THE GOVERNMENT OF THE BRITISH EMPIRE

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THE GOVERNMENT

OF THE

BRITISH EMPIRE

(AS AT THE END OF THE YEAR 1923)

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WITH MAP

LONDON

JOHN MURRAY, ALBEMARLE STREET, W.

1923

TO THE

BELOVED AND GALLANT MEMORY

OF

'ALAN'

(MAJOR ALAN ROBERT CONSTANTINE JENKS, B.Sc., M.C., R.E.)

WHO GAVE HIS LIFE FOR THE EMPIRE

IN HIS TWENTY-SEVENTH YEAR

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PREFACE TO THE SECOND EDITION

EVENTS have moved rapidly since this little book was first published, two years ago. The Reform Act of 1918 was then not actually law. The great changes in the government of India, since effected, were then only a project. The great removal of sex disabilities only took place last year. The new Ministries of Transport and Health were yet unborn. These and similar changes have, it is hoped, been duly noted in the new edition; and a few inaccuracies which had crept into the former have been eradicated. The speedy demand for a new edition encourages the hope that the work is useful.

E. J.

October, 1920.

PREFACE

IT is, perhaps, needless to say that this little book is not intended to compete with the standard works on the Constitution which have been produced by eminent writers, such as the late Sir William Anson, the late Bishop Stubbs, or Professor Dicey, happily still with us. Still less does it claim to rival the classical monographs on the various aspects of the Constitution which are the work of experts in the strict sense. It is written only in the hope that those who have not

yet the leisure, or who have not yet arrived at the age, to appreciate these larger works, will be enabled by it to look forward to that advantage at a later date. And the immediate prospect of a largely increased electorate, combined with the great stimulus of interest in problems of government produced by the war, would seem to make that hope reasonable.

For the many defects of the book, the writer will not apologize; for he knows that critics best able to appreciate the difficulty of writing it, will be the readiest to forgive them. He will merely deprecate the suggestion that the book is a 'précis' of larger treatises. So far as it goes, it is original both in plan and execution, and from first-hand material. For neither plan nor execution is any one but the writer responsible.

Nevertheless, it is the writer's keen pleasure, as well as his bounden duty, to tender his grateful thanks to those acquaintances and friends who have been ungrudging with their help on the matters upon which he has appealed to them. Particularly great is his debt to Sir Almeric FitzRoy, K.C.B., Clerk of the Privy Council, Mr. F. A. Hyett, B.A., J.P., Chairman of Quarter Sessions for Gloucestershire, Sir Courtenay Ilbert, G.C.B., Clerk of the House of Commons, Mr. O. E. Niemeyer, of The Treasury, and Sir Ernest Trevelyan, Reader in Indian Law at Oxford, formerly Judge of the High Court at Calcutta, who have placed their great experience of special subjects freely at his disposal. If the writer has failed to profit as he should have done by their help, the fault is his, not theirs; and he is alone to blame for errors, while such merit as may be found in the book is due mainly to them.

EDWARD JENKS.

9 OLD SQUARE,
LINCOLN'S INN, W.C.2.
January, 1918.

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THE GOVERNMENT OF THE BRITISH EMPIRE

CHAPTER I

THE KING-EMPEROR

At the head of the British Empire stands the King-Emperor.

The King

There have been Kings in England (save for the briefest intervals) ever since its settlement by the English nearly fifteen hundred years ago; perhaps, indeed, even earlier, for it is doubtful whether the older 'Welsh' inhabitants ever completely lost their independence under Roman rule, and some of their chiefs, at least, were probably called 'Kings.' These ancient rulers were half patriarchal chief, deriving his power from birth and religion, and half military leader, or 'heretoch,' as the English called him.

But for many centuries these so-called Kings ruled over only small parts of the country, or, rather, over small groups of people. Then, by a slow process of combination, the numerous petty kingdoms (of which the names of some are known to us) became the seven Kingdoms of the Heptarchy, and, finally, the one Kingdom of England, under the Wessex House of Cerdic, in

the ninth century A.D. From that time, there has been (save for brief periods of struggle) but one Kingship in England; and the present Royal House can trace its descent from the Wessex House of the ninth century A.D.

Hereditary Descent

The old English Kingship was (as was natural from its origin) partly inherited, partly elective; for, until the Norman Conquest, at least, the Witan, or Council of Elders, claimed and exercised the right to choose the fittest member of the Royal House to fill the throne. The Norman Conquest, however, in 1066, though it maintained the pretences both of inheritance and election, was really a forcible revolution; and the new line was insecure in its title till, in course of time, and by prudent inter-marriage with the old Wessex House, it came to fill the place of that House in the minds of the English. Meanwhile, by its superior activity and strength, it had obtained powers which its predecessors had but slightly exercised—such, for example, as the administration of justice and the regular management of the resources of the Kingdom.

Ireland and Wales

To this increased activity, the Norman House and its successors, the Angevins and Plantagenets, added an increase of territory, by the partial conquest of Ireland in the twelfth century A.D., and the conquest and incorporation of Wales in the thirteenth and sixteenth. Meanwhile, by the loss of its Continental possessions (Normandy, Anjou, Maine, etc.), in the disastrous reign of John, it had become more purely English; and it is a remarkable fact that, in spite of the immense influence of the Norman landowners and the foreign clergy, the language (or, rather, the languages) of the

country remained truly English, though Norman-French was for centuries the language of the Court, while Latin was in general use for official and religious purposes.

Scotland and the Colonies

The union of the Crowns of England and Scotland, on the accession of James VI of Scotland and I of England in 1603, though at first only a family arrangement, paved the way for a union of the two Kingdoms a century later; but, before that time, a new dignity had been added to the ancient Kingship of England by the rapid acquisition, partly by conquest, partly by colonization, of vast territories 'beyond the four seas,' destined one day to give to the British Crown a splendour and an influence which no mere island Kingship could confer. Unhappily, a quarrel between the mother-country and her most vigorous colonies at the end of the eighteenth century led to a separation which long left bitter memories behind it; and the forced union of Great Britain and Ireland at the end of the same century, though it may have been a military necessity, added little to the lustre of the British Crown.

India

On the other hand, the rapid up-building, on wiser lines, of a new Colonial Empire in the nineteenth century, and the equally rapid conquest of India in the eighteenth and nineteenth centuries, raised the occupant of the British throne to the highest rank of earthly monarchs, and made the British Empire the greatest political accomplishment in the world's history. The definite incorporation of India in the British Empire was marked by the adoption of the Imperial title in 1876; though the legal incorporation dates from 1858.

Changes in Character of Kingship

Meanwhile, however, the relation of the British monarch to his subjects had undergone a change no less remarkable than the increase of his territorial rule. It is well known, of course, that, ever since the close of the thirteenth century, Parliament had been a permanent national institution with gradually increasing powers. On more than one occasion, for example, it had changed the succession to the throne. It had established itself as the sole authority in matters of taxation, and gained the right to be consulted in all important changes of the law. But it was not until the seventeenth century that it definitely challenged (first in the Civil War, then in the Revolution) the ill-defined 'prerogatives,' or special privileges, of the Crown, and established itself as the supreme representative of the national will. Then it was that, by accepting the throne on the definite terms of a great Parliamentary statute, known as the 'Bill of Rights,' in 1688, William of Orange and his consort not merely recognized the fact that Parliament shared equally in the establishment of the Kingship, but, in effect, admitted that the final disposal of the throne lay with Parliament. This truth was admitted again, in an equally unmistakable way, when, on the failure of the Revolution line in 1714, the Elector of Hanover, the great-grandson of James I and the direct ancestor of his present Majesty, accepted the throne on the terms of the Act of Settlement of 1700, which implied an acceptance of the whole of the existing rules of British law and custom. This event was rapidly followed by the introduction of that Cabinet System of government which, as will be presently explained (Chapter V), whilst carefully cherishing the Crown as the symbol of Imperial unity and authority, protects it from attack by providing that, for every act of

government done by the King, some Minister shall be responsible to Parliament and the people, and that upon that Minister and his colleagues shall fall the blame and the punishment for the mistakes which he or they may have advised. Whatever be the drawbacks of this system, it has unquestionably raised to the highest pitch those feelings of loyalty and popularity towards the Crown which are so vital for political safety; though it is only right to add, that this happy result has also been largely caused by the wisdom and tact with which the last three occupants of the throne have discharged the immense and difficult duties of their exalted position. Let us now examine briefly what these duties are.

The King as Host-leader

One of the oldest (if not the oldest) of the King's duties is to lead his subjects in war. In olden days, this duty was performed in person; and, though the change of circumstances has rendered it unusual, if not actually improper, for a constitutional monarch to appear in the firing line, yet the military side of Kingship is still deeply rooted in the British Constitution.

Allegiance

The tie of allegiance, which is the essential mark of nationality, is a personal bond between the King and all his subjects; and a breach of it is treason against the King. All the acts which constitute this gravest of all crimes are, practically, breaches of military loyalty. And, though British law has departed from the older rule that no one could resign his allegiance, yet such resignation is only allowed in certain cases specially provided for in the recent statute dealing with the subject, and, though the Act does not say so, probably, even in such cases, only in time of peace.

British Nationality

Subject to these provisions, any person (with a few special exceptions) born within the British Dominions or on a British ship, and any person born outside the Empire whose father was at the time of that birth a British subject, is a natural-born British subject; and any foreigner, or 'alien,' to whom a certificate of naturalization has been granted also becomes a British subject, and is under the bond of allegiance to the King. In passing it may be said, that the fact of being an alien does not of itself disqualify a person from enjoying the protection and benefits of British law, so far as private affairs are concerned; except that such a person cannot own any share in a British ship, and, in some parts of the Empire (though not in the United Kingdom) he cannot own landed property. But even a friendly alien cannot exercise any political or public rights, such as voting at elections or sitting in Parliament, though, as a matter of grace, he is usually accorded the full protection of public law. The wife or widow of a British subject, though an alien born, is deemed to be a British subject, and *vice versâ*; but in this and a few similar cases, express provision is made to enable such a person, on the death or change of nationality of her husband, to make a declaration of foreign or British nationality, as the case may be.

Liability to Military Service

One of the most prominent consequences of the bond of allegiance is to render the male British subject liable to military service at the King's summons. So far as defence of the realm is concerned, this liability goes back to remote antiquity; and, though circumstances have tended in recent times to conceal it, yet, in fact, the liability has never been allowed to become legally extinct.

The 'Militia'

It was one of the marked features of the Norman policy to keep alive the old English *fyrd* or militia; and the 'Assises of Arms' of the twelfth and thirteenth centuries carefully regulated the liability to serve. In the sixteenth century, the county militia, previously under the care of the King's sheriffs, was made the subject of an Act of Parliament and organized under a new county official, the Lord Lieutenant (p. 272) appointed by the Crown. At the Restoration of Charles II in 1660, the King's sole right to call out and command the militia (which had been denied by the Long Parliament of the Civil War) was fully confirmed by Act of Parliament; but the same statute introduced an elaborate scheme which virtually placed its control in the hands of the landowners of its own county. With the growth of population, it became unusual to train the whole of the male inhabitants of the country; and there was, in normal times, rarely any difficulty in raising sufficient numbers by voluntary enlistment. In the middle of the eighteenth century, however, provision was made by Act of Parliament for the regular drawing up of lists of persons liable to serve in the militia, and the holding of ballots to select by lot those who should actually be called up. During the Napoleonic wars, the militia, quite contrary to its original purpose, was freely made use of to provide drafts for foreign service, with the result that, as a defence force, it almost disappeared. Its place was taken in the middle of the nineteenth century by a body known as 'The Volunteers' (pp.200, 201); though, as a matter of fact, the whole army was then a voluntary service body. In the year 1907, the remains of the old militia and the Volunteers were united by the new Territorial and Reserve Forces Act, which actually had in view a voluntary defence force though, as a

precaution, the militia ballot, though long disused, was not expressly abolished. Like the old militia, the 'Territorials' are organized under the county Lord Lieutenants, aided, however, by County Associations; and they are only subject to military law when actually embodied or 'called out' for service. This arrangement will be further explained at a later stage (pp. 200–203).

