqueville that there was no British constitution. The constitution can be amended by the same procedure as any other change in the law can be made. This position, of course, is merely a historical accident; it was only slowly that Parliament was felt to have absolute power; the emigrants to America carried with them the tradition found in Coke that there were fundamental laws which Parliament could not violate, and their belief in this doctrine was one of the causes why Britain and her American colonies parted company. Cromwell would gladly have seen provided fundamentals which might not be violated by any law. But the position has long been clear; Parliament is so sovereign that it cannot bind itself to deal with constitutional legislation in any special way. Moreover, when the vital question of enacting the Parliament Bill was raised, its sponsors refused to make

any exception in its provisions of laws amending the constitution. They no less than any ordinary measure can be passed over the head of the House of Lords subject only to the power of the latter to delay enactment for rather over two years.

It was inevitable that over this Bill, which at the same time punished the Lords for its rejection of Mr. Lloyd George's budget by depriving them of all power in matters of finance so certified by the Speaker of the Commons, there should have been waged bitter warfare, and as already mentioned it is clear that the King rightly expected that the government would by the dissolution of November 1910 secure a mandate from the people. There can be no doubt that the result of the election, which left almost unchanged the figures given by the election of January 1910, proved that there was a sufficient body of opinion in the country to justify action, and in these circumstances George V's promise if necessary to create sufficient peers to carry the measure through the House of Lords, which was made public on July 21, 1911, was inevitable. The King had shown that he was fully conscious of the gravity of the changes made; he had been active in securing in July 1910 a conference of two members of each of the four parties vitally concerned in an attempt to solve the Irish imbroglio, and to avoid the necessity of further definition of the rights of the Commons. Those who criticised his giving of the pledge clearly erred; they asked their sovereign to set himself up as a partisan and to prefer his own opinion to that of the country. But the King is a guardian of the constitution only in the sense that it is his privilege and duty to secure through his power that the constitution shall only be amended with full authority. That

so drastic a measure as the Parliament Act was passed was the outcome of the vehement opposition of the House of Lords to the measures of the Liberal Government, despite its clear mandate to pass many of the Bills which the Lords rejected. It is significant that Edward VII took exception to the vehemence of the upper chamber and, vainly, strove to induce accords. The Lords, however, had been so strengthened by the influx of strong party men from the Commons, and of leaders of finance and industry, that it no longer exercised that balance of judgment which throughout the reign of Victoria prevented any serious movement to affect it. It is instructive to contrast the attitude of Queen Victoria who in 1894 was eager to force a dissolution on her ministers in order to prevent any possibility of their dealing with the Lords.

The Parliament Act, however, did not remove the difficulties in the path of the King, for the opposition to the Government of Ireland Bill evoked a bitterness of opposition which was fanned by the deliberate assertions of the leader of the opposition and the ex-Lord Chancellor that the King could and indeed should refuse his assent to the measure, if and when presented to him for assent under the provisions of the Parliament Act. It is impossible to regard this demand as justified. The King was being urged to substitute his own opinion once more for that of the people, and to frustrate by a purely revolutionary use of power a change which, far-going as it might be, had been passed by the due procedure and with the backing of the electorate determined in the normal mode. Moreover it must be remembered that once more the King summoned a conference in a last hope to achieve accord. Under these circumstances, even if war had not intervened to bring about a com-

promise, there can be no doubt that the King was constitutionally bound to assent. It remains, of course, true that neither party acted wisely in the issue. Both ignored a fundamental justice in the claims of the other; the moral grounds which demanded autonomy for Southern Ireland demanded like treatment for Ulster, and the fruit of this clash of wills was destined to be the definitive destruction of a unity which might with greater wisdom have been preserved, and years of a peculiarly horrible civil war.

The net result, of course, is that the constitution is still without safeguards other than the thankless duty of the King. The most obvious menace lies in the policy of the Labour party to seek a majority pledged to demand from the King, as the price of taking office, a promise forthwith to override by the creation of peers any opposition which may be offered to the immediate carrying out of the Labour policy of destroying the capitalist system. The method proposed contemplates legislation of a penal character to punish financiers and others who might use their financial power to counter the efforts of the ministry and legislation authorising the carrying out of the socialisation of industry, finance and agriculture by Orders in Council, power being given to the Commons by resolution to annul any judgments of the courts. It is plain that this is a rather revolutionary project. The true mode of procedure is clearly by legislation under the Parliament Act, and direct pressure on the King to force him to facilitate on the strength of a single general election such drastic measures is open to serious criticism. There is, in fact, no doubt that constitutionally the procedure suggested is unjustified; it is plain that it can only be resorted to, if the electorate deliberately approves by a

substantial majority the procedure proposed. In any other event the King would plainly be entitled to demand that recourse should be had to the slower but proper action under the Parliament Act. If this request were refused, it would remain for the government to advise a dissolution in order to test the issue finally, or to resign and leave the King to dissolve Parliament on the advice of another ministry which would probably find the treatment of the sovereign by the opposition a useful electoral asset.

VII

THE KING AND THE LAW

1. *The Crown as the Fountain of Justice*

THOUGH the traditional position of the Crown as the source whence justice is derived remains unaltered, the personal intervention of the sovereign has long since utterly ceased. The ingenuity of Coke persuaded James I that he could not act as judge in a court of common law; the abolition of the Star Chamber by the Long Parliament in 1641 destroyed the judicial activity of the King in the Council, and the only, but important, power remaining to the King was the power to remove at pleasure and to appoint judges, who thus might safely be expected to follow the maxim of Bacon and be lions under the throne. The Act of Settlement, 1701, assured judges of security of tenure and virtually provided that they might be removed from office only on the passing of addresses to the Crown from both Houses of Parliament. Fortunately judicial misconduct is virtually unknown, so that the procedure remains in abeyance. The appointment of judges of the Supreme Court is vested in the Crown; it is exercised as regards the puisne judges on the advice of the Lord Chancellor; patronage in the case of the other members of the court and of the Lords of Appeal in Ordinary, who sit as life members in the House of Lords as the final court of appeal for the United Kingdom, rests with the Prime Minister. In these matters the King naturally is not in the position to exercise an independent judgment, and the source whence issues

the recommendation is accepted as negativing need for enquiry.

To the King in Council lie appeals from the ecclesiastical courts in England, from prize courts, and from the courts of the overseas territories of the Crown. But under statutory provisions these appeals are disposed of by the Judicial Committee of the Privy Council, which is so constituted as to be virtually an ordinary court of justice. The connection of the King with the procedure remains only in the fact that the Judicial Committee's advice must be treated as unanimous, the majority prevailing, so that no dissentient judgments or variant judgments can be delivered, and that effect is given to the finding of the Court by a formal Order in Council. But no question of discretion arises in this matter; the responsibility of ministers is for once not engaged, for the Order is really no more than a judicial decree.

Judicial proceedings are couched in the name of the King but judicial writs as a rule issue under the seal of the court. Criminal proceedings are also conducted in the royal name, and the Crown has its law officers, the Attorney General and the Solicitor General, to represent it in both criminal and civil business, while a special department considers cases in which public prosecution is desirable as opposed to leaving the matter to the ordinary process of private prosecution. It is the right of the Crown through its representative to stop criminal proceedings in any court by intimating refusal to prosecute the case, and thus both in initiating and in stopping prosecutions a wide power is vested in the Crown. It was intervention in a prosecution for sedition that formed the episode on which the feeble and disunited government of Mr. MacDonald in 1924 chose to accept

defeat. But in these matters the King is never consulted.

2. *The Prerogative of Mercy*

The Crown also has the right of pardoning any crime of a public character, and by statute it may remit penalties even when part or whole may be payable to some other person, for instance to a public informer under the Sunday Observance Act, 1780, a power which has recently been exercised. The pardon may be absolute or conditional; in the case of capital sentences the condition is usually imprisonment with or without hard labour. Pardons are regularly granted on the advice of the Home Secretary, who acts either on the report of the judge who tried the case or on the application of the prisoner or a friend. Reprieves are also granted in a similar manner, normally pending commutation of a death sentence. On an application for pardon the Home Secretary may require the report on the case of the Court of Criminal Appeal. Prior to the reign of Queen Victoria the consideration of certain classes of death sentences with a view to determine the issue whether the capital sentence should be executed or not was still undertaken by the King in Cabinet, by a curious anomaly; but this rule was abolished in the interest of the young Queen, and the whole operation of the prerogative of mercy is left to the Home Secretary. The royal intervention, therefore, is now formal. The sovereign is never consulted regarding the execution of death sentences, even when these are brought before the Cabinet, but the form of grant of pardon is still that of a sign manual warrant countersigned by the Home Secretary; prior to 1827 Letters Patent were requisite. A pardon may be

granted before or after conviction, but in 1679 the Commons resolved in Danby's case that no pardon could bar an impeachment by the Commons, though after impeachment the Crown may pardon.

3. *The Immunities of the Crown and its Servants*

The King is in large measure above the law, as follows from the fact that he is the source of law. He cannot be arrested, nor can an arrest be effected in his presence or within the verge of a royal palace, nor can judicial process be served therein; that of the palace of Westminster extends from Charing Cross to Westminster Hall. The King's goods may not be taken in execution nor a distress levied on his lands; Crown chattels on the land of a third party may not be seized in execution or in distress. The King may not give evidence in his own cause; hence in cases of treason or felony his testimony is excluded. He is not bound by any statute unless this is made expressly the case or is necessarily implicit in its terms. These rules apply equally to the King in his personal aspect and to him in his public capacity.

The contracts of the Crown are subject to certain special principles. Save by special statutory authority no contract can deprive the Crown of the right to dismiss at pleasure a public servant whether of the civil or the defence services. All contracts which involve the payment of money must be read subject to the implied condition that authority for money payments must be provided directly or indirectly by Parliament, and if provision is not made the contract cannot be enforced. In any case contracts can be enforced only by the process known as petition of right, which involves as a preliminary to the hearing of the case the royal permission,

but this is regularly accorded if there is any possible doubt as to the validity of the claim. The same procedure is available to bring claims relating to real or personal property which is alleged to be wrongfully in the hands of the Crown, and it has been allowed to be employed to enforce rights for compensation given by statute or under the rules of international law. It is also possible in some cases to obtain a declaratory judgment against the Attorney General which may affect the rights of the Crown, but it seems clear that this procedure should not be employed where the petition of right lies. No suit lies against the King in tort, nor can a criminal prosecution be brought against him; the courts are his own, and therefore cannot exercise jurisdiction over their possessor. For the sake of simplicity, by statute arrangements exist for direct suit against named defendants in matters affecting the private estates of the King.

The servants of the Crown cannot be held liable on Crown contracts, for they are presumed to contract for the Crown as their principal. On the other hand, as the King can do no wrong, torts of servants cannot be imputed to the Crown; hence servants may be punished for crimes or sued for torts in the ordinary courts, nor can they plead state necessity, nor the orders of the Crown or of a superior officer, though in the case of members of the defence forces obedience to orders not manifestly illegal may be deemed sufficient excuse to negative guilt of crime. Government departments are in much the same position, though in a few cases, e.g. that of the Minister of Transport, the right to sue and be sued are both given. Normally the Crown or its representatives can sue whenever private persons could, and in addition the Crown possesses a considerable

number of special remedies. Crown debts as a rule have preference over other debts, though this has been limited by statute in the case of bankruptcy and the winding up of companies.

The judges of the Crown are exempt from judicial process for all judicial actions whether done maliciously or not, if within their jurisdiction, or even if not within that jurisdiction unless they knew or had means of knowing that jurisdiction was lacking. All public officers have procedural advantages, for actions against them must be brought within a period of six months.

The immunities of the Crown in England do not extend to Scotland where the Crown can be directly sued as against the Lord Advocate. In the overseas territories of the Crown direct suit in contract and even in tort often lies either by usage or by express statutory provision.

VIII

THE KING AS THE FOUNTAIN OF HONOUR

1. *Royal Ensigns and Armorial Flags and Banners*

THE right to determine the royal arms or ensigns armorial of the United Kingdom and the British dominions is vested in the King, the right being given statutory form by the Union with Ireland Act, 1800. Under the proclamation of 1801 the fleur-de-lys, attesting the claim to the kingdom of France which George III had renounced, disappeared, and in 1837 on the separation of the kingdom of Hanover the arms of that country also vanished, and the arms therefore now consist of those of England in the first and fourth quarters, with those of Scotland in the second and of Ireland in the third. Licences may be granted by the King for the use of the royal arms, for instance in the case of tradesmen who supply the royal household; unauthorised use is an offence punishable by a fine.

The royal standard is solely the personal flag of the King. It is not to be used except in the case of the actual presence in a building of His Majesty, and the practice of displaying it promiscuously is wholly improper, and in Scotland where the office of the Lyon King at Arms is still endowed with judicial authority, such use may be punished. In England in such cases the loss of coercive power by the Heralds' College renders the impropriety immune from legal punishment. In the first and fourth quarters appear the three leopards or lions passant gardant of England, in the second the lion of Scotland, while in the third the Irish harp strikes a milder note.

The Union flag, the Union Jack, which is required to be used in all the King's flags on sea and land, combines the crosses of St. Andrew and St. Patrick with that of St. George. It appears on the white ensign which consists of the cross of St. George, with a Union Jack described in a canton in the upper corner next the staff. The blue and red ensigns are blue and red flags, with the Union Jack placed as in the white ensign. The white ensign is the flag of His Majesty's ships in commission, the blue ensign of other public vessels and of merchant vessels commanded by officers of the Royal Naval Reserve with the consent of the Admiralty; the red ensign is the flag of all other British vessels, and the misuse of flags is a criminal offence under the Merchant Shipping Act, 1894. For the private individual as for government departments the Union Jack is the legitimate flag to display, and it may be freely used.

2. *Titles of Honour and Precedence*

The King is by common law the fountain of all honour and dignity, and his right to determine precedence is further laid down by a statute of Henry VIII in 1539. No subject can acquire a new title or dignity except by grant from the King, unless indeed it be conferred by Parliament or in the case of a female be acquired by marriage.

Titles of honour are conferred either by Letters Patent, or by writ of summons in the case of peers, or by corporeal investiture in the case of knights and those of less status.

There are in general no restrictions on the power of the Crown to create peerages of the United Kingdom. On the other hand, by the Union with Ireland Act, 1800,

the Crown was only to create one peer for every three peerages which became extinct, and to fill vacancies if the number of Irish peers not entitled to hereditary seats in the Lords fell below a hundred. The probability of further creations may be ruled out, as the election of representative peers from Ireland to sit in the House of Lords has ceased with the creation of the Irish Free State, and the disappearance of the Lord Chancellor of Ireland through whose instrumentality the elections used to be arranged. In the case of Scotland the practice of creation has been dropped, though it is not certain whether the Union with Scotland Act, 1707 forbids further creations. New peers therefore are peers of the United Kingdom and are entitled, if males, to sit in the House of Lords, a right restricted in the case of Scots and Irish peers to selected representatives. It is impossible for the King to create a life peerage which will entitle the holder to sit in the House of Lords unless statutory provision is made, as has been done in the case of the seven Lords of Appeal in Ordinary; the bishops of course sit merely for life, but their case is due to historical causes. The disadvantages of the restriction are considerable, but attempts to alter the law have all failed, pending some reconstruction on a radical scale of the upper chamber. If a peerage descends to co-heirs as co-parceners, it falls into abeyance, but the King can terminate the abeyance at discretion by issuing a writ of summons to the chosen co-heir if a commoner and a man, or by the grant of the title by Letters Patent to a woman. A hereditary title cannot be aliened, exchanged or surrendered, nor can any person now be deprived thereof save by Act of Parliament.

Claims for peerages are decided on reference by the King to a Committee of Privileges of the Lords. In

the case of baronetcies which date from James I, the establishment of a Privy Council Committee to keep an authentic roll of the baronetage secures the non-recognition of bogus claims.

The value placed on hereditary titles renders it natural that special efforts should be made to obtain them, notably during the war period when Mr. Lloyd George's political fund was asserted to have been considerably augmented by payments from aspirants to the peerage or baronetage. The King was naturally specially concerned with additions to the number of holders of hereditary titles, but in this matter, as usual, the rule is that the royal assent is given if the Prime Minister presses. Thus Edward VII yielded to Sir H. Campbell Bannerman's desire to have sixteen peers created in the first six months of his government, and he even acquiesced in Lord Pirrie's peerage, though in 1909 he protested with just acerbity at his having been asked to confer the K.P. on that peer, when it turned out that none of the knights of that order would attend his investiture which had therefore to be carried out in private. Something, however, was accomplished by public opinion and the report of a Royal Commission in 1922; the Honours (Prevention of Abuses) Act, 1925, penalises those who ask for, and those who offer or give, money to secure honours, and the Prime Minister is now expected to appoint three Privy Councillors as a Political Honours Scrutiny Committee, whose business it is to report to him on the character and antecedents of persons whom it is proposed to honour. Moreover, it is now expected that the ground of the conferring of an honour shall be intimated in the published list. Whether the precautions taken have had any result in improving the quality of the recipients of honours is open to doubt.

At any rate there is no doubt that since 1900 the recklessly generous bestowal of honours has lessened the value in which they are held.