Scottish and Irish Militia

It appears beyond dispute, that the principle of liability for defensive service was recognized in Scotland long before the union of that country with England in 1707; for in the year 1483 we find the Scottish Parliament assuming the liability of all 'fencible' (*i.e.* defensible) men to serve the King in their 'wapinshaws.' Unhappily, the peculiar circumstances of Anglo-Irish history rendered the liability for defensive service unenforceable in Ireland until a comparatively late date; and when, in the year 1715, the Irish militia was organized by Act of Parliament, it was composed exclusively of Protestants. But it is beyond question that the principle of liability for defensive service was admitted in the earliest North American colonies (where defence against the Indians was a constant necessity), and, probably, also in the other early colonial acquisitions of the British Crown, as it certainly was in the Channel Islands. But the growth of colonial independence on the one hand, and the necessity for keeping on foot a 'standing' or 'regular' army in the United Kingdom, as well as a permanent royal navy, on the other, tended, in the seventeenth and eighteenth centuries, to make the militia system of secondary importance. Of these two great institutions, the royal navy and the 'regular' army, an account will be more appropriate at a later stage. Here it is sufficient to emphasize that, quite apart from Parliamentary

action, the fundamental principles of the British Constitution involve (*a*) liability to defensive service of all male subjects of the Crown, (*b*) the supreme control of that service by the Crown. To the Crown belongs also, as a natural consequence, the power of declaring war and peace, and, as another consequence, the control and conduct of all international intercourse. For, if it is too cynical a view that all international intercourse has grown, historically, out of war, it is, unhappily, beyond question, that all international intercourse has been controlled, though in a degree less now than formerly, by military considerations.

The King as Head of the 'Executive'

Closely connected with his military character is the position of the King as chief executive officer of the State. The origin of this side of the Kingship is, clearly, the necessity for maintaining internal order; for it is obvious that a community in which internal order is not maintained cannot be trusted to defend itself against external attack.

The Police

This duty of the Crown is, in normal times, performed through the agency of the 'police,' *i.e.* a special class of civilian soldiers trained and used for the purpose. But it is unquestioned law throughout the British Empire, that the King, and any one to whom he has entrusted the powers of a magistrate, may call upon all his male adult subjects (soldiers or civilians) to aid him in the task of maintaining order, and that any such person who refuses to help is liable to fine and imprisonment. The widely-spread belief that, in England at least, what is called the 'reading of the

Riot Act,' of 1714, is necessary before action is taken to preserve order by the military or other persons not members of a regular police force, is a delusion; though there is a good deal of excuse for it. For Great Britain, at any rate, is not a 'police State'—*i.e.* a State in which the police force is brought under one central control, and thus made a regular organ of the supreme government. On the contrary, except for the Metropolitan Police, the police forces of Great Britain are still, as they were in the old days of the village constable and the 'watch,' bodies under the control of the local authorities, the county and borough councils and magistrates, who enrol, equip, and maintain them, though they are subject to inspection by the central government, which makes grants in aid of their pay and up-keep. The chief differences are that, while the old village constable and the 'watch' were compelled to serve, and were not specially trained for their work, the modern policeman of Great Britain joins the force quite voluntarily, is paid a living wage, and is scientifically trained. Yet, local as he is, every policeman, or 'constable' (as he is still more properly called) acts in the King's name, and bears the staff surmounted by a copy of the King's crown.

The same principle applies throughout the whole vast range of that part of the government which we call 'the Executive,' because its main concern is with the enforcement or execution of the law. Whether the executive official is directly appointed by the King, as in the higher ranks of government and magisterial service, or by a local authority, as in the case of a sheriff's officer or a superintendent of police, whether his range of action is wide, like that of the Postmaster-General, or limited, like that of the Justice of the Peace or the Sheriff, each of his acts is done in the name of the Crown. Even so humble an act as the delivery of a postcard bears witness to this truth, in its stamp which bears the King's portrait.

Courts of Justice

Third in historical order among the great duties of the Crown is the administration of justice. The modern man is so familiar with the idea that all justice (in the legal sense) is dispensed by 'His Majesty's Judges,' in their various ranks, that it comes upon him with somewhat of a shock to learn that this state of things was once a novelty, and is not, even now, quite universally true. Thus, even now, the ecclesiastical or Church courts do not act in the King's name. But until just a century after the Norman Conquest, there were no regular royal courts of justice at all; though there was an idea that, in very important cases, the trial ought to be before the King and his chief advisers. The ordinary, every-day disputes of the country were disposed of by tribunals of village elders, by feudal courts, by ecclesiastical courts, by borough courts of burgesses, or by 'courts merchant' of traders; and the gradual absorption of the duties of these bodies by the Crown is the outcome of a long and bitter struggle, very fascinating to study but too involved to be described here. It may be said to have ended in final victory for the Crown at the time of the Reformation; though, long after that event, 'franchises,' or exceptional courts, continued to exist, as, for example, in the great Palatine bishopric of Durham and the Scottish 'heritable jurisdictions,' while, even to the present day, as has been said, the purely ecclesiastical courts do not administer justice in the King's name. There can be little doubt that the chief reason for the success of the royal jurisdiction was its superior power to enforce its decrees; and the weakness of all other tribunals in this respect has gradually put an end to their existence.

Trial by Jury

But it is also true, that the victory of the King's Courts was due to their superior efficiency and procedure, notably in the famous introduction of the jury-system. It is another widely spread belief that the jury is of 'popular' origin, coming down from ancient days. It is nothing of the kind, but a royal privilege which could only be used in the King's courts; because no other courts could compel jurymen to serve. For long after its introduction, it was most unpopular. One of the taunts of a French poet of the late Middle Ages against the rival English was, that they were 'judged by inquest,' *i.e.* jury, instead of by their 'peers' or fellow vassals; and it was not until the sixteenth century that, as a contrast to the harsh and secret proceedings of the Star Chamber and the Court of High Commission, the jury became really popular, even in England. In Scotland it made little way until much later; in Ireland, it has had a stormy history. But in the colonies, which date since its triumph in England, and even, to a certain extent, in British India, it has long been regarded as one of the characteristic safeguards of liberty.

Safeguards against Arbitrary Decisions

It may reasonably be asked, however, whether this almost complete triumph of the royal jurisdiction was not attended by grave dangers, owing to the great increase of power which it brought to the Crown. Undoubtedly it was; but these dangers were ultimately averted by the establishment of two important principles. The first, established so early by the judges themselves that its precise origin is uncertain, is, that the King takes no personal part in the proceedings of his own law courts. This principle was clearly established

by the end of the thirteenth century; and it is one of the great services to the cause of British liberty which we owe to the judges, as distinct from Parliament. How they did it, we do not quite know; perhaps by a cunning use of forms, perhaps by making legal proceedings so dull and intricate, that the Kings had not the patience to hear them. At any rate they did it, and so effectually, that when James I, some three centuries later, tried to break the rule, he was successfully opposed by the great Sir Edward Coke. But there were two weak spots in the system. Not only did the King appoint his own judges (which was natural), but he appointed them only 'during his pleasure,' *i.e.* subject to dismissal at any moment. Moreover, the chief part of their income was received from fees paid by 'suitors,' *i.e.* the people whose cases were tried. Consequently, the judges could be terrorized by a threat of dismissal, or bribed by a promise of higher fees. This was exactly what happened in the seventeenth century; and it was, perhaps, the worst feature of the Stuart monarchy. But one of the great triumphs of that Revolution which drove James II from the throne was a complete reform in this respect; though it was not made quite secure till the accession of the House of Hanover. Then, in pursuance of the provisions of the Act of Settlement of 1700, the judges' 'commissions,' or appointments, were made 'during good behaviour' (*quam diu bene se gesserint*), and their salaries ascertained and established, *i.e.* secured on the national revenue. Consequently, the judges cannot be dismissed by the King except for actual crime known to the law—nor, indeed, in practice at all, except on the joint request of both Houses of Parliament—while their incomes are independent of royal favour. This second principle has been extended, not only to Scotland and Ireland, but throughout the British Empire, with the priceless result, that British judges are famed, not merely for their learning, but for their independence,

their uprightness, and their impartiality, throughout the world.

Legislation

The fourth great duty of the Crown is that of legislation, or the enacting of laws. It may seem strange to enumerate this among the powers of the Crown; for the fame of the British Parliament and its numerous offspring as legislative bodies is spread far and wide. But if the reader will look at any Act of the British Parliament (even a 'Money' or tax-granting Act) he will find that it is expressly stated to be 'enacted by the King's Most Excellent Majesty,' though, doubtless, 'with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled.' Moreover, there is a great deal of important legislation, known as 'Orders in Council,' annually issued, which never comes before Parliament at all, at any rate until after it is enacted, but is made by the King with the advice of his Privy Council. What is the explanation of this apparent mystery?

The explanation is interesting and really important. In early times, law is not regarded as being *made* at all, at any rate by earthly rulers. Unconsciously, each community works out for itself a course of conduct, or *custom*, which it comes to regard with the utmost reverence, as being of divine origin. For long this custom remains unrecorded, save in the memories or consciousness of the people. Gradually, a class professing a special knowledge of this custom grows up; and this class is, of course, the beginning of the later profession of lawyers. Then again, some disturbing event, such as a conquest or great internal dispute, renders it desirable to put the customs on record, *i.e.* to draw them up in a more or less definite form. This is sometimes done by a single man, of repute for skill and learning. More often, however, it is done by an assembly of the whole people, which is, naturally,

presided over by the King, if there is one. The record or 'code' (which, originally, means nothing more than a scroll or tablet) is, naturally, connected in people's minds with the King under whose auspices it is drawn up; and so we get such expressions as 'Ethelbirht's Laws' and 'Alfred's Laws.' But it does not profess to be 'made,' *i.e.* created or invented, by him, but only ascertained, settled, or drawn up by him.

The 'Common Law'

A large part of English law, even at the present day, viz. that part known as the 'common law' in the strict sense, has never even been recorded in any formal manner; for the codes of Ethelbirht and Alfred were mere local customs, and the story of a code drawn up by Edward the Confessor has long been shown to be false. Even the masterful Norman Kings, despite the 'Conquest' of 1066, made no attempt to root out this ancient English customary law; in fact, they expressly guaranteed it, and this is, perhaps, the most conclusive proof that England, since it became England, has never been really conquered. All that the Norman Kings and their judges did was, to bring into agreement the various local customs, combine them into one 'common law,' and expand and enforce that common law in their own Courts.

Royal Commands

But, of course, long before that time, the English Kings, as host-leaders and maintainers of order, had issued *commands*, often of a wide character, such as the famous 'curfew' ordinance of William the Conqueror, which required all fires to be extinguished by a certain hour, or the order of the same King forbidding the acknowledgement of a new Pope without the King's consent. These commands, though often spoken of as 'laws,' are, obviously, of a different character from the

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voluntary customs of the people; they are supposed to be only in the nature of temporary and limited regulations, not altering the permanent relationships of citizens to one another. Such regulations are the beginning of the modern 'Orders in Council,' before alluded to (p. 14); and it is claimed that the Crown has still a right, within certain limits, of issuing such 'prerogative' ordinances. But, for the most part, Orders in Council are now issued under the express authority of Parliament.

Parliament

For the appearance of the English Parliament at the end of the thirteenth century gradually transformed the practice of legislation from a rare and mysterious event into a methodical and regular process. Though at first intended only as a tax-granting body, at any rate as far as the elected or representative part of it was concerned, the English Parliament soon became very much more. The King in fact, early found, that it is often easier to call an institution into life than to destroy it afterwards, and that an institution created for one purpose may speedily learn how to act for quite other purposes. Both these discoveries are useful items of state-craft; here they are only mentioned to explain the fact that the English Parliament, and especially the House of Commons, soon became, not merely a tax-granting body, but a powerful agency for the removal of grievances, and, ultimately, a stern critic of the policy of the Crown.

Petitions to the King

In the former capacity, it presented petitions to the King, based, usually, on the complaints of its electors, and threatened to withhold 'supplies,' *i.e.* taxes demanded by the Crown, until these petitions were

granted. At first, these petitions were largely concerned with abuses of power by royal officials; and the King would often promise to prohibit such abuses in the future. But, as the result was not always satisfactory, Parliament gradually acquired the habit (about the beginning of the fifteenth century) of sending up 'Bills,'[1] agreed to by both Houses, in the exact form in which the remedy was desired; and these 'Bills' gradually, in their turn, became more comprehensive or general in character, more, in fact, like true 'laws.' Often the process was reversed, and the King's counsellors submitted to Parliament 'Bills' which the King desired to enact, and requested the consent of the Houses to them. This was the origin of what is now known as 'Government legislation,' as opposed to 'private members' legislation,' which must not be confused with the distinction between 'public' and 'private' Bills (p. 156). Of course, until a comparatively late date, the King could, and often did, refuse his assent to Parliamentary Bills, in the polite form—*le roy s'avisera*; but if he assented (*le roy le veult*), the Bill became a statute, or Act of Parliament. And thus it came to be held, that the agreement both of Crown and Parliament was necessary to legislation, and that, as we have seen, the King still 'enacts,' but only with the 'advice and consent' of Parliament.

Orders in Council

Meanwhile, it was obvious, that a little straining of the admitted power of the Crown to make 'ordinances,' or Orders in Council, could be used with dangerous effect to undermine this right of Parliament to share in all legislation; for if Parliament declined to concur in a Bill proposed by the Crown, what more easy

[1] Like the word 'code' (p. 15), the word 'bill' originally had a very simple meaning, *i.e.* that of any written note or demand. This meaning survives in such expressions as 'bill of the play,' 'bill of costs,' 'bill of lading,' etc.

than to turn the Bill into an Order, which required no Parliamentary approval? This practice was condemned so early as the year 1322, when Parliament was barely a quarter of a century old, by a solemn statute. Yet it continued, with varying success, till the beginning of the seventeenth century, when another famous opinion of Sir Edward Coke, the great Parliamentary lawyer, defined the limits of 'proclamations,' or prerogative legislation, on lines which have since been generally observed. These are that, while the King may, by his Proclamations or Orders, enjoin his subjects to observe existing laws, and, to this end, make regulations applying existing laws, yet he cannot in that way change any part of the 'common law,' or (especially) create any new offences, without the authority of Parliament. And, as the power of making regulations to carry out general laws is more easily and quickly exercised than the more intricate process of passing an Act of Parliament, it is, in fact, very frequently conferred by Act of Parliament itself, not only on the Crown, but on persons such as the holders of great offices, or a committee of judges, or even a municipal council. But in such legislation there is not the importance which attaches to an Act of the Imperial Parliament. The validity of the latter can never be questioned in any law court; while the provisions of any of the former can always be set aside, even in time of war, as *ultra vires*, i.e. beyond the power of its authors to make.

The Scottish Parliament

The necessity for the agreement of Parliament in legislation appears to have been clearly established in Scotland also, long before its union with England in 1707; though the Scottish Parliament never attained the importance of its English compeer. Consequently, when the two Parliaments were united in 1707, it went

without saying that agreement of the united Parliament was and remains necessary for legislation affecting either England or Scotland. Owing to the severe provisions of Poynings' Laws (p. 53), passed in the Irish Parliament of 1495, the position was by no means so clear in Ireland; for those statutes restricted the action of the Irish Parliament to passing measures previously approved of by the Crown. But these severe restrictions were first modified, and then, in 1782, finally abolished; so that, when the Irish Parliament was united to that of Great Britain in 1800, Ireland naturally inherited the rights and responsibilities of Parliamentary legislation. Long before that time, however, the doctrine had spread from Great Britain to the older British colonies, where legislative assemblies of various kinds were established by Crown charter, or, in some cases (to use the words of a chronicler) 'broke out' of their own accord. And even though, in the case of colonies acquired by conquest, it has not been possible in all cases to grant representative institutions, yet, even in some such cases, such institutions were early granted; and, by a famous decision of the Court of King's Bench in 1774, it was laid down that, when once such a grant has been made, the power of the Crown to legislate for that colony, without the consent of either the Imperial or the local Parliament, is gone.

Administration

The fifth and last great official attribute of the Crown is the power of administration. This power is not easy to distinguish, in theory, from the executive power, with which it is often confused. But, in substance, we mean by 'executive' authority that which is concerned with enforcing an existing law, or, at least, policy, while, by 'administrative' authority, we mean rather the power to frame a policy or decide what law shall

be proposed. The chief point of administration is, in fact, the employment of *discretion*, the discreet and wise use of the resources of the nation for the national welfare.

Foreign Policy

The position of the King with regard to this power was originally due to his position as representative of the State in dealings with other States; and this, as we have before said (p. 9), was probably due to his character as military leader. Certainly 'foreign policy' is one of the oldest of the prerogatives of the Crown, and was one of the very last to be brought under Parliamentary control. How it is now exercised, we shall see later (p. 234); here we are concerned with seeing how the administrative authority of the Crown was extended to internal matters.

The Royal Domains

This was probably (though the story is obscure) due largely to the position of the King as a great feudal landowner. Especially after the Norman Conquest, owing to forfeitures and confiscations, as well as to the complicated system of feudal land tenure then set up, the King, especially if he were at all a prudent man, was so greatly the most wealthy person in the country, that his domains were, naturally, the models for other domains, while his bailiffs, stewards, and other officials were the most skilful to be found. Naturally, also, to his Court came all the best artists, writers, philosophers, and expert craftsmen; and, as such persons gradually made it clear to the King that his own power and splendour were increased by the prosperity of his subjects, it is not surprising that intelligent rulers (of whom England has, happily, had a full share) should attempt to develop the resources of their country by

all the means in their power. Despite their many faults, this tendency was strongly shown by the Tudor monarchs; and it was, doubtless, one of the great secrets of their popularity, though in some cases, notably that of 'enclosures,' *i.e.* converting 'open' or common land into separate farms (p. 334), they met with strong opposition. The efforts of the Stuart Kings in a similar direction were not happy, mainly because they were felt not to be honest; and, with the accession of the House of Hanover, there followed a long period of what is known as *laissez-faire*, when efforts towards social improvement were left mainly to private enterprise. This state of things even survived the introduction of machinery into manufactures (the 'industrial revolution'); but the disorder and social injustice created by that enormous change gradually produced an equally profound change in public opinion, and now, the health, morals, education, and material welfare of the community are deemed to be among the primary objects of the State's care. The extreme difficulty, however, of defining the proper limits of 'State interference' shows how comparatively little thought has yet been devoted to this most important aspect of the activities of the Crown. In theory, there are no limits to State activities; but this fact is not so serious as it sounds, for there are very distinct limits to interference by the Crown and its officials in the affairs of the citizen. For, in the first place, it is difficult to introduce any scheme of administrative reform without in some respects changing the law; and that, as we have seen, can only be done with the consent of Parliament. In the second, almost every administrative reform now (whatever it may have done in earlier times) involves the spending of national funds; and that can only be done with the consent of the House of Commons, a body representative of popular opinion. Thus, for example, the great scheme of State elementary educa-

tion which has been introduced into England within the last century (p. 259), could never have been made effective by the efforts of the Crown and its advisers alone; for it has cost vast sums of money, which have annually to be voted by Parliament, and it has involved compulsory attendance at school, which could not be imposed except by Act of Parliament.

The British Empire not an Autocracy

Nevertheless, this sketch of the powers of the Crown, unless corrected, may leave upon the mind of the reader the totally false impression that the British Empire is an autocracy, under an hereditary military ruler, on whose powers there are few legal restrictions, and whose personal likes and dislikes rule the lives of his subjects. Of course the latter part of the impression would be directly contrary to the truth; but it was necessary to emphasize the former, to explain what is meant by the 'sovereignty' of the Crown, which is an essential feature of the unity of the British Empire. Having, however, laid sufficient emphasis on this aspect of the Crown, we proceed now to the equally important aspect which is known as its 'constitutional' character. What exactly do we mean by saying that the British monarchy is a 'constitutional' monarchy?

CHAPTER II

THE CONSTITUTIONAL MONARCHY

WHEN we try to distinguish a ruler who acts according to the wishes of his people, from an autocrat, or ruler who acts according to his own view of what is right, we speak of him as a 'constitutional monarch.' Evidently the terms are not precise; for more than one ruler whom we call 'autocratic' is subject to a good many restrictions which he cannot violate without breaking the law, while some 'constitutional' rulers exercise a good deal of personal discretion in the discharge of their offices. Nevertheless, in spite of doubtful cases, the distinction is well understood; but it is very often not in the least understood how or in what way a particular ruler has become 'constitutional,' how, in fact, his personal will is guided and controlled by the wishes of his subjects. Inasmuch as the British monarchy is, actually and historically, the most conspicuous example of a constitutional monarchy in the world, it is peculiarly a good case for study. And, as so often happens, there is no clearer way of realizing the present state of things than by seeing how it came about.

HEREDITARY KINGSHIP

It may sound a little startling, to say that one of the earliest causes of the constitutional nature of the British monarchy was its hereditary character. Yet

such is undoubtedly the case. So long as any genuine element of choice survived, the elected King felt that he had been chosen for his personal qualities; and, naturally, he exercised personal rule. When he died, there was what is called an 'interregnum,' or period between Kings; and then, as an old chronicler feelingly remarks, 'forthwith every man that could robbed another,' for the 'King's Peace,' or protection against disorder, was suspended. But, in the twelfth century, the English Kingship became definitely hereditary, largely owing to feudal ideas; and then, though it is doubtful whether the military character of the Kingship would have permitted a woman to claim the throne (at any rate there was no reigning Queen in England or Scotland till the sixteenth century) it could hardly be long before the country was faced with an infant King. This is exactly what happened on the death of King John (1215), whose eldest son, Henry III, was only nine years old when his father died. It was a 'test case,' as the lawyers say. Should the infant, who, obviously, could not personally exercise the powers of Kingship, be set aside in favour of some elected adult, or should he nominally become King, and the difficulty be got over in another way? The latter was the course chosen; and for years, all acts of State, though nominally done in the King's name, were really decided by a Council of Regency, consisting of the great officials of the Kingdom. The result was not entirely good; but it was quite as fortunate as the later part of Henry's reign, when he himself governed. And it is remarkable that it was during that reign that not only were the foundations of the future Parliament laid, but the development of that system whereby, as we have seen (p. 13), the actual administration of justice was taken out of the King's personal control, was definitely established. But the most striking proof of the change which had been wrought in the character of the King-

ship in the thirteenth century was the fact that, on the accession of Henry III's son, the great Edward I, the commencement of the reign was dated, not from the new King's coronation, as theretofore, but from his father's death. As a matter of fact, Edward was abroad at the time of his father's death, and did not return to England till nearly four years afterwards. But, all that time, 'the King's writ was running' (as contemporary lawyers would have said), that is, the royal officials were pursuing malefactors, deciding cases, maintaining the King's Peace, and, generally, acting in the King's name, as though under the King's personal orders. Thus the dangers of an 'interregnum' were avoided; and thus the doctrine became true: 'The King is dead; long live the King.'