Apart from hereditary honours there are the various orders of knighthood. With those of the Garter, Thistle and St. Patrick the King is naturally closely concerned, but recommendations are made by the Prime Minister, just as in the case of peerages, and, if the King desires that any member of his family should receive a peerage or honour, it is still necessary that the recommendation should come from the Prime Minister. The less important Orders of the Bath, St. Michael and St. George, the Star of India, the Indian Empire, the British Empire, and the Imperial Service Order are naturally given in the main on departmental recommendations, and do not excite active interest on the part of the Crown. Knights Bachelor are recommended by the Prime Minister, who through the Permanent Secretary to the Treasury controls all civil service honours; judges on appointment invariably are knighted, and mayors and other civil dignitaries may expect like treatment; the Lord Mayor of London is given a baronetcy, occasionally also the Lord Provost of Edinburgh.

It is instructive to note that with the widening of the interests of the sovereigns a change has come over the character of the honours conferred. It is hardly credible now that Queen Victoria should have definitely negatived the urgent and most reasonable request of Lord Salisbury to appoint Sir F. Leighton to the House of Lords in 1891; the peerage was only given in 1896, a few days before his death. It is true that Lord Kelvin's peerage was granted when Leighton's was negatived, but doubtless the reason was the assurance given of his importance as a leader among the scanty band of Unionists in

Scotland. In the same spirit the Queen was not willing to confer the Privy Councillorship on a mere artist. With this contrasts interestingly the attitude of Edward VII who pressed his Prime Minister to include in the honours list the American artists Abbey and Sargent, as well as Herkomer and Orchardson, in the first two cases unavailingly. The royal right of criticism is well illustrated by the King's objections to Lord Pirrie, and to Ray Lankester's K.C.B. on the ground that he had been dismissed from the Natural History Museum and had not passed through the normal routine of a C.B., and the harmonious co-operation of minister and King is shown in the decision in 1907 to negative the desire of the King of Siam to receive the Garter, which was opposed by Sir E. Grey on the perfectly sound ground that it was a mistake to confer so high an honour on any non-Christian sovereign except our ally, the Emperor of Japan.

The King retains control of two orders in the sense that he does not feel bound to act on ministerial advice, though suggestions may of course be mooted. The first is the Royal Victorian Order, which is the order naturally given to those who have rendered some service to the sovereign of a more or less personal kind, and which in May 1936 was opened to women; the second is the Order of Merit, which has been awarded with satisfactory results to men of high intellectual distinction, such as Thomas Hardy, who would not have welcomed the ordinary honours.

Honours are valid throughout the Empire; hence Dominion governments cannot be the final authority in the award of honours to persons domiciled or normally resident therein. No honour can be bestowed by constitutional usage save with their consent, and normally

on their recommendation, but the final decision must rest with the King on the advice of the Dominions Secretary and the Prime Minister. But in the Dominions there is serious doubt regarding the propriety of the award of honours at all, and in general the award of hereditary honours is regarded as ill-suited to Dominion social conditions; there is indeed a measure of absurdity in creating a Canadian a peer when geographical considerations render his presence in England and the Lords sporadic. Hence the Union of South Africa and the Irish Free State make no recommendations, nor under Labour administrations are they sent from Australia, while in the period since 1919 only Mr. Bennett ventured to defy the overwhelming weight of Canadian feeling against honours, which are repugnant to the character of American society.

Precedence is regulated at the royal pleasure, and this is a matter in which the King's wishes naturally prevail. Even in the Dominions the lists are submitted for his approval, though necessarily it rests with the Dominion governments to indicate their desires as to the relative precedence of their ministers and officials; there is in Australia the complication of a differing precedence in Commonwealth and States. It is sometimes felt in the United Kingdom that too little attention is still paid to changed conditions; certainly it was anomalous that it was only in 1905 that the Prime Minister was awarded precedence and then only after the Archbishop of York.

IX

THE KING AND THE CHURCHES OF ENGLAND AND SCOTLAND

THE Church of England is the established church of England and its relations with the Crown are close and important. Under the Act for the Submission of the Clergy, 1534, the authority of the Crown is necessary for the meeting of the Convocations of Canterbury and York, the King issuing letters of business on which they act. Moreover, to make canons, it is requisite that a royal licence in the form of Letters Patent should be issued, and permission to promulge must be given in like form. The control of the Crown, however, over church legislation, which was thus complete, has been lessened by the Church of England Assembly (Powers) Act, 1919 under which the Church Assembly acts free from royal control, save in the necessity of obtaining the royal assent to any measure; it is accorded by the clerk of Parliaments in the same form as to an Act of Parliament, for measures have legal effect only after approval by both Houses. The Crown, therefore, is in regard to ecclesiastical legislation in virtually the same position as regards other legislation; if the revised Prayer Book had been approved by the Commons as well as the Lords in 1927 or 1928, the Crown, it may safely be assumed, would have assented whatever the personal feelings of the King. It is true, of course, that under his coronation oath the King is bound to uphold the Protestant faith, but the assent of the two Archbishops must have sufficed to obviate any objection of the King on that score. Needless to say, Queen Victoria would have been seriously distressed by a

measure so alien to her conception of the true doctrines of the English Church. It was to her initiative, fruitless in the case of Gladstone but successful in that of Disraeli, that was due the passing of the Public Worship Regulation Act, 1874, a measure which in fact proved quite unsuited for its alleged aim, the putting down of ritualism.

The real power of the Crown is found in the right to select the Archbishops, Bishops, Deans and in some cases canons. No doubt the Prime Minister was the official adviser of the Crown, but plainly in a matter of this kind there was an opening for the Queen to have a say. Gladstone with due courtesy conceded to her the right to select without any competing nomination the Dean of Windsor, and she declined to accept Palmerston's view that she was not entitled to make enquiries from other sources regarding the qualifications of men he put forward. The appointment of Dr. Tait as archbishop was carried against the objections of Disraeli, who failed to have a more acceptable candidate available, and in his son-in-law, Dr. Davidson, whom she appointed Dean of Windsor, securing later for him promotion to the bishoprics of Rochester and Winchester, she found a congenial adviser on whom she leaned for advice on church promotions. Nothing is more interesting than the skill with which he induced her to accept Lord Rosebery's nomination of Dr. Percival as Bishop of Hereford, despite the fact that he was in favour of Welsh disestablishment; had he favoured English disestablishment, his case would have been hopeless. That Dr. Liddon should become Bishop of Oxford she declared impossible, though Lord Salisbury succeeded in winning her assent to the offer of the see of St. Albans, which he declined.

Neither her son—after 1906—nor grandson seems

to have been so interested in ecclesiastical patronage, but the right to intervene in such cases plainly exists. The Crown has also patronage of many livings; to the more important of them the Prime Minister nominates for royal approval.

Characteristically the Queen asserted the claim to be supreme head of the Church, with more accuracy than Disraeli, who relied on Mr. Hardy, supposed, for though Elizabeth did not adopt the style used by Henry VIII the title rests on sound authority, asserting not spiritual powers but freedom from Papal control or authority. Her assent to the disestablishment of the Irish Church, at first sight difficult to explain, was doubtless due to her general lack of interest in Ireland which most unhappily she could not be induced to visit, staying there only some five weeks in the sixty-three years of her reign compared to seven years in her beloved Scotland. To the Church of Scotland she recognised far more than the obligation of her oath on accession; it was for her the real and true stronghold of Protestantism, and she was absolutely firm in 1894 in refusal to allow the insertion in her speech to Parliament of the proposal of the government to disestablish the Scottish Church which she was sworn to uphold or the Church in Wales. History was to secure that instead of being disestablished, the Scottish Church was to gain fresh life and strength by absorbing the dissidents and by acquiring the fullest autonomy in matters spiritual and temporal. The assent to the Church of Scotland Act, 1921, would as readily, we may be sure, have been given by Victoria as it was by her grandson, and possibly she might have been persuaded by Dr. Davidson to assent even to the severance of the Welsh Church. But it was doubtless fortunate that it fell to

George V to take a step which happily has worked for the prosperity of that church and the appeasement of religious bitterness in Wales.

In the Scottish Church, of course, the Crown has no authority. Queen Victoria in this case was erroneous in claiming to be head, and the slight authority of the civil government over the Church appears to have been wholly eliminated by the Act of 1921.

1. *The Duties of the Crown*

THE relation of the Crown and the people was historically founded on a semi-feudal bond under which the King as liege lord was bound to maintain and defend his people in return for service and obedience. The subject owes allegiance, the Crown protection, the two being essentially correlative. Hence allegiance has two aspects, for the resident alien owes local allegiance in return for the protection which enables him to live peacefully in the realm, while the subject owes natural allegiance whether he be in the realm or outside. Even if his sovereign is at war with the British Crown a resident alien continues to owe allegiance; he is guilty of treason even if the territory wherein he is is invaded by the forces of his own country, should he afford them aid of any kind. It is, of course, in case of war open to the sovereign to withdraw his protection and to intern alien enemies as prisoners of war, as was done in many cases as a necessary precaution in the great war.