The King as an Institution

Thus the first three-quarters of the thirteenth century had already worked two great changes which are at the foundation of constitutional Kingship. First, they had made the King, not merely an individual ruler, but an *institution*, that is, an arrangement or system which goes on independently of the actual occupant of the throne, and is capable of lasting for ever. One great result of this change was, that each new King, as he ascended the throne, found himself face to face with a body of law and tradition which set bounds to his personal will, though he had never personally agreed to accept it. It is well known, that this feature of Kingship, which seems so natural to us, was not acknowledged in Western Europe till towards the end of that vague period which we call the Middle Ages. Charles the Great and his descendants, for example, never admitted that they were bound by their predecessors' 'charters,' or promises, unless they had themselves confirmed them. And we can see traces of this idea lingering on, even after

the thirteenth century, in the frequency with which the 'Great Charter' of 1215 was re-issued by King John's successors. But, by the end of the fourteenth century, the rule that the acts of each King bound his successors was firmly established; and it survived even the so-called 'despotism' of the Tudor monarchs. So that statesmen came to think and speak of the King rather as an institution than an individual; though, to the mass of the people, the personal qualities, real or imaginary, of the monarch long remained of great interest. This change of order in the more influential classes was expressed by the use of the term 'Crown' instead of 'King.' The crown is, of course, an inanimate object, which is kept in the Tower of London; but, by the simple process of using a capital letter in writing it, we make it stand for the Kingship as an institution.

Effect of Courts of Justice

The other great change in the character of the Kingship made in the first three-quarters of the thirteenth century was the establishment of the doctrine that, in the administration of justice, the King ought to take no personal share, though it is regularly carried on in his name. We have suggested, already (pp. 12–14), how this change was brought about. Here we have only to notice how powerfully it contributed, perhaps even more than the better-known achievements of Parliament, to make the Kingship constitutional. For, in allowing his judges to decide cases, not according to his own personal views, but according to the 'laws and customs of the realm,' the King was really allowing them to act in his name according to the wishes of his subjects; because, as we have seen before (p. 15), the English 'common law,' which the judges administered, was the expression of the unconscious will of the nation.

And though there arose, in the following century, a new and powerful tribunal, the Court of Chancery, which professed to administer the King's 'grace,' not the 'common law,' yet it is remarkable how, in a comparatively short time, that 'grace' began to follow popular custom and practice as its guide, until, by the end of the sixteenth century, it had become hardly distinguishable in character, except to experts, from the older 'common law.'

Growth of Parliament

But, of course, the crowning achievement of the great thirteenth century was the achievement of its last years, the creation and establishment of Parliament, as a direct expression of the national will, through the process known as 'representation' by elected representatives. The story of this new and famous institution is very well known, at least in outline. It is, therefore, sufficient to say here that, by adding to the already existing Great Council of Peers, *i.e.* the great feudal tenants, lay and ecclesiastical, of the Crown, a new body consisting of 'Knights' chosen by (or from) each shire, and of citizens and burgesses from each privileged city or borough, and a third body consisting of certain minor ecclesiastics, and 'proctors' or agents from the cathedral and diocesan clergy, King Edward I, following the hints previously given by Simon de Montfort and other reformers of his father's reign, brought together in the year 1295 the great Parliament which, despite the practical disappearance from its ranks of the minor clergy and their proctors soon after, has ever since remained the historical model and ideal of national representation, and which now, though still representative only of England, Scotland, and Northern Ireland, claims to be, in conjunction with the Crown, the supreme legislative authority, not only in the United Kingdom, but in the British Empire.

Not Originally a Legislative Body

What is, however, not so well known is, that this new Parliament, or at least the representative part of it, was not originally intended, by the King or his advisers, to act as a legislative or ruling body at all, but to fulfil the much humbler task of granting money for the King's needs, which were then heavy. The very words of the original 'writs' of summons to this Parliament of 1295 survive; and from them we see that the lay representatives, at any rate (the case of the clerical proctors is a little doubtful) were simply summoned 'to do what then of common counsel shall be ordained in the premises.' This was in marked contrast to the writs of the peers or magnates, who were summoned 'to discuss, ordain, and do'; and King Edward was careful to omit from the writs for the humble representatives of shires and towns that specious admission that 'what touches all shall be approved of all,' with which he prefaced the summons to the peers. In fact King Edward, wise and far-seeing as he was, would probably have been profoundly astonished, and not altogether pleased, could he have foreseen that he was creating an institution which would rapidly rise to dispute the power and claims of his own successors, and ultimately to bend and break their wills.

But, as has been before observed, it is one thing to create an institution, and quite another to set bounds to it; and the English Parliament soon proved the truth of this maxim. For the King, in the excess of his caution, and to prevent any excuses about want of authority from their constituents, had, in the writs of summons, bidden the sheriffs return representatives 'having full and sufficient power from their communities'; and thus the English Parliament, from the very first, was distinguished from some at least

of the Continental Diets or States-General, by the fact that no question could be raised as to the limits of its powers. The King's advisers were thinking, no doubt, when they inserted these words, of the power of consenting to the King's demands. But the representatives of the Commons applied them freely also to the power to refuse demands, and the power to claim redress. Thus, as has been already explained (p. 16), by making stiff bargains for 'redress of grievances' before it would grant supplies, the House of Commons soon acquired the right to share with the Crown and the Peers in the important process of legislation, and thus to impose another national fetter on the exercise of the personal will of the monarch.

Control of the Executive

Still, we should hardly, at the present day, regard a monarchy as 'constitutional,' in the complete sense, merely because the King could not decide cases according to his personal views, or raise taxes or legislate without the consent of a representative Parliament. This was the position, for example, at any rate in theory, of the German Emperor and most of the State monarchs of Germany; and we did not regard them as constitutional rulers. We do not regard a monarch as truly constitutional unless he acts in his executive and administrative capacity also according to the wishes of his subjects, *i.e.* unless what we call the 'daily conduct of the Government' is in harmony with the feelings and judgment of the country. We know that, in fact, at the present day, and for some century at least, this has been the state of affairs in the United Kingdom and the self-governing Dominions of the British Empire; though by no means so completely in the 'Crown colonies' or India. How was this state of affairs brought about?

The Crown and its Officials

It is usual to look for the beginnings of this principle in the various attempts of Parliament to influence the Crown in the choice of its officials or 'Ministers,' and to procure the rejection or dismissal of Ministers who, in the judgment of Parliament, were corrupt, inefficient, or mischievous. In fact, the story goes further back; for it would not have been much use for Parliament to influence the conduct of Ministers, unless Ministers could influence the conduct of the Crown. But this latter influence was very early established; for, with the great increase in the activities of the Crown which resulted from the Norman Conquest, we learn that the Kings soon found it necessary to collect around them, as a permanent institution, a body of advisers, known first as the *Curia Regis* or 'King's Court,' and, later, as the King's 'Ordinary' or 'Privy' Council.

The Privy Council

This body, as distinguished from the larger Council of Peers or Magnates, which only met at intervals for the discussion of important business, probably had quarters in the King's palace, and met frequently for the transaction of ordinary every-day business.

The Exchequer

One of its earliest forms was that of the Exchequer, or Finance Office, which managed the receipt and expenditure of the royal revenue. We have a vivid account of this body's procedure in the twelfth century, by a contemporary writer who evidently wrote from first-hand knowledge; and one of the things that strikes us most about it is the mass of minute regula-

tions for keeping every item of business in its proper form. Thus, for example, this 'Dialogue of the Exchequer' informs us that every item of receipt and payment has to be entered in three different records, or 'rolls,' kept by different hands, and to pass through various stages for approval, before it can be regarded as lawfully made. And again, though, doubtless, the King was entitled to order any payment he liked out of his own treasury, he had to do it by a proper 'writ,' which had to be 'tested' or countersigned by the proper official, and sealed with a seal kept by another official, and then delivered to another official, and so on. It is not difficult to see how these precise forms (in which the Norman lawyers excelled) would, in fact, restrict the exercise of the King's personal authority; for each step in the process would give opportunity for objections and difficulties, while the recipient or payer of the item would be equally interested in seeing that the proper forms were observed, because, if there was the smallest error, he would not get his money or his acquittance.

Official control of this kind would, naturally, develope greatly during the periods when the King was an infant or otherwise incapable of judging for himself; as was the case with Henry III at the beginning of his reign (p. 24), and with Henry VI at frequent intervals during his long reign.

The Seals Act

Accordingly, we are not surprised to find that, even during the reign of Henry VIII, which followed soon after, an Act of Parliament was passed providing that every exercise of the royal authority which required the use of the Great Seal should be preceded by no less than three distinct stages, being authorized first by 'sign manual,' then by the royal signet, thirdly by the privy seal, each in charge of a separate official, who

should be entitled to charge a fee for his share in the process. A cynical observer might say that the last provision afforded the most powerful guarantee that the statute would be obeyed; and the suggestion, though cynical, is not without weight. But the real importance of the Seals Act of 1535 is the evidence it affords of the extent to which, before Parliament had obtained control over the Crown officials, these officials had virtually obtained a good deal of control over the Crown. It is true that the Seals Act expressly reserved power to the King personally to dispense with the regular forms; and there was another exception to which reference will hereafter be made. But, for all that, the statute, which was not repealed till a comparatively short time ago, deserves more attention than it has hitherto received.

Control of the Crown by its own officials, however, though it might have produced what we call a 'bureaucracy,' *i.e.* a government of officials, never would have produced constitutional or popular government, unless the officials themselves had been checked and controlled by a popularly elected body. To that side of our constitutional history we must next turn.

Apart from some early and premature attempts, the first two efforts of Parliament to control or check the policy of the Executive date from the latter part of the fourteenth century, when the brilliant reign of Edward III was drawing to a gloomy close.