To the subject the Crown owes the duties which are summed up in the coronation oath as summarised above. Virtually the Crown promises order and good government and the maintenance of the national church. Further the Crown is bound to extend its protection to all its subjects when beyond the realm. But the Crown alone can determine the character and extent of the protection to be furnished, and may make its protection conditional on such terms as it thinks fit. Thus the Crown no doubt has a general duty to protect

British trade, which is carried out in part by the activities of the navy. But there is no obligation on it to furnish military guards for ships sailing in Chinese waters where pirates abound, at public cost, and if it does provide such guards it may charge for their services. The interests of British subjects abroad are cared for in part by diplomatic officials, in part by consular officers, whose special obligation lies in the sphere of promoting business connections, while through the legations representations may be made to foreign governments in any case in which subjects are treated illegally under international law. In all cases, however, the extent to which claims may be pressed remains entirely with the Crown to decide, nor will the British courts attempt to interfere with the discretion of the Crown in the mode in which it distributes such compensation as it may be able by representations to a foreign power to obtain in respect of wrongs imposed on British subjects, as for instance when Germany made payments in respect of the injuries inflicted by her acts of war on civilians and their property in the United Kingdom.

In domestic matters the duty of the sovereign and his ministers to govern according to law is expressly laid down in the Act of Settlement, 1701, and recognised in the coronation oath. It is of fundamental importance, because on the rule of law thus expressed rest the liberties of the subject. Freedom of the person is assured, freedom of discussion, the right of public meeting, the right of association, the right of property. Arbitrary action by the executive government, such as prevailed in Germany, Italy and Russia under their varied regimes, is totally distasteful to the spirit of English law; even in time of war it has not been thought proper to suspend for British subjects the security for the freedom of the

person which the Habeas Corpus Acts assure, and the House of Lords emphatically negatived the claim that the Crown was not merely entitled to seize the property of the subject for the purpose of better prosecuting the war, but also was entitled to refuse compensation for user at its discretion.

2. *Allegiance and Nationality*

Allegiance is due to the Crown from all natural-born British subjects wherever they reside. Who are subjects is determined by legislation based on the common law, but extended by statute from time to time. With negligible exceptions all persons born in British territory are British subjects, and by statute the status has been extended to the children, if born out of the Commonwealth, of British fathers, if the latter were born on British territory or in any place in which the Crown exercises extra-territorial jurisdiction (e.g. Egypt or China), or were naturalised, or became British subjects through annexation of territory (as in the case of the Transvaal or Kenya), or were in the service of the Crown. In other cases British nationality may be retained by registration at a British consulate, accompanied at age 21 by a declaration of retention of such nationality. Naturalisation is permitted, normally on the strength of five years' residence in British territory or service of the Crown and intention to continue residence or service. Married women normally take the nationality of their husbands but there are exceptions; in case of war the British born wife of an enemy alien may recover British nationality. Moreover, since 1933 a British woman who marries an alien, e.g. a United States subject, and does not by the marriage obtain the nationality of her husband, does not as formerly under the British

Nationality and Status of Aliens Act, 1914, become an alien. Further, if a British husband becomes naturalised in a foreign country, his wife may by declaration within twelve months retain her British nationality, and she does not in any case lose it unless by her husband's naturalisation she attains automatically his foreign nationality. In the same way, if a foreign woman's husband becomes naturalised as a British subject, she does not obtain British nationality unless within twelve months she makes application for it.

Allegiance is not now unalienable. British subjects may become naturalised in foreign countries whereupon they lose their nationality; if when born they are also nationals of another country they may at majority lay aside their British nationality. But it is clear that during war a British subject cannot naturalise himself in a foreign enemy country so as to cease to be liable to the penalties of treason; indeed in Mr. Lynch's case in the South African War it was argued that the act of naturalisation was itself a treasonable act. Nor can any British subject evade the obligation of service in war time by making a declaration of alienage in a case in which he could thus have acted in peace.

Certain officers are required to take the oath of allegiance, which must also be taken by soldiers and airmen on enlistment, and by clerical persons as a precedent to ordination; members of Parliament who sit or vote without taking it may be fined. An affirmation is permissible in lieu for those who have no religious belief or whose belief precludes the taking of an oath. But the oath is immaterial to the duty of allegiance, which depends solely on the relationship between King and subject.

3. *The Law of Treason*

The special relation between the subject and the Crown results in the protection of the latter by the law of treason. The offence was defined in 1352 in order to limit the vagueness of the crime, but the definition then given was largely extended by the judges. To compass or imagine the death of the King had been made treason, and every rebellion was held to involve this compassing or imagining. To levy war against the King in his realm was treason, and this was extended to including riots for a public purpose accompanied by violence, as in the case of a riot to pull down Dissenters' meeting houses. It is treason to adhere to the King's enemies in his realm or elsewhere or to give them aid or comfort, but the offence is not committed if the accused has acted under continuous compulsion. It is treason to seek to prevent the accession of the person entitled under statute, or to assert that any other person has a better claim. But no treason may be proved by the evidence of less than two witnesses. The penalty is death. The concealment of treason, misprision of treason, is rather less criminal, but involves imprisonment for life.

By an Act of 1848 certain offences which were formerly made treason by legal construction were made treason felony, the maximum punishment being penal servitude for life. These offences include attempts to depose the sovereign or to deprive him of part of his dominions, and attempts to levy war so as to put constraint on the Crown or on the Houses of Parliament. Under this statute were punished the efforts of the Fenian Brotherhood to blow up Scotland Yard and the Houses of Parliament in 1883. Treason, it may be added, is one of the few offences which committed outside England can be

tried there, as in the case of Mr. Lynch and Sir Roger Casement.

4. *The Right of Petition*

The subject possesses by common law, reinforced by statute, the right to petition the King; the most important practical use of the right is the addressing of petitions for pardon by or on behalf of convicted persons, but the range of petitioning is unlimited, provided that a petition is couched in respectful language and contains an assurance of the subject's devotion. All such petitions are dealt with by the Home Secretary who advises the King what reply is to be sent. Officers in the defence services have by statute special provision for the consideration of their petitions by the appropriate department, by which then the reply to be given is put forward for royal approval. In the case of a civil servant the reply would be suggested by the minister in whose department he was serving. These matters inevitably are decided in the sense advised by ministers.

XI

THE PROPERTY OF THE CROWN AND THE CIVIL LIST

1. *Crown Property*

SINCE the reign of George III the principle has been adopted that the Crown at the beginning of each reign surrenders, in return for a fixed grant known as the civil list, almost all the old hereditary revenues of the Crown. Those are the revenues which were not granted by annual taxation but belonged definitely to each sovereign, unless he pleased to transfer them. They were of two kinds according to their legal origin, prerogative or statutory. The statutory revenues were granted in compensation for the royal surrender of revenues which otherwise would have been levied under the prerogative. Thus the cavalier Parliament of Charles II in 1660 relieved landowners who constituted its membership of the burdensome incidents of military tenures at the cost of the general public by granting to the Crown in lieu a hereditary excise on beer, ale and cider and certain wine licences; in 1685 the post office revenues were settled on the Crown, part being diverted in 1787, and the Crown enjoyed revenues imposed by statute on exports from certain West Indian islands at the rate of $4\frac{1}{2}$ per cent. At present of these revenues only the post office revenue is levied, and it is paid to the consolidated fund. But, like the prerogative revenues, the old statutory revenues remain ultimately the property of the Crown, and might revive if no composition could be made. To prevent inconvenience it is provided that the surrender lasts for the life of the King and for

six months thereafter. During that period arrangements are made for the new settlement.

Of the hereditary revenues land provided a substantial share. The King is, as an inheritance from the feudal system, deemed to be the ultimate owner of all land in England or territories where English law applies. Hence, when Australia was occupied, it was at once held that the vacant lands of the country were royal property, and the same rule applies to Canada, New Zealand, etc. But the final ownership of the King is of minor importance; he holds also in beneficial ownership lands originally belonging to the Crown or acquired from time to time by forfeiture or other means. The Crown also owns the foreshore, the land between high and low water mark, subject to the right of the public to use it for purposes of navigation and fishing, and any land formed by alluvion or left dry by diluvion. It is probable also that all land under the sea up to the three mile limit is the property of the Crown. The Crown further is the owner of all gold and silver mines, and by Act of 1934 of petroleum, but not since 1688 of mines of base metals; this prerogative was of fundamental importance in constituting the gold of Australia when discovered royal property. The value of the lands surrendered for life by George III were at his accession some £89,000 a year; by careful management and through the gradual increase in land values, the total now realised is about £1,300,000, so that the arrangement is decidedly profitable for the country.