Impeachments

One of these was the famous step taken in 1376, when the 'Good' Parliament undertook the punishment of Lords Latimer and Neville, two of the Ministers of the King, as well as of Richard Lyons and other 'farmers (or collectors) of customs.' Probably because these Ministers were members of the Upper House, the Commons undertook the prosecution or 'impeachment,'

and the Lords the trial and judgment; and this division of labour became the rule, which was strictly followed until the abandonment of the process of impeachment a century ago. The step taken in 1376 was followed in 1386 on the impeachment of the Earl of Suffolk; and, though it was temporarily dropped in the fifteenth and sixteenth centuries in favour of arbitrary Acts of Attainder (which are merely statutes ordering execution without trial), it was revived with great effect in the Parliamentary struggle of the seventeenth century, in the well-known cases of Buckingham, Strafford, and Laud, and was resumed after the Restoration, in the cases of Clarendon, Danby, and others, down to the case of Warren Hastings, the last famous (though not absolutely the last) instance of impeachment. The special point about an impeachment for our purpose is, that it is not necessarily based on any definite *crime* (indeed a commoner could not be impeached for an ordinary felony), but always on misconduct in affairs of State as an official. Thus it afforded a real, though rather irregular, check on arbitrary and corrupt conduct by a Minister of the Crown; especially after it had been decided, as it was in Danby's case (1678), that even obedience to the King's personal order was no defence to an impeachment.

'Appropriation' and 'Ordinary' Revenue

Almost simultaneously with the appearance of impeachment, viz. in 1377, we note the beginning of an even more important effort of Parliament to control the action of the Executive, by 'appropriating' to particular objects taxes granted by it at the request of the King. This was a new feature in the situation; and it could hardly have appeared so long as the King continued to 'live of his own,' *i.e.* to defray the expenses of government out of his hereditary or custom-

ary revenues, such as the rents of Crown Lands, the profits of administering justice, the ancient port dues, and the like. Parliament, of course, had no chance of touching this revenue, which came to the King's treasury without its aid.

'Extraordinary' Revenue

But, happily, the English monarchs of the later Middle Ages never succeeded (except in rare periods) in living on this 'ordinary' revenue, but were constantly obliged to ask Parliament to supplement it by grants of 'extraordinary' revenue, *i.e.* taxation, mainly direct. Then came Parliament's chance; and though the move of 1377 was not immediately repeated, it was not forgotten, and, after the Restoration of 1660, Parliament resorted to it fully and freely, particularly when Charles II scandalously wasted the large sums voted for the carrying on of the Dutch war. Since that time, the practice has developed so greatly, that it has enabled Parliament, and more particularly the House of Commons, which, shortly after 1377, succeeded in establishing its pre-eminence in all matters of finance, to bring under review and criticism almost every conceivable act of the Crown's Ministers, by refusing to vote a particular item in the financial scheme of the year (or 'Budget') until that act is explained and justified.

The 'Cabinet System'

Parliament was, therefore, proceeding on well-prepared ground, when it made its final and successful bid for complete control of the Executive in the early eighteenth century. The circumstances were favourable. The new Hanoverian line owed its throne entirely to the choice of Parliament, which, in the Act of Settlement of 1700, ignored the claims of the elder

(Stuart) branch of the Royal House, and conferred the Crown upon the descendants of the Electress Sophia of Hanover, the grand-daughter of James I, 'being Protestants.' The first two monarchs who held the throne under this Act were born abroad, and knew and cared little about British affairs. They were, necessarily, bound to rely almost entirely on their Ministers for information and advice; and, so long as certain privileges and income were secured to them, they were content to let these Ministers do pretty much what they pleased. It saved trouble, and came to much the same thing in the end. But these Ministers were themselves not in a very easy position. They knew that the exiled Stuart family, and its numerous supporters, denied altogether the validity of the Revolution which had seated William of Orange on the throne, and, therefore, the validity of the Act of Settlement. These 'Jacobites,' as they were called, upheld the doctrine of Divine Right, by which the crown was claimed as the direct gift of Heaven, and, therefore, incapable of being taken away from its 'legitimate' wearer, and were prepared to treat as traitors all persons, and especially Ministers of State, who supported the new line. Naturally unwilling to lose their heads, the Ministers of George I and George II not only banded themselves, in spite of many jealousies, firmly together, but made it their especial business (we need not enquire too closely by what means) to maintain a majority in Parliament, and especially in the House of Commons, of that 'Whig' party which supported the Hanoverian line against the Tories and Jacobites. To do this, they were, of course, obliged to take the House into their confidence, and obtain its approval for their policy; and Sir Robert Walpole's act, in 1742, when he resigned office the moment a vote in the House of Commons went against him, is justly regarded as marking the definite establishment of the famous Cabinet System, which rests on two great principles,

first, that the King, in all political matters, must follow the advice of the Cabinet, and, second, that the Cabinet itself can continue to hold office only so long as it can secure a majority in the House of Commons.

'Appeal to the People'

Thus was established one great essential of constitutional monarchy, viz. the control by the House of Commons of the policy of the Crown; and, inasmuch as the House of Commons is a representative body, its control may be said, in normal times, to be the control of the people, or, at least, the electors. But it may happen, and not infrequently does, that the House of Commons may be 'out of touch' with the electors, *i.e.* be acting in a manner of which they do not approve. This happened in 1784, in the first Ministry of the younger Pitt. After an obstinate struggle, the House of Commons had defeated the determined attempt of George III to upset the Cabinet System; but its patriotism stopped there, and it factiously opposed the honest and vigorous government of Pitt. Thereupon Pitt turned the tables upon it in a masterly way, by persuading the King to exercise his unquestioned right to dissolve Parliament, and order a General Election. At that election, Pitt's followers were in a great majority; and the precedent thus set establishes the rule, that the ultimate decision, in the event of a quarrel between the Cabinet and the House of Commons, lies with the electors. This is the famous 'appeal to the people,' which is the supreme guarantee of popular government, for it protects the citizen, not only against the King, but against the King's Ministers and even Parliament itself.

Habeas Corpus

Not long, however, before the crowning achievement of 1784, the liberty of the citizen (which is, of course,

also of the essence of constitutional government) had been further secured by a series of events extending over just a century, beginning with the struggle for the Habeas Corpus, and ending with what are known as the 'General Warrant' cases.

The famous writ of Habeas Corpus has a curious history, which cannot be fully told here. Originally, it was a document issued in an ordinary prosecution or action at law, bidding the sheriff 'have the body' of the defendant in prison ready for the trial of the case. At the beginning of the seventeenth century, it began to be used as a means of testing the lawfulness of imprisonments by the numerous special or 'prerogative' courts set up by the Tudors. When a man was thus imprisoned, he would get one of his friends to apply to one of the regular 'common law' courts to issue the writ of Habeas Corpus to the gaoler who held the prisoner, bidding him produce the latter's body before the common law court, which was supposed to want him for its own purposes, and explain why he (the gaoler) held the prisoner in custody. The writ was freely used in the great struggle between Charles I and his Parliaments, especially in the famous 'Five Knights' (1627) and 'Six Members' (1629) cases. One of the first acts of the Long Parliament, when it assembled in the autumn of 1640, was to pass a statute guaranteeing the right to the writ of Habeas Corpus in all cases, to all persons imprisoned, on whatever ground. Of course if the gaoler who obeys the writ shows good cause for the imprisonment, the rule or order for the issue of the writ is not made 'absolute'; and the prisoner is remanded to prison. But the cause shown must be strictly 'lawful,' *i.e.* such as would justify imprisonment; and, even then, the court which hears the 'return' or explanation, may (except in rare cases) let the prisoner out on bail. The more famous Habeas Corpus Act of 1679 is really only an amending measure, stopping up loopholes and adding

new safeguards; the real victory was won in 1640. The remedy avails, of course, not only against imprisonment by Government officials, but, even more, against unlawful detention by private persons.

The 'Rule of Law'

The remedy of Habeas Corpus protects the personal liberty of the citizen; the 'General Warrants' cases established his liberty in property and reputation. The actual decisions turned upon the propriety of warrants issued on suspicion by a Secretary of State, to search the house and goods, not merely of a particular alleged offender, but of any one whom the official executing the warrant might suspect to be guilty of a particular offence. In the year 1763, a notorious demagogue named Wilkes, whose papers had been searched under such a warrant issued by a Secretary of State, sued that official's secretary, who had taken part in the search, for trespass, and won his case. He was followed, two years later, by other complainants, who sued the actual persons executing the warrants, with similar success. And when the defendants in these cases set up the plea that they were acting *bonâ fide* in the interests of the State, it was drily remarked by the Chief Justice that 'if the legislature be of that opinion, they will make it lawful.' It was not enough for the defendants to plead that their acts were done in the interests of the State; they had to show, if they wished to succeed, that such acts were *lawful*. Thus was established the famous Rule of Law, which lays down the principle, that no act, even of the highest official, however *bonâ fide* and apparently reasonable, which infringes the liberty or rights of a citizen, is justifiable, unless it is authorized by law, and that, for any such unlawful act, by whatever authority commanded, the official is personally liable, like the humblest member of the community, in an action in the ordinary

courts. Of course the reader will be careful to observe that the act complained of need not be justified by *statute* or Act of Parliament; because a good deal of English law is not contained in statutes. But it is important to observe, that this Rule of Law, though it originated in England, has passed automatically, not only to Scotland and Ireland, but to all the British possessions which have adopted English law, and that, in some others, the remedy of Habeas Corpus has been guaranteed by statute.

Colonial Independence

One other cause, too often forgotten, of the growth of constitutional liberty in the British Empire, is, unquestionably, the expansion of the United Kingdom into that wider scattered group of communities which we call the British Empire. As was, perhaps, natural, in the earlier stages of this expansion, the Crown and Parliament of Great Britain tried to keep the control of distant colonies in their own hands. But, in days when the means of communication were slow and costly, this attempt, as might have been expected, was ineffectual; and, as a matter of fact, the earlier colonies exercised a good deal of practical self-government, under more or less popular constitutions. As is well known, however, a foolish and disastrous attempt to tighten the control of the central government led to the separation of the thirteen colonies of the American coast towards the end of the eighteenth century; and, though we may rejoice that that step gave rise to the mighty Republic of the United States, we cannot but regret that it had to be taken in circumstances which long left bitter feelings in the minds of both nations. Warned, however, by this event, the British statesmen of the nineteenth century encouraged the growth of self-government freely in the colonies founded by English settlers; and Canada, Australia,

New Zealand, and South Africa rapidly ran through the various stages of freedom, till they arrived at complete local independence, tempered only by the Imperial tie of allegiance to the Crown. Even in the colonies of alien blood, much local independence was freely granted; while the great dependency of British India was largely governed by private and unofficial authority, though in ever-lessening degree, till its definite incorporation into the British Empire in 1858. All these tendencies and results, which will be the subject of special description in the next chapters, inevitably encouraged the spirit of liberty, and limited the possibilities of autocratic government from the political centre of the Empire. Thus, in complete and happy contrast to other Empires—for example, the Roman Empire—the growth of distant dependencies, instead of converting the British Empire into an absolute despotism, led to an enlargement of the bounds of self-government and freedom.

The Personal Powers of the King

Finally, before leaving the Crown as the supreme authority in the British Empire, and the symbol of its unity, we must say a few words on a subject which is much apt to be misunderstood. It might be hastily supposed, from an enumeration of the many constitutional checks and safeguards which secure the constitutional character of the monarchy, that the King himself is a mere figure-head, whose duties could be performed almost equally well by a statue capable of making certain mechanical signs. That would be a ludicrous mistake.

It is, happily, quite true, that the spirit and institutions of the British Empire would render it difficult, if, unfortunately, a weak or bad King should succeed to the throne, for such a monarch to do much harm, at any rate in his official capacity. That is

an advantage which is essential to the success of a hereditary monarchy; for it is a matter of common observation, that merit cannot be relied upon to pass from father to son. But it would be a superficial error to assume that, because a bad monarch can do little harm, therefore a good one can do little good. Happily, the history of the last three British reigns is a complete refutation of such an error; but it may be worth while to explain briefly how the personal qualities of the King-Emperor may be of value to the Empire.