Other revenues include the right, now statutory under the Administration of Estates Act, 1925, to all the personal and real property of persons dying intestate, provided that there is no husband or wife or relative within the limits laid down by that Act. Formerly the Crown

took personal property as *bona vacantia*, and land by escheat. It is entitled also to the personal property of a dissolved corporation and to things in which no one can claim property. Wreck belongs to it where there is no legitimate claimant, and it is entitled to treasure trove, that is gold or silver coin, plate or bullion hidden in the earth or other secret place by some person with the intention of recovering it in due course, if that person is not known and cannot be discovered. If merely abandoned, then it belongs to the first comer. It is now, however, the practice of the Treasury to let finders who promptly report finds to the local coroner, whose business it is to hold an inquest thereon, to retain such articles as are not desired by national institutions, and for those to pay fair compensation. The Crown may also, by usage going back before Magna Charta, have an exclusive right of fishery in a creek or arm of the sea or in any part of a navigable river; it is also the owner of whales and sturgeon captured in territorial waters as opposed to the wide seas. In Edward II's day a rash whale which reached Greenwich was duly despatched by the Constable, and Elizabeth's costumes made considerable demands for whalebone; at the beginning of George V's reign a sturgeon caught in Cardigan Bay was duly offered to the King. The property in all white swans swimming in open and common rivers belongs to the King, provided they are wild and unmarked.

The Crown also is entitled to the dues known as droits of Admiralty which were of importance during the great war, and to fines, recognisances, legal fees and forfeitures; and formerly it enjoyed certain valuable privileges in respect of vacant bishoprics, the first-fruits and tenths, but these have all been surrendered to the Ecclesiastical

Commissioners or to Queen Anne's Bounty to be applied strictly to purposes of ecclesiastical importance.

2. *The Revenues and Property of the King*

Since the surrender made by George III and repeated by each of his successors, there has been a clear distinction between the public revenue and expenditure of the Crown and the King's own income and payments. But under George III the King was still expected to meet from the £800,000 a year allowed, the salaries of the civil service and ambassadors and certain pensions. Since the reign of Victoria the sovereign has not been expected to meet any part of expenses of properly public character out of his own income. This income now consists of three elements: the civil list granted in return for the surrender of the hereditary revenues; the profits of the Duchy of Cornwall and the Duchy of Lancaster and of the Principality of Scotland; and revenues from private property. The revenues from the two Duchies and the Principality of Scotland are of a hereditary nature and descend with the Crown; but they have been excluded for various reasons from the operation of the system of surrender in consideration of the grant of the civil list. Where there is a Prince of Wales, the revenues of the Duchy of Cornwall and of the Principality of Scotland fall to him, but that does not apply to the heir presumptive, in the present case the Duke of York. The third source of income is that derived from private estates, real and personal, which the King possesses. These may be derived from savings from the civil list or the Duchies, bequests, donations or otherwise. Such property is not attached to the Crown so as to descend with it; it may be disposed of freely during life or by will on death, though there exist certain statutory restric-

tions regarding it. Unlike Crown property, it is not exempt from rates, taxes or other burdens, and suits regarding it may be brought by or against specified persons.

The total of the civil list is modest: George V was given only £470,000, of which £125,800 was appropriated for the royal staff and pensions, £193,000 for the maintenance of the royal household, £20,000 for works, £13,200 for royal bounty and alms, and £110,000 for the King and Queen's privy purses, with the balance unallocated. In the case of Edward VIII his possession of the revenues of the Duchy of Cornwall and the fact that he is unmarried render a less sum possible, though it is plainly the pleasure of the people that royal state shall duly be maintained. The Civil List Act of 1936, therefore, provides a total of £410,000, allocated as £110,000 for the privy purses of the King and any consort, £134,000 for the royal staff and pensions, £152,800 for the expenses of the household, and £13,200 for royal bounty, alms and special services. But the King intimated that he would treat £33,000 of the privy purse grants and £7,000 of the grant for royal servants as reserved for a future Queen, and would apply the revenues of the Duchy of Cornwall, at present about £104,000 a year, to the payment of an extra annuity of £25,000 to the Duke of York in view of the duties now falling on him as heir presumptive, and as regards the balance in reduction of the sums due under the Civil List. The State undertakes to bear the cost of maintaining buildings and the salaries of the Treasurer, Comptroller and Vice-Chamberlain of the Household, these three offices alone now changing with the government. The net result pending the King's marriage is to secure a saving of £155,900 a year. It is significant

of the entire sympathy between King and people that George V made a most generous sacrifice of income in the crisis of 1931, arranging his economies so as not to fall on the members of his staff.

The small pensions, up to £1,200 a year, granted to persons distinguished in science, literature or art, who have not made profits from their attainments and to their relatives after death, are awarded by the King on the advice of the Prime Minister; they are not charged on the royal civil list but are paid from the consolidated fund. Though they are styled civil list pensions, the name is a survival from the time when the King defrayed from his civil list important elements of public expenditure of a civil nature.

XII

THE KING AND THE EMPIRE

1. *The Colonial Empire*

IT is the most essential constitutional feature of the reign of George V that the relations of the Crown to the Empire outside the United Kingdom have been greatly altered. At his accession in international law there was but a single unit, the United Kingdom with its dependencies, among which ranked equally in theory with the lesser colonies the great self-governing Dominions, Canada, Australia, New Zealand, the Union of South Africa, and the less important Newfoundland. From the Peace Conference of 1919 it has been clear that the Dominions and India have international personality. Similarly the Statute of Westminster, 1931, has in law emphasised the constitutional autonomy of each Dominion government, and the fact that British ministers cannot advise the King in regard to matters affecting internal affairs. For the rest of the Empire, on the other hand, they still remain the effective advisers in the ultimate issue of the King, without limitation in the case of international relations, and in internal affairs limited only to the extent to which in the case of Ceylon, Southern Rhodesia, and until 1933 Malta, a measure of responsible government is conceded under definite restrictions. Newfoundland's Dominion status is, since 1934, in abeyance as the result of financial disasters, which induced the people to assent to the suspension of self-government pending the rehabilitation of their finances.

In the case of the colonial Empire the King has in

general the same prerogative rights as in the United Kingdom, and he can in respect thereof exercise certain rights which are now inapplicable in the United Kingdom. He can grant to any colony acquired by settlement a constitution on the British model with an elected chamber and a nominated upper house; he can confer such a constitution or one with more limited character on any conquered or ceded colony, as in the case of Malta in 1921. He can annex territory as in the case of Kenya or Southern Rhodesia. Appeals lie to the King in Council from all the colonies, and he can admit them on such terms as he deems fit. All persons born in these territories are British subjects, owing him allegiance precisely as in the United Kingdom. The administration and executive government of the colonies are under his supreme control, and, except in the cases of Ceylon and Southern Rhodesia, all matters of policy are decided by the Crown on the advice of the Secretary of State for the Colonies.

There are other territories which have not been annexed to the Crown but over which a protectorate of the Crown has been declared. Some of these are governed on colonial lines, either by themselves or, as in Nigeria and Kenya, in connection with adjacent colonies. In others, which are more exactly described as Protected States, the administration is carried on either independently in internal issues as in Sarawak or British North Borneo, governed by Rajah Brooke and a chartered company respectively, or under full British control as in Zanzibar, the Malay States and, less completely, Tonga. In these territories the residents are not British subjects, but outside their lands they are protected by the Crown as British protected persons. Further, under the Covenant of the League of Nations

the King controls as a mandatory Palestine, Tanganyika, and parts of Togoland and the Cameroons.

Again, in certain countries such as China, Egypt, Morocco, Bahrein, Kuwait and Muskat the Crown by treaty or usage possesses jurisdiction over British subjects and British protected persons, a term which includes the subjects of the Indian States, for their territory is not British.

It is only in the most important matters affecting these lands that royal intervention takes place. Edward VII was naturally much interested in the decision to grant self-government in 1906 to the Transvaal, and was not a little perturbed at the danger of a hasty withdrawal of the Chinese labourers introduced to meet the shortage of native labour. Financiers interested in the mines pressed this danger on his notice, but the ministry were able to invent an ingenious compromise, which more or less satisfied the pledges they had given at the election regarding the ending of Chinese slavery, the burden of settling the time of removal being placed on the newly formed government. In like manner George V was specially interested in the experiment of establishing a Jewish National Home in Palestine contemporaneously with promoting the development of self-governing institutions, the two rather inconsistent tasks taken upon itself by the British government under the mandate in accordance, on the one hand, with the Covenant of the League of Nations, and on the other with the Balfour declaration of war policy of November 2, 1917.