The King as a Person

In the first place, the King supplies the vital element of personal interest in the proceedings of government. It is far easier for the average man to realize a person than an institution. Even in the United Kingdom, only the educated few have any real appreciation of such abstract things as Parliament, the Cabinet, or even 'the Crown.' But the vast mass of the people are deeply interested in the King as a person, as is proved by the crowds which collect whenever there is a chance of seeing him; and it is possible that the majority of the people, even of the United Kingdom, to say nothing of the millions of India, believe that the government of the Empire is carried on by the King personally. He therefore supplies the personal and picturesque element which catches the popular imagination far more readily than constitutional arrangements, which cannot be heard or seen; and a King or Queen who knows how to play this part skilfully, by a display of tact, graciousness, and benevolence, is rendering priceless services to the cause of contentment and good government. It is true that this element has a humorous as well as a slightly dangerous side. For example, the unfortunate phrase 'King's taxes' causes a good many simple-minded people to believe that the

King personally receives all the money which is raised in his name, which is, of course, quite untrue. But, on the whole, the King or Queen attract the admiration and interest of the great mass of their subjects in a way which no other political authority does; and they thus render government intelligible to the many. It is more than doubtful whether the Empire would hold together without them.

His Unofficial Influence

Very closely allied to this personal character of the King, is the great unofficial and social influence which he wields, and not he alone, but the Queen, and, in a lesser degree, the other members of the Royal Family. Their influence in matters of religion, morality, benevolence, fashion, and even in art and literature, is immense. Every, or almost every, scheme set on foot with these objects is eager to secure their patronage; to be able to prefix the title 'Royal' to the name of the association is regarded as an almost certain guarantee of success. And this patronage is, very rightly, only accorded with great discretion, and after careful enquiry, in which the personal judgment of the monarch, if wisely exercised, is of the greatest value. How much good was done in this way by the late Queen Victoria, is a matter of common knowledge; it was one of the striking triumphs of her long reign. And, be it remembered, in such matters the monarch is in no way bound to follow, or even to seek, the advice of his Ministers; for such matters lie outside the domain of politics. It could, perhaps, be wished that this fact were true also of what are technically called 'honours,' the award of which on the advice of Ministers has led to a cynical traffic in titles and decorations. But, unfortunately, that is a subject which has long been immersed in politics.

His Political Rights

In the third place, moreover, it must not be supposed that, even in the arena of politics, the King-Emperor's part is purely that of a mouthpiece. Doubtless, as we have seen in the last two chapters, one official function of the Crown after another has been brought within constitutional control; but, in spite of all the achievements of popular struggles, the King-Emperor may be said still to have three political rights, the exercise of which ultimately rests on his own discretion, viz.: the right to be informed, the right to warn, and the right, in rare cases, to reject advice, even when tendered by his constitutional Ministers. A few words as to each of these rights shall conclude this chapter.

The Right to be informed

The King has the right to be informed. Inasmuch as all the most important acts of State are (as we have seen) done in the King's name, and require his express authority, he is entitled to know exactly to what he is giving his approval. The vast correspondence which passed between George III and his Ministers has been published; and it records the minuteness with which the King was kept in touch with daily affairs of State. It may be said, of course, that this is a bad example; because George III, at any rate in the first part of his long reign, strove to break down constitutional government, and very nearly succeeded. But the same practice prevails to the present day; and it was only a few years ago that the nation learnt, by first-hand evidence in Parliament itself, that the Prime Minister's daily letter to the King includes an account, not merely of the public proceedings of Parliament, but of the secret discussions of the Cabinet. And this information must be given to the King in good time

to enable him to make himself master of it before he is called upon to act upon it. This was the point emphasized by Queen Victoria in the famous letter to Lord Palmerston, in which she temporarily extinguished that buoyant Minister, in 1851.

The Right to Warn

But it follows, almost inevitably, that a King who is fully informed of affairs becomes, in course of time, if he is an able man, an unrivalled storehouse of political experience. Ministers come and go; they are swayed, it is to be feared, by the interests of their party as well as by those of the State; they may have had to make, in order to obtain support, bargains which tie their hands; they have ambitions for the future, which they are loath to jeopardize. Not so the King. He is permanent; he is above all parties; he does not bargain for places and honours; he has nothing in the way of ambition to satisfy, except the noble ambition of securing his country's welfare. So he can say to his Ministers, with all the weight of his experience and position: 'Yes, I will, if you insist, do as you wish; but, I warn you, you are doing a rash thing. Do you remember so and so?' Only, the King must not give his warning in public; he must not *seem* to overrule his Ministers. But a Minister will, unless he is an exceptionally rash person, think many times before disregarding a warning from the King.

The Right to Refuse

Finally, the King, in certain rare cases, may take the extreme step of refusing to act on his Ministers' advice, even in political matters. Naturally, he will not do so without weighing the cost, remembering that the shielding maxim, 'The King can do no wrong,' has its counterpart in the maxim that the King, except in the rarest cases, must act on his Ministers' advice,

for which they are responsible. This is a priceless principle of the British Constitution; because, while a Minister can be displaced quietly and without fuss, any personal action against a King is apt speedily to lead to violence and bloodshed. Still, it is the duty of the King, on rare occasions, to take this risk; but they are really rare. Apart from the undisputed right of the King to refuse to appoint to office a man known to him to be unworthy, even though recommended by a Minister, there would appear to be now only two well-known cases in which the King is justified in opposing his personal will to the advice of his Ministers in matters of State, unless, of course, that advice should entail an actual breach of the law. The first is, when a request is made to him to create peers with the avowed object of securing a passage through the House of Lords of a Bill ardently desired by the House of Commons. This matter was much discussed on the occasion of the struggle over the Parliament Act of 1911, to be hereafter explained (p. 165); and it was generally thought that, in a case of this kind, the King was not bound to act on the advice of his Ministers, unless it was clear that the country supported them. The other crisis occurs when the Cabinet cannot secure the support of the House of Commons, and, following the precedent of 1784 (p. 36), asks the King to dissolve Parliament and order a General Election. Here it is said that, if the Ministry was formed (as in that case) after the existing House of Commons was elected, the King must accede to the Ministers' request; but if, on the other hand, a House of Commons was elected since the formation of the Ministry, then, presumably, the latest expression of the popular will is adverse to the Ministry, which cannot, therefore, insist on a dissolution of Parliament. If these views are correct, it will be seen that, even in the case of a difference between the King and his Ministers, the wishes of the country are the final court of appeal.

CHAPTER III.

THE TERRITORIES OF THE EMPIRE: THE UNITED KINGDOM AND THE SELF-GOVERNING DOMINIONS

ONE of the chief reasons, though not the only reason, why the dominions of the British Crown have received the somewhat misleading name of 'Empire' is, that they comprise a large number of separate communities, differing in language, institutions, religion, and other qualities, and united only by their common allegiance to the British Crown, and their common sympathy with one another. In former times, such collections of different communities were rarely created except by the process of forcible conquest; though occasionally the personal interests of a ruler, acquired by marriage or descent, exercised some influence in that direction. It was, therefore, natural that, when British statesmen began to realize that they were the servants of a monarch whose rule was gradually extending far beyond the bounds of the British Islands, they, and others, should begin to speak of that rule as 'Imperial,' though, in fact, it was, as we shall see, only in part based on conquest. But the practice is unfortunate, though now, probably, too firmly fixed to be changed; for it conceals the important fact, that the so-called 'British Empire' is by no means a collection of subordinate peoples governed by a ruling race with the sword and spear, but a vast body of communities, nearly all of which enjoy a good deal of control over their own affairs, and some of which are practically independent commonwealths.

The Story of the Empire

The story, long and brilliant, of the events by which this vast Empire was created, cannot be told within the limits of this book. Happily, this is not necessary; for it has been admirably told by other writers, and readers of these pages cannot be too strongly advised to make themselves acquainted at once with the outlines of the story in some trustworthy version.[1] Here all that can be done is, to group the different communities which form the British Empire according to their constitutional character and their relations to the Imperial or central government, and explain briefly the position of each in these respects. And for these purposes it will be found that such communities fall into four great groups, viz. (1) the United Kingdom, (2) the 'self-governing' Dominions in the strict sense, (3) the 'Crown' colonies, and (4) the great dependency of British India. Beyond these, there is a fringe of 'feudatory' or 'protected' states, which do not actually form part of the dominions of the British Crown, but are so closely connected with it, that a few words as to their position will be necessary.

The United Kingdom

(1) The United Kingdom itself, which, as we shall see, occupies a special position in the British Constitution, though now for many purposes a single community, is, as its name implies, a union or combination of formerly independent countries. For at least five centuries, the western rule of the English Kings, which had been gradually extended from the English Channel to the river Tweed, ceased at a line vaguely drawn from the Dee to the Severn.

[1] No better example can be chosen than the little collection of six lectures by Sir Charles Lucas, K.C.B., K.C.M.G., published by Messrs. Macmillan under the title of *The British Empire*, in 1915.

Wales

West of this line, or 'border,' the hills and valleys of Wales were still governed by patriarchal chieftains, who occasionally united in allegiance to a single ruler or Prince, but, more often, acknowledged no superior, and carried on tribal wars with their neighbours, or, towards the end of this period, with the Norman 'Lords Marchers' of the borders, who held great feudal possessions from the English Crown on condition of guarding England against Welsh invasion. During this long period, England was gradually being built up into a single country, with a definite and strong government, which has since become the model and centre of the Empire. Before her bounds were further enlarged, England had acquired her great permanent institutions, such as her Treasury, her Law Courts, her Privy Council, and even, though in incomplete form, her Parliament.

Edward I and Wales

One of the many achievements of the great English King Edward I was the incorporation into English territory of a large part of Wales. This result was achieved by hard, though not unprovoked fighting; and it was, probably, as good for the Welsh as for the English. Out of the northern part of Wales, six counties were created on the English model; and the English legal system was largely introduced into them, though with a considerable recognition of Welsh customs. Strong border castles were built to maintain order; and around these grew up the Welsh towns of a later day. The Welsh bishoprics were brought under the influence of the English ecclesiastical province of Canterbury; and their bishops were summoned to the English House of Lords. But it is noteworthy, that

the step of granting representation in the then new Parliament to Welsh shires and boroughs, was not taken till more than two centuries later.

Henry VIII and Wales

This occurred in the reign of Henry VIII, in the midst of the numerous changes caused by the religious Reformation. The Tudor monarchs were themselves partly of Welsh descent, and probably understood the Welsh better than did their predecessors. Accordingly, after some further fighting in the reign of his father, Henry VIII determined to complete the work of Edward I, by making England and Wales one country. He created six more Welsh counties out of 'wild Wales,' and, unfortunately, an additional English county (Monmouth) out of that borderland which had always been more than half Welsh in language and sentiment. To the Welsh counties and their capital towns he gave the right of sending each one member (not two as in England) to the House of Commons; except that, instead of the shire town of Merioneth, the port of Haverford-west sent a member. Though a special judicial system prevailed in Wales until the early part of the nineteenth century, Wales thus became definitely united, for government purposes, to England; its peculiar customs were abolished, or, at least, ignored; and, in legal language, 'England' now includes Wales, unless special exception is made. In fact, save for the admirable and self-governing system of higher and secondary education in Wales, England and Wales are, for our present purpose, practically a single country. The only other point to which it seems necessary to call attention is that, by the provisions of the Welsh Church Act of 1914, which have recently been put into force, the Welsh branch of the Established Church of England has been 'disestablished,' *i.e.* severed from

all connection with the State. This branch has, therefore, ceased, on the coming into operation of the Act, to be a part of the British Constitution.

Scotland

Much later and less complete was the union of England and Scotland.

Personal Union

As before pointed out, this union did not take place until 1603, when James VI of Scotland, the great-great-grandson of Henry VII of England, through the marriage of Henry's daughter Margaret to James IV of Scotland, succeeded to the English throne on the death of Queen Elizabeth. Even then, the union was only 'personal'; *i.e.* the same man was King both of England and Scotland, but the laws of the two countries, public and private, their institutions, and their forms of religion, were different, though there was, naturally, a good deal of similarity between them. This state of affairs was the source of much dispute and jealousy, especially on the question of law: how far the union of the Crowns entitled the inhabitants of one of the two countries to enjoy the rights, or made them liable to the duties, of natives in the other. It was even, in theory, possible that England and Scotland should be at war with different countries, without being bound to help each other; and, in fact, at one period during the Civil War between Charles I and his Parliament, the two countries were at war with one another. But the most dangerous question arose at the Revolution of 1688, when it was very doubtful whether the Scotch were prepared to accept the English choice of William and Mary to fill the joint thrones; and a quarrel between the two nations was only with the greatest difficulty avoided.

Real Union

It then became clear, to all wise statesmen in both countries, that something must be done to put the relationship of England and Scotland on a more satisfactory footing; and, at last, in the year 1707, by a Treaty of Union made between representatives of the two countries, it was agreed that the two Crowns should be for ever united and follow a single line of descent, that there should be a single Parliament for Great Britain, which should include representative peers of Scotland, as well as elected representatives of Scottish shires and boroughs, that there should be complete freedom of trade and commerce between the two countries, and that all political and public offices should be equally open to the inhabitants of either country. On the other hand, the judicial and private legal systems of each country were to remain distinct; the excellent educational system of Scotland (and especially her universities) was guaranteed permanence; and, above all, the separate and independent existence of the Presbyterian Church of Scotland, which is entirely different in government and form of worship from the Episcopalian Church of England, was secured by every solemnity that could be devised, though naturally, as the Established Church of Scotland does not recognize bishops, there are no Scottish bishops in the House of Lords. The best proof of the wisdom of the Act of Union of 1707 is, that it has remained substantially unaltered for more than two hundred years, and has converted what was formerly a state of jealousy and suspicion between the two countries into hearty friendship and co-operation.

Scottish Office

And, notwithstanding the Union, the separate identity of Scotland is preserved in administrative as

well as in religious and legal matters. Though the English and Scottish Treasuries were united in 1707, and the administrative work of Scotland passed to the British Secretary of State, yet in fact that official was largely advised by the Lord Advocate, the senior Law Officer (p. 298) for Scotland, who had a place of business for that purpose in Whitehall. This somewhat inconvenient arrangement continued until 1885, when a Secretary for Scotland was appointed, as a member of the Ministry of the day, to take charge of Scottish affairs. He is not, technically, a Secretary of State (p. 297), but a general Minister for Scotland, who answers all questions relating to Scotland in Parliament, administers the excellent Scottish educational system, in his capacity of Vice-President of the Committee of the Privy Council on Education in Scotland, and presides over the meetings of the Scottish Government Board created in 1894, which performs duties similar to those exercised by the Local Government Board in England (p. 251). There is also a Board of Agriculture for Scotland, created in 1912, and consisting of a Chairman and two Commissioners, which are not political offices, and a separate Fishery Board, established in 1882. The National Insurance Act of 1911 (p. 227) created a separate body of Health Commissioners for Scotland, to administer the benefits of the Act, and a separate Insurance Fund; and Scotland has its own Prison Commission, National Gallery and Portrait Gallery, Geological Survey, and other national institutions.

Ireland

The story of the relations between England and Ireland is painful and still unsettled. Though Ireland was nominally annexed to the English Crown in the twelfth century, English rule was long confined to the few counties round Dublin, known as 'The Pale'; and, though a Parliament, in imitation of the English,

was established in Ireland in the fourteenth century, the statutes which it passed had no effect beyond this district, and, probably, not much within it. In other words, the Anglo-Irish barons—the Burghs, Butlers, Laceys, Fitzgeralds—unlike their predecessors in the conquest of England, never forced the Irish peasantry under the yoke of agricultural serfdom, thereby compelling them, in their own despite, to become a nation of workers instead of a mass of warring tribes. Such a discipline was possible in the twelfth and thirteenth centuries. By the sixteenth, when it was hesitatingly attempted, it had become impossible, owing to changes of sentiment and knowledge. That is, probably, the chief reason why Irish history is so totally different from English and Scottish history.

Very naturally, this difference became more and more obvious as time passed; and one of the first cares of the strong Tudor monarchy was to strengthen its grip on Ireland by a complete subjection of the Irish to the English government. Whether the Tudors were moved more by jealousy of the Anglo-Irish barons or the native Irish, it is not quite easy to say. At any rate, in the year 1494, the Lord Deputy Poynings was instructed to force through the Irish Parliament a series of statutes ever since known by his name, by which all existing English Acts of Parliament were, at a blow, made applicable to Ireland, and, for the future, the Irish Parliament was forbidden even to discuss measures which had not previously received the approval of the English Privy Council.

During the whole of the century which followed the passing of Poynings' Laws, and even later, the history of Anglo-Irish relations consisted mainly of a deliberate attempt to exterminate the Irish elements of society, not merely within, but beyond the Pale, either by massacre or by conversion to English ways. For this course, the passionate adherence of the Irish to the Roman Church, despite the Reformation in England,

and their avowed sympathy with Spain, the champion of Catholicism in Europe, afforded both a pretext and an incentive. Especially in the reign of Elizabeth, a determined attempt, embittered by religious hostility, at conquest of the hitherto exclusively Irish districts, was made by the invasion and conquest of Ulster. After a long series of struggles, the province was ultimately reduced by the expulsion of the native Irish, and the settlement of their lands by immigrant Scots during the reign of James I. Not unnaturally, during the Civil War in England, the Irish retaliated on the Parliamentary party, through whose efforts the 'Plantation' had been mainly effected, and who, as Protestants, were bitterly hostile to the Catholic Irish; for Charles I, though not a Catholic, was far more sympathetic in temperament and manner to the Irish, than the stern and fanatical Parliamentarians. Equally naturally, after the defeat and execution of Charles, the Parliamentarians, under their champion Cromwell, took a dire revenge on their enemies, who could make no stand against the combined military genius and fanaticism of the Lord General. For the first time since the landing of Strongbow, all Ireland lay at the feet of the English government.

Unhappily, the recall of Cromwell to greater tasks at home left the settlement of Ireland to inferior natures, which saw in it merely an opportunity of plunder. Many of the great Irish estates of English nobles originated with the greedy adventurers who followed in Cromwell's wake, and who stirred up the Irish to fury by dispossessing them of their ancestral lands and banishing them to the wilds of Connaught. With the fall of the English Republic came the delusive chance of recovery; but Charles II had no mind to make trouble by attempting any wholesale dispossession of Cromwell's new landowners, and it was not until the accession of the Catholic James II that the

hopes of the Irish revived, only to be dashed once more, by William of Orange, at the decisive Battle of the Boyne in 1690.

After the wind, the whirlwind. If the yoke of Cromwell had been heavy, that of William and his successors was heavier. Ireland was subjected to a veritable reign of terror, with the double object of stamping out Catholicism and excluding the country from the benefits of the new 'Navigation' policy which aimed at making the English merchant navy supreme upon the seas of the world. So harsh and unjust was the treatment meted out to Ireland in the eighteenth century, that even the Protestant settlers in Ulster became almost as hostile to England as were the Catholics of the south and west. The climax of this oppressive system was reached in 1720, when an Act of the Parliament of Great Britain formally declared the right of that body to legislate for Ireland, in spite of the fact that Ireland had a Parliament of its own, carefully limited in its activities by the operation of Poynings' Laws (p. 53).

Once more the monotonous alternation of oppression and revenge recurred, when the embarrassment of England in the French and American wars of the later eighteenth century supplied Ireland's opportunity. Happily, however, the reprisals were of an infinitely more statesmanlike character than the old tribal forays and burnings; and the English Government was inclined to listen to reason. The penal laws against the Catholics were relaxed. Some of the worst oppressions of the Navigation Acts were removed. One of the first measures of the Rockingham Government of 1782 was to pass the famous 'Repeal Act' of that year, which not only repealed Poynings' Laws and the Declaratory Act, but paved the way for the 'Renunciation Act' of the following year, by which the legislative and judicial independence of Ireland was formally acknowledged. Still, however,

the daily administration of government in Ireland was in the hands of the Lord-Lieutenant and of his subordinates, who, even if they occupied seats in the Irish House of Commons, were in no way 'responsible' to that body. Notwithstanding these serious limitations on self-government as later understood (p. 64), the period of 1782 to 1800 is fondly looked back on in Ireland as the one brief gleam of sunshine in the long and chequered gloom of six centuries.

For, unhappily, the mortal and long-drawn-out struggle into which England drifted when the liberties of France were superseded by Napoleonic ambition, roused fears—some genuine, some fictitious—which once more stirred up strife between England and Ireland. Undoubtedly there was in Ireland a deep and natural sympathy with the Republican movement in France, which was strengthened by the personal ties which had resulted from the numerous cases in which, after the English Revolution of 1688, Irish officers and soldiers had taken service under the French Crown. Undoubtedly, also, the more extreme Republicans in France favoured the idea of attacking England through Ireland. In fact, hostile expeditions from France threatened, and, on two occasions at least effected, a landing in Ireland; though it is the opinion of some competent critics that substantial success was never possible for them.

Be this as it may, the English Government professed serious alarm at this menace to its western front, and resolved to destroy the system of self-government set up under the Acts of 1782–3. The Irish Act of Union of 1800, so called, bears a strong superficial resemblance to the Scottish Act of Union, passed nearly a century before (p. 51). Twenty-eight representative Irish Peers, elected by their fellow Irish Peers, were introduced into the new Parliament of the United Kingdom; though, unlike the Scottish Representative Peers, they are elected for life, not for each Parliament, and

power was reserved to create new Irish peerages, so that the number should not fall below one hundred. The Irish Privy Council was not abolished; and (until 1869) four Irish bishops of the Established Protestant Church sat in the House of Lords, while a hundred seats in the House of Commons were allotted to Irish constituencies. The continuance of the Irish legal and judicial systems was guaranteed; and uniformity of trade and political privileges was established between the two countries. But it is impossible to ignore the fact that, unlike the Scottish Union, the so-called Union with Ireland was not the voluntary act of two free peoples, each seeking only a reasonable and mutual advantage, but the act of a stronger against a weaker party, done almost wholly for the advantage of the former, and forced upon the reluctant and unreal consent of the latter by an unscrupulous use of corruption and social pressure.