2. *The Indian Empire*

Far more important, however, has been the constitutional development of India as a result of the promise

given in August, 1917, of the development of self-governing institutions leading up to responsible government. The legislation of 1919 and that of 1935 have been landmarks in a period of grave turmoil and unrest, and in these great constitutional decisions the authority of the King has been essentially engaged. The effect of the latter Act in particular is to hand over to the political leaders in India a large measure of the power hitherto exercised by the Secretary of State for India in Council with the royal approval in all issues of fundamental concern. The surrender of authority is a significant sign of the King's readiness to extend self-government, but his position has been rendered especially delicate by the relation in which he stands to the Indian Princes. Their relations are with the King direct, and the rights of paramountcy fall to be exercised with his approbation. They have naturally been anxious that they should be assured that their position in this regard will not be affected under the new regime, and this demand has received due consideration from His Majesty and his ministers. The solution which permits the States to enter federation, but which in all non-federal matters maintains direct relations with the Crown, has pleased the States, and the decision has been formally marked by creating a distinct office of representative of the Crown in its relations to the Indian States, which, though held with that of Governor General, will be exercised by Lord Linlithgow in full independence. It was the definite attitude of Queen Victoria to favour the maintenance of the rights and prestige of the princes of India, a plan warmly favoured by Edward VII and George V, and with negligible exceptions the princes have reciprocated by unswerving respect and loyalty, and this personal relationship

forms one of the most valuable motives for the preservation of the connection between the United Kingdom and the Indian Empire. The Princes are well aware that in the future there must be increasing risk of the emergence of questions between them and British India which cannot be solved within the limits of the federation's authority, and the personal relations which they enjoy with the King ensures them that all decisions as to the employment of paramount power will have to be explained to and receive approval by the King.

3. *The Dominions*

The essential bond between the United Kingdom and the Dominions at the outset of George V's reign might still be deemed to be the supremacy over the Dominions of the Crown in Parliament. But by 1909 the acute mind of Mr. Balfour saw that the real link of Empire was the person of the King, not Parliamentary sovereignty, and could assert positively that His Majesty could safely act on his own discretion in regard to the controversy between Lords and Commons since it was he who maintained the cohesion between the people of the United Kingdom and those of the Dominions. The passage of time has rendered the position more and more above dispute. Nor has the result been achieved by the mere negative process of the elimination of the authority of governmental institutions in the United Kingdom, whether ministers, Parliament or the Privy Council, over matters of Dominion government, so that the Crown by a process of exhaustion is left as the sole link of Empire. The deep interest of George V in the Empire, many parts of which he knew from personal experience, was emphasised by the frequent visits of the Prince of Wales, who achieved the difficult

feat of attracting the respect and liking even of the Afrikaans-speaking elements of the population of the Union of South Africa. Loyalty, therefore, has been made a reality for very large numbers of the people of the Dominions, who can feel from personal experience the same sentiment of respect and affection which in the United Kingdom to-day affords the firm base on which the institution of monarchy rests.

But it would be idle to ignore the difficulties which must arise where such personal loyalty is lacking or imperfect, as it is in regard to the vast majority of the people of the Irish Free State and to a substantial minority at any rate of those of the Union of South Africa. In the former case the present position is in part the nemesis of the failure of Queen Victoria and her son to spend a due portion of their time in Ireland; that, we must admit, was an error of judgment and even a failure in duty which cannot be too much lamented, and its consequences cast a dark shadow over the life of George V. In the case of South Africa the root of republicanism is the historical love of the Boer for freedom and resentment of British control on racial grounds. The existence of this feeling in both countries results in raising fundamental and most difficult questions regarding the extent and character of Imperial unity.

4. *The Unity of the Crown and the Right of Secession*

Prior to the union with Scotland in 1707 the Crowns of the sovereigns of England and Scotland were distinct, though held by the same royal line under like conditions of descent. They were then merged in the single Crown of Great Britain. The Irish Crown, though recognised as a distinct title, was in a very different position. From the first it was indissolubly annexed

to the English Crown, and, when the effort was made to assert that it was a distinct sovereignty on a footing of equality with England, the contention was repressed by force of arms under the Commonwealth and by the legislation of the British Parliament under George I. The threat of armed rebellion during the fatal war with revolting colonies in North America secured in 1782–3 the renunciation of British Parliamentary sovereignty over Ireland, but the freedom thus obtained was surrendered by the venal and unrepresentative Irish Parliament in 1800, and the unity of the Crown of the United Kingdom was fully established. Quite different was the position regarding Hanover; the Elector, later King, was also King of the United Kingdom, but the two realms were held on a different rule of descent, and no effort was made to merge the two kingdoms into one. Hence on the accession of Victoria the crowns were severed, since the accession of a female to the throne of Hanover was prohibited.

The unity of the British Crown remained unassailed from the recognition in 1782–3 of the independence of the American colonies until the Irish rebellion of 1916–21. The close of that struggle was marked by the suggestion of Mr. de Valera as leader of the provisional government set up by the rebels that the solution of the struggle should take the form of the recognition of an Irish Republic which, however, in external affairs, might accept association with the British Crown, recognising the King as head of the association, and even paying part of his civil list in token of the connection. The project was rejected definitely by the British government, and by a small majority the representatives chosen by the constituencies of southern Ireland ratified the treaty despite the objections of Mr. de Valera. It

is, however, noteworthy that the constitution which was framed by the upholders of the treaty followed in essentials the plan of eliminating the Crown from the government of the Irish Free State, and that it was only on strong representations from the British government that the authority of the Crown and of its representatives was duly provided for in the Constitution of 1922. Apart from the formal duties of the Governor General and the recognition of the Crown in the Constitution, the Irish Free State Government proceeded to eliminate all mention of the Crown from matters of internal government; the Crown disappeared from all concern with the armed forces, the civil service, the judiciary; the royal effigy was banished from coins and stamps alike. The one resort made to the Crown was in external relations; ministers in these issues entered into direct relations with the King, and thus in practice accorded the Crown much the same position as Mr. de Valera had proposed to recognise.

The incentive to the plan of accentuating the distinct character of the Crown in the Free State from the Crown in Great Britain had been given by the events attending the signature and ratification of the Treaty of Versailles and by the creation of the League of Nations. At the instance of Sir Robert Borden, Prime Minister of Canada, and of General Smuts representing the Union of South Africa, the treaty had been couched in a form different from the normal; it was signed by representatives of the Dominions as well as by representatives of the British Empire in the name of which it was made. Moreover it was ratified by the King on the advice of the Dominion governments as well as the British government and after approval by the Dominion Parliaments as well as the British Parliament. In the

League of Nations, while the British Empire figured as a member, separate representation on the Assembly was accorded to the Dominions, and it was even agreed that, while the British Empire would be entitled to a permanent seat on the League Council, a Dominion would be eligible for election as a temporary member, a result achieved in 1927 when Canada secured election, to be followed in 1930 by the Irish Free State and in 1933 by the Commonwealth of Australia. In practice naturally the British Empire representatives on the Council and Assembly are selected by the United Kingdom.

The distinction of aspects of the Crown in the League was welcomed by the Free State which entered the League in 1923. The principle was carried further in 1924 when the Free State secured the right to have a distinct diplomatic representative at Washington independent of the British Ambassador. The Imperial Conference of 1926 emphasised the rule that each part of the Commonwealth had for international purposes a distinct personality. It encouraged the distinct representation of the Dominions in foreign countries; it pronounced in favour of the doctrine that no Dominion could be bound by international treaty except by the action of its own representatives. Moreover, while it still enunciated the doctrine that in certain matters there must be combined action by all the members of the Commonwealth, it made no effort to define such matters. While, therefore, it did not surrender wholly the idea that there remained a measure of unity, it left that unity wholly vague, and stressed rather the essential equality of the parts of the Commonwealth, 'as in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common

allegiance to the Crown and freely associated as members of the British Commonwealth of Nations'. This attitude reflected an essential compromise between the insistence of the Irish Free State and the Union of South Africa, since 1924 under a Nationalist regime, on complete autonomy, and the reluctance of the Commonwealth of Australia and New Zealand to surrender unity with the United Kingdom lest the change of relations might weaken the obligations of the United Kingdom in regard to defence.

The decisions of 1926 have necessarily been conclusive for the development of Dominion autonomy. The Statute of Westminster, 1931 gave effect to the doctrine then enunciated in its domestic aspect by providing the means by which in all issues of internal government the King is advised solely by the government of the part of the Commonwealth concerned, and his representative acts wholly independently of the interests of the British government. Contemporaneously the Irish Free State secured from the King acceptance of its claim that advice on external relations should be tendered to him direct, and not through the mediation of the British government; henceforth full powers to conclude treaties, instruments of ratification, and letters of credence for ministers to represent the Crown at foreign courts fell to be issued under the Irish seals and on the immediate advice of Irish ministers. The Union of South Africa followed the same course, and made formal provision for like use of its seals by the Royal Executive Functions and Seals Act, 1934. The matter, however, is here carried one step further, for the Governor General is actually empowered to act in lieu of the king in such cases as the Union government thinks proper. Both the Free State and the Union

have established representation abroad on a wide basis. Needless to say, the other Dominions may act likewise if they so please. In practice they still are willing to act through the agency of the British government in less or greater degree. Canada has established legations at Washington, Paris and Tokio, but neither the Commonwealth nor New Zealand has so far cared to establish legations abroad, preferring to avoid any risk of weakening the closeness of their co-operation with the British government.

How far, in these circumstances, can it be held that the unity of the Crown remains? It is held by General Hertzog that the effect of the Statute of Westminster, 1931, reinforced by the Status of the Union Act, 1934, passed by the Union Parliament under the authority given by that British Act, is to establish the divisibility of the Crown. The king of the United Kingdom is juridically a distinct entity from the king of the Union of South Africa; the fact that the kingship in either country rests with Edward VIII rests on the fact that the South Africa Act, 1909, as amended by the Status of the Union Act, 1934, provides for the rules of succession to the throne of the United Kingdom being adopted in the Union. It follows, therefore, that the relations between the Crown of the United Kingdom and that of the Union are relations between two distinct sovereignties which are governed by the principles of international law. It follows also that the Union cannot be involved in war by any power other than the Crown acting on the advice of Union ministers, so that it may remain neutral in a British war and be able to claim under international law respect for its neutrality. It follows also that in the absence of any binding tie between the Crowns and as a result of the freedom of

their association in the British Commonwealth the Crown in the Union may be dissociated from the British Crown without the breach of any principle of law or moral obligation. It is on the basis of acquiescence in these views, if not formal acceptance, that the present union of parties has been effected in the Union and in view especially of the strong hostility shown by the government to the newly founded Dominion party which opposes these doctrines, it may be taken that on the whole they appeal as sound to the major part of Union politicians, however little reason they may see for proposing to give effect to them at an early date. These doctrines, therefore, demand close consideration, and the case for such examination is strengthened by the fact that they are in effect shared by the Irish Free State. In that case the movement for republicanism pure and simple sponsored by Mr. de Valera is in form even more hostile to the unity of the Crown, but the opposition in the State, when in power, in effect established as its creed the doctrines of the divisibility of the Crown, the subjection of relations between the Crowns of the State and the United Kingdom to international law; the right of neutrality; and the right of secession by unilateral action from the Commonwealth. On the other hand these rights are not asserted by the other Dominions, and the British government has refused to declare its acceptance of the claims of either the Union or the Irish Free State, though it has refrained so far as possible from formal discussion of the claims made.

(1) *The Divisibility of the Crown*

It may be admitted at once that the distinct character of the Crown in respect of each part of the Common-

wealth has been carried to lengths which leave it hard to find any trace of unity. But the Imperial Conference of 1926 would not concede that the separation of aspects annihilated unity outright. It insisted instead that in certain matters the Commonwealth must still act as a whole, and it is therefore necessary to enquire how far this proposition can be established. The view of the British government can be gathered from its actions, and it must be admitted that it has accepted a very wide latitude of divergence. The most remarkable instance is the Locarno pact of 1925; under it the United Kingdom accepted liabilities which might easily result in war, as the events of March 1936 were to show, and yet it consented to leave the Dominions free to undertake obligations under the pact at their discretion. Yet it must be remembered that the position was not so remarkable as it appeared. The pact did not contemplate that the Dominions would be exempt from being placed in a position of war if the United Kingdom became involved; it merely confirmed the constitutional position then recognised that no Dominion could be required to do more in a British war than to defend itself unless it chose to intervene and lend active aid. Moreover, it must be remembered that the British action was taken with great reluctance as a matter of urgency, and that it was hoped, though vainly, that the Dominions, when the issues were fully explained, would see their way to accept the obligations contemplated in the pact. But in fact the Dominions, though they approved British policy, showed complete unwillingness to share the burden, and in the crisis of 1936 they therefore remained unfettered by any obligation to assist France or Belgium, and General Smuts was at liberty with the detachment thence

resulting to counsel these powers to come to terms with Germany.

The British government, which reluctantly had accepted the necessity of concluding the Locarno pact without Dominion co-operation, was most anxious not to repeat the experiment of isolated action. Hence, when Mr. Kellogg invited it to take part in the pact to renounce war as an instrument of national policy, the British reply insisted that the matter was one in which action would only be possible if taken on behalf of all the members of the British Commonwealth. The United States accepted the suggestion, and the pact was finally in 1928 signed separately and ratified for each of the Dominions as well as the United Kingdom and India, which in this as in other matters of general foreign policy was treated on the analogy of the Dominions. In the same spirit the British government insisted in the case both of the Washington and the London treaties of 1922 and 1930 regarding limitation of naval armaments that the British Commonwealth should be treated as a unit in determining limitation of total tonnage, and the treaties were duly concluded and accepted with the co-operation of Dominion representation. It is, however, significant that, while the London treaty of 1936 was negotiated with Dominion aid, the Irish Free State and the Union of South Africa withheld signature; neither Dominion, it is true, contemplates naval construction, and therefore could claim that actual participation in the treaty was idle. But the British government would much have preferred a continuation of co-operation, and in its accords of 1935–6 with Germany and the United States regarding the quantitative relations of the fleets it accepted the whole of the naval forces of the Commonwealth, including these two Dominions, as the unit

of comparison. It may be taken, therefore, that the British government favours the maintenance of the united action of the whole of the Commonwealth in all vital issues of defence and foreign policy, although it recognises that it may be compelled on occasion, as in the case of the Locarno pact, to take isolated action. The matter, it must be remembered, is affected also by the attitude of foreign powers, which may well be willing to accept assurances of aid from the United Kingdom alone, but would not agree to a naval treaty which left the Dominions free from restrictions included imposed on the United Kingdom.

(2) *The Law governing Inter-Imperial Relations*

On the question of the character of the relations between the United Kingdom and the Dominions there is complete and outspoken divergence of view between the British government and those of the Irish Free State and the Union of South Africa. The latter, accepting the doctrine of the divisibility of the Crown, insist that between the British and the Irish and Union Crowns the rules of international law prevail. The Free State points to the term "treaty" used of the accord of 1921 on which her status rests, and on admission to the League of Nations the Free State government insisted on registering with the League Secretariat in accordance with Article 18 of the League Covenant the treaty of 1921. The British government immediately protested, asserting that since its inception it had held that neither the Covenant of the League nor treaties concluded under it had application to the relations of the parts of the Empire *inter se*. The Free State repudiated the argument, and insisted in like manner in registering the treaty of 1925 amending the boundary and financial clauses of that of 1921, and

again the British government expressed its dissent. But at the Imperial Conference of 1926 the British contention triumphed for the time. The Dominions, including the Free State, accepted the doctrine, asserted by legal experts at the Arms Conference of 1925, that treaties must be assumed not to apply to territories under the same sovereign, a doctrine which clearly was condemnatory of the Irish action in regard to its treaties with the United Kingdom. Moreover practical effect was accorded by the Free State to the finding, for it did not register the further treaty of 1929.

On the other hand the issue reappeared in a modified form in regard to the jurisdiction of the Permanent Court of International Justice. The desirability of acceptance of the provisions of the statute of the Court providing for the acceptance obligatorily of the authority of the Court in certain classes of disputes was accepted by all parts of the Commonwealth, but a grave divergence of opinion was revealed when the nature of the disputes to be subjected to the control of the Court was discussed. The Irish Free State maintained that its relation to the United Kingdom was essentially such that it should be entitled to submit to the Court any disputes between it and the United Kingdom, while the latter denied that an international tribunal was a fit body to decide issues between members of the Commonwealth. The Union government maintained an intermediate position; it accepted the justice of the Irish contention, but declared that in its view it was preferable not to resort to such a court in disputes between parts of the Commonwealth. In accepting, therefore, the jurisdiction of the Court in 1929, each part of the Commonwealth other than the Free State expressly exempted from those cases in which it accepted compulsory jurisdiction, issues arising between

themselves, thus rendering ineffective to this extent the unconditional acceptance of jurisdiction in all disputes by the Free State.

The question was shortly afterwards to be brought into active debate, for the repudiation by the government of Mr. de Valera, which took office in 1932, of the obligation to pay over to the United Kingdom the annuities, due by purchasers of Irish land under the legislation for the transfer of land to the peasantry, led to a vehement controversy. The British government desired reference to an inter-imperial tribunal of the type suggested by the Imperial Conference of 1930, which had devoted some time to evolving a scheme for settling justiciable disputes between the parts of the Commonwealth. Even then the government of the Free State had refused to make reference to a tribunal compulsory, but it had not dissented from the view that any such tribunal should be composed of nationals of some part of the Commonwealth, two chosen by either party, with a fifth chosen by the other four. The Free State, however, now dissented, and demanded that, whatever tribunal were chosen, it should contain a foreign member. To this demand the British government demurred on grounds of principle, since it repudiated the idea of foreign intervention in an inter-imperial dispute, and a complete deadlock resulted, for neither side would give way, and the tariff war which ensued was injurious to both sides, though naturally it pressed more heavily on the economically weaker unit. It must be noted that, while the British government denied the possibility of referring the issue to an international court, it responded to Mr. de Valera's argument, that the agreement, on the strength of which the British government claimed payment of the annuities,

had never been ratified, by the contention that under international law such accords did not require formal ratification, thus admitting that the principles of international law could properly be invoked in interpreting inter-imperial accords, even if they should not be determined by international tribunals. This measure of inconsistency can easily be explained by the consideration that under British constitutional law the agreement in question might well be held to be invalid for lack of express Parliamentary legislation to accord it effect.

The attitude of the Union towards the issue was revealed definitely in 1932, for it then decided that the Ottawa accords should be regarded as treaties and should not only be formally ratified, but should also be registered with the League Secretariat, and in like manner it registered its trade agreement with Northern Rhodesia. The British government has, naturally, refrained from protest, but there is no reason to suppose that its view on the issue has changed in any respect. Both the United Kingdom and the Dominions other than the Free State and the Union when they accepted in 1931 the Act of 1928 for the Pacific Settlement of International Disputes excepted from the operation of its terms inter-imperial controversies; the Irish Free State refused to make any exception, while the Union government evaded a decision by the plan of refraining from acceptance altogether.

(3) *The Right of Neutrality*

In the case of the claim for neutrality the protagonist has been the Union of South Africa, which has insisted on the issue, no doubt, because it affords the acid test of the contention that the Union Crown and the British are not fundamentally connected. If, it is argued, the

relations between the Crowns are similar to those between the Crowns of the United Kingdom and Hanover, then the Union must have an unfettered right to remain neutral in a British war. The mode of proclaiming such neutrality even against the personal wish of the King is available under the Royal Executive Functions and Seals Act, 1934. Under its terms the Governor General would be bound on the advice of the ministry to issue a proclamation of neutrality, should his government so decide.

The practical question then arises whether such a declaration would be held under international law to entitle the Union to the treatment of a neutral by a power with which the British Crown was at war. Had the latter been forced to declare war in response to an Italian attack in retaliation for the enforcement of sanctions, could the Union successfully have demanded that a declaration of neutrality should be respected? In fact, of course, the Italian government might readily have admitted neutrality, but the issue is whether it could be held bound so to act. A definite answer can be given to this question and it is in the negative. That arises from the fact that under an accord of 1921, when the British government withdrew its forces from the Union and handed over its valuable properties to be used for defence purposes, it secured acceptance by the Union of the obligation to provide for the naval base at Simon's Town that measure of land defence which hitherto would have been afforded by the British garrison. Such an obligation is utterly inconsistent with the duties of a neutral; the time is long past when a nation could render aid to a belligerent under a treaty concluded before the war, and plead that, so long as the aid supplied accorded with the treaty, it could not

be accused of unneutral action. In the event of war the Union must either repudiate its plain obligation to the United Kingdom on the strength of which the British garrison was withdrawn, or be guilty of the unneutral conduct of affording armed aid to a belligerent. So long, therefore, as the accord persists, the Union cannot legally claim the right of neutrality. If the obligation disappeared, the issue would then be open to discussion, but with little probability of the achievement of accord between the opinion of the Union and that of other parts of the Commonwealth, in which as a rule there prevails the opinion of Mr. Hughes that when the British Crown is at war all the Dominions are involved.

In the Irish Free State the right to neutrality has been repeatedly demanded by Mr. de Valera, but he admits that the defence facilities provided under the treaty of 1921, and the right of the British government in the event of war to claim such further facilities as it thinks fit, preclude any chance of the Free State asserting effectively under international law the right of neutrality. Hence his repeated offer, in return for the surrender of these rights by the British Crown, to give full assurance that Irish territory shall never be used as a base for operations against the United Kingdom.

(4) *The Right of Secession*

The right of secession is demanded equally by the Irish Free State and the Union, but there is at present a vital distinction in the character of their demands. In the Free State the demand is made by Mr. de Valera with the definite intention if the right were to be accorded to exercise it. To him the creation of a republic is the vital test of true national freedom; without the

form, the substance as it is now enjoyed by the people of the Free State is not enough. In the Union General Hertzog insists as energetically as ever on the existence of the right of secession, and he can justly claim that he induced both houses of Parliament to assert the right when they approved of the enactment by the British Parliament of the Statute of Westminster. But he disclaims wholeheartedly any desire to exercise the right. Its recognition is sufficient to afford him that sense of freedom which all Boers have so eagerly desired.

It is not easy to formulate any conclusive argument in favour of the right of secession. It does not follow from the divisibility of the Crown ; it may well be that, though the Crowns are distinct, yet there is no provision for the decision of any one part of the Commonwealth to separate itself from the rest. The Imperial Conference of 1926, unquestionably asserted that the Dominions and the United Kingdom were 'freely' associated in the Commonwealth, but it did not assert that the association could be determined at the pleasure of any one part. Moreover the Imperial Conference of 1930 definitely adopted the doctrine that any change in the succession to the throne demanded the legislation alike of the United Kingdom and the Dominions. There can hardly be a more formal enunciation of the doctrine that the Commonwealth possesses a unity which can be dissolved only by concurrent action, and with the assent of all the Dominions the principle is enshrined in the preamble to the Statute of Westminster, 1931. Against so formal a declaration the view of the government and Parliament of the Union cannot be held to possess much weight.

Could the Union Parliament as a matter of law sever

the connection of the Crowns? The Royal Executive Functions and Seals Act, 1934 provides the possibility for the assent of the Governor General to a measure to effect this end; the complete control over the Governor General, which has existed since 1930 when the right of appointment was assigned to the Dominion governments, and 1932 when the removal of the Irish Free State Governor General proved that the office was held at the will of the Dominion ministry, would assure that the Governor General would not refuse assent to such a measure, although in 1919 and for many years subsequently General Smuts denied the right of any representative of the Crown so to act. Nor since the right to disallow a Dominion Act disappeared for the Union under the Status of the Union Act, 1934 could such a measure be disallowed by the Crown. In the Union the Courts would doubtless be bound to give effect to such a measure, and presumably it might be held valid in law even in the United Kingdom. In the case of the Irish Free State action has been so far postponed as a result of the refusal of the British government to give any assurance that unilateral secession by Irish legislation would not be followed by economic or other sanctions. From this reply it is clear that the British government is not yet prepared to admit the doctrine of unilateral secession. Nor is this surprising, for the history of the Commonwealth suggests that its unity is of essential value and that only by full accord among its members should it be destroyed. There must also be remembered the essential fact that secession for the Free State would destroy the ideal of the restoration of Irish unity, which is still cherished, despite the overwhelming difficulties involved, by so many politicians in the Free State.

(5) *Dominion Nationality and Allegiance*

The republicans in the Union and the Free State are responsible also for an attack on the unity of British nationality. Canada, as early as 1921, constituted a distinct Canadian nationality, primarily to avoid the doubt whether a Canadian might be eligible for election to the Permanent Court of International Justice in addition to a British judge, there being a bar on the election of persons of the same nationality. But Canada maintained unimpaired the existence of British nationality, so that Canadian nationality is in effect a sub-division of a wider whole. The Union went further in 1927 and 1934; political rights are restricted to Union nationals, though still they are normally also British nationals, and the Nationalist party is pledged to the destruction of the system of double nationality which is alleged to prevent the merger of the English-speaking population in the Dutch. Nothing yet has been done to effect this end by the government. On the other hand, in 1935 the Free State legislated to destroy the quality of British nationality of all Irish citizens, as defined by the Constitution as amended by the Irish Nationality and Status of Aliens Act, 1935. The result is curious; in the Free State Irish nationals are not British subjects, but outside the British legislation cannot be overridden by the Irish, and the Irish national has the fortunate privilege of claiming rights on either theory of his nationality; he can ask the British Ambassador in Paris to aid him as a British subject, the Irish minister to succour an Irish compatriot. Where both governments have treaties with a foreign country, he can appeal to the more advantageous. But best of all, in the many lands where the Free State has no representatives or consuls, the resources of the British

diplomatic and consular service are freely available. How long this will last, cannot be said; at present at least the Irish national is in the happy position of making the best of two worlds save in those cases where his national pride forbids recourse to British aid.

Whether, however, we talk of allegiance or not, the essential fact remains that the relation to the Crown of each territory still constitutes the one essential bond of union between the parts of the Empire. Without that bond, personified by the King, the maintenance of the Commonwealth might well prove hopeless, for the only alternative, the construction of a formal connection by treaty, would encounter the most serious difficulties. But the King now holds together the several units, and it may well prove that in the course of time it will be possible to establish more definite ties between the members of the British Commonwealth than are supplied by mere membership of the League of Nations, though that serves as a partial link.