Working of the Union

Moreover, the vestiges of the older system which were left themselves combined badly with the new system set up in 1800. The Lord-Lieutenant was not abolished, but continued to hold his court with semi-regal state in Dublin, and to make 'progresses' throughout the island. But his power tended rapidly to pass into the hands of an official, the Chief Secretary for Ireland, who, though nominally his subordinate, was frequently a member, not merely of the Viceroy's Council, but of the Cabinet in London, which could make or mar the fortunes of the Lord-Lieutenant. Thus the Lord-Lieutenant became a mere figure-head, and his court a shadow; for the experiment, occasionally tried, of giving the Lord-Lieutenant a seat in the Cabinet, only accentuated the real vice resulting from the Union, viz. absentee government.

Even worse followed. Had the government of Ireland really been in the hands, either of the Lord-

Lieutenant, who was usually a great nobleman, often animated by the best intentions and aloof from petty jealousies, or by the Chief Secretary for Ireland, who, though not a Secretary of State, and nominally under the control of the Home Office, was nearly always an ambitious and rising politician desiring nothing better than to see a happy and contented Ireland, the system set up at the Union, though vicious, might have been tolerable. But both the Lord-Lieutenant and the Chief Secretary were temporary officials, shifting frequently as the result of English party changes, who found themselves very largely at the mercy of the permanent officials at 'the Castle,' *i.e.* the official residence of the Lord-Lieutenant in Dublin. These permanent officials, though they were Irishmen, were, at any rate during the early part of the century which followed the Union, almost invariably chosen from a strictly limited class of great Protestant families which had secured the monopoly of office in the days in which Catholicism was a fatal bar to employment by the State. This little group of families, in the days when Civil Service examinations were unknown, established a close system of mutual bargaining, whereby the executive offices in Ireland, high as well as low, were carefully restricted to those who had the greatest interest in maintaining a thoroughly unwholesome monopoly; and thus the daily government of Ireland exhibited the worst features of bureaucracy, while the larger questions became the sport of political parties in England. Thus, also, though Ireland appeared to have institutions of her own (she even had a separate Treasury till 1816), they were not really expressions of local feeling, but close Boards, composed entirely of officials, either sent by the Treasury from England to take charge of the sub-departments of the Imperial offices, or appointed in Ireland, by the influences above described, from a narrow circle of persons with fixed ideas and strong sectarian pre-

judices. Outside was an Ireland of which they knew very little, and with which they sympathized less. The administration of Ireland was, and was probably intended to be, in the nature of a garrison holding down a conquered country, and was all the more detested that it was largely composed of persons who, though strongly opposed in sentiment to the majority of the population, were nominally Irish. It was not until the latter part of the nineteenth century, with the establishment of the Education Boards, the Department of Agriculture and Technical Instruction, and the National Insurance Commission, that the administration of Ireland began to assume anything like a native character.

It is hardly, therefore, a matter for surprise that, almost from its date, the Irish Act of Union encountered severe opposition and attempts at amendment, ultimately at repeal. These agitations took various forms, which it is impossible here to discuss. In their later phases, they were known generally as the 'Home Rule Movement'; and, after a severe struggle, and more than one failure, that movement appeared to achieve, just before the outbreak of the Great War, a complete triumph, in the passing, under the provisions of the Parliament Act, 1911 (p. 161), of the Government of Ireland Act, 1914.

The stupendous events which quickly followed, rendered it, however, unthinkable that a new and complicated scheme of government, violently disliked by a powerful and active minority in Ireland itself, should be put immediately into force in that country. Accordingly, the operation of the Home Rule Act was postponed by the Suspensory Act of 1914 to an unfixed future date; and, before any attempt was made to put it into execution, it was found that it had ceased to have any attractions, even for any substantial section of the Irish people. This was, of course, because, in the whirl of events, the power

formerly wielded by the Home Rule party had passed into other hands, which had adopted other ideals.

A desperate attempt to deal with the situation was made, soon after the termination of the war, by the Government of Ireland Act, 1920, which definitely recognized the unbridgable gulf between 'Northern' and 'Southern' Ireland, and endeavoured to create a separate government, with considerable though limited powers, for each part of the island, and to make a shadowy and problematical provision for a single government in the future, without entirely breaking the Parliamentary link between Great Britain and Ireland. With some considerable reluctance, 'Northern' Ireland, consisting of six counties, accepted the Act, and is at present governed by its provisions. Its constitutional position is anomalous. A Crown Colony (pp. 74–81) it certainly cannot be called; for, apart *from all historical considerations, it takes a definite* part in the government of the Empire, through its representatives at Westminster; and it is itself governed by a Parliament with a Responsible Ministry (p. 64). On the other hand, it cannot well be classed as a self-governing Dominion; for, by a solemn provision of the Act, the supreme authority of the Parliament of the United Kingdom remains 'unaffected and undiminished over all persons, matters, and things in . . . every part thereof.'

Southern Ireland, however, or at least the mass of the Catholic Irish, refused absolutely to have anything to do with the Act of 1920, or to lift a finger to make it effective outside Ulster. In their eyes, it was tainted with the unpardonable sin of Partition; and something like a state of anarchy succeeded, in the South, the announcement of its passing. Almost inevitably, though with real reluctance, the British Government adopted fiercer methods of repression, which provoked further reprisals; until it began to look as though a war of extermination were in prospect.

But wars of extermination can hardly be carried out under the eyes of Western Europe in the twentieth century. Moreover, it gradually became clear that, if the struggle were prolonged, the extermination would not be confined to one side. This combination of 'ideal' and 'real' considerations led, in the autumn of 1921, to the offer of a truce; and, after three or four months of anxious waiting, it was announced that Parliament would be asked to authorize the acceptance of an Agreement arrived at between the representatives of Sinn Fein (the native Irish organization) and the British Government. This Agreement, which was embodied in the Irish Free State (Agreement) Act, 1922, authorized the establishment, in Southern Ireland, of a Provisional Government, until a Constituent Assembly should frame a constitution for the Free State within the terms of the Agreement, the essential articles of which included a provision for a special oath of allegiance to the King, to be taken by every member of the Parliament of the Free State, for the ranking of Ireland in the same constitutional status as the four Greater Dominions (with special reference to the precedent of Canada in its Imperial relations), and a somewhat indefinite reservation by the Imperial Government of the right to use Free State harbours and obtain 'other facilities' both in peace and war. Free trade (subject to 'customary port and other dues') is guaranteed between the two countries. But a very significant clause reserved the right of Northern Ireland to 'denounce,' so far as she was concerned, the Treaty as an instrument of government, though with a hint that, if the option were exercised, there might be a rearrangement of boundaries by an independent Commission of three persons. As everyone knows, the Government of Northern Ireland promptly exercised its right of 'contracting out' of the Agreement.

The Constituent Assembly in Dublin was commend-

ably free—despite a very difficult quarrel with its former Republican allies—from delay in producing its new Constitution; and that fact alone is a tribute, when we reflect on the incapacity in this respect of certain other constituent bodies, to its political ability. But this favourable impression is strengthened by the Constitution itself, which was embodied in, and enacted by, an Act of the Imperial Parliament passed in December 1922, known officially as the Irish Free State Constitution Act. The Parliament of the Free State ('Oireachtas') is to consist of two Houses; one ('Seanad') with limited powers, elected by the whole State as one constituency from a panel drawn up by Parliament itself (but with double voting choice to the popular House), the other ('Dáil Eireann'), elected by adult suffrage in geographical constituencies, but with a system of Proportional Representation intended to give a voice to all parties. The 'Dáil' is elected for four years; 'Seanad' for twelve, one-third of its members retiring every fourth year. The Referendum and the Initiative, two very advanced democratic institutions, considerably limit the authority of 'Oireachtas,' which is also expressly subjected to certain other limitations of power, and is, therefore, certainly not a sovereign body.

The arrangements for the Executive are equally original; though the tribute of imitation is paid to the Cabinet system to an extent which undoubtedly adds yet another laurel to the wreath of that remarkable deity. Though called an 'Executive Council,' the chief executive authority of the Free State is expressly declared to be responsible to the 'Dáil,' *i.e.* the popular House of Parliament, and is to be appointed by the Lord-Lieutenant on the nomination of the President of the Executive Council, who in England would be regarded as Prime Minister. Moreover, by an adoption of the spirit rather than the letter of the English system, all the members of the Executive Council are

to be members of the 'Dáil,' and the President is to be formally nominated by the same body, instead of being approached by the Lord-Lieutenant. But a remarkable Article (No. 55) provides for the appointment of Ministers who are not members of the Executive Council, and will not share the fate of a defeated Ministry. They are to be nominated by the 'Dáil' from a panel presented by a carefully chosen committee of that body, and are, obviously, intended to be specialists, rather than party politicians. They are to be the heads of their Departments, responsible individually to the 'Dáil' for their administration; and they are not to be removable except by the 'Dáil' itself, and by it only for stated reasons. On the other hand, they have a right of audience in the Senate, and vacate their offices at a General Election. This experiment of non-party Ministers is one of the most striking features of the new Constitution.

It is an interesting question, under what precise constitutional category the Free State Act has left Southern Ireland. Manifestly, the latter has ceased to be a part of the 'United Kingdom'; it is doubtful whether it is included in the 'British Islands,' except in a purely geographical sense. On the other hand, it is difficult, both historically and constitutionally, to speak of it as a 'colony,' despite the definite assignment to it of Dominion Status by the Act, and the wording of the Interpretation Act of 1883, which is still unrepealed, and which defines a colony as 'any part of H.M. Dominions exclusive of the British Islands and British India.' Probably, like so many other things in the Empire, it is anomalous and undefinable; and much the same may be said of two other possible claimants of Dominion status, viz. Malta, which received large powers of self-government in 1920, and Southern Rhodesia, which, only this year (1923), emerged from the tutelage of the British South Africa Company, and entered on a career of

self-government. In what follows, therefore, it will be understood that the writer, in using the phrase 'self-governing Dominions,' is thinking mainly of the five older Dominions enumerated at the head of the next following page.

Isle of Man

It should be mentioned here that, unlike the various islands near the British coast, such as the Isle of Wight, Lundy Island, the Orkneys, and the Shetlands, which are, for government purposes, parts of the counties to which they are adjacent, the larger Isle of Man and the 'Channel Islands' (Jersey, Guernsey, Alderney, etc.) are not parts of the United Kingdom, though they are parts of the British Islands. The Isle of Man, formerly a possession of the Kings of Norway, after being long in the hands of feudal lords, such as the Earls of Derby and the Dukes of Atholl, came directly under the British Crown in the year 1765. But it retains its ancient government under a Governor (appointed by the Crown) and Parliament or 'Tynwald' Court of two Houses, with its own laws and law courts.

Channel Islands

The 'Channel Islands' are the last fragments of William the Conqueror's Duchy of Normandy, which survived to the English Crown when Normandy was re-conquered by the French Kings in the twelfth century. Their ancient and primitive forms of government, like those of the Isle of Man, remain to the present day; and, consequently, Acts of the Imperial Parliament are not in force in either of these dependencies, unless, of course, they are expressed to apply to them. The Isle of Man and the Channel Islands resemble, therefore, very much the class of self-governing Dominions, to which we must now turn our attention.

The Self-governing Dominions

(2) The self-governing Dominions, the most important of the possessions of the Crown 'beyond the four seas,' comprise the Dominion of Canada, the Federal Commonwealth of Australia, the Union of South Africa, the Dominion of New Zealand, and the Island (the oldest colony of the Empire) of Newfoundland. In area, in wealth, in the energy and intelligence of their populations, in their splendid loyalty to the Empire, in their unbounded possibilities of future greatness, these vast possessions are something unique in the world's history, and deserve far more study than has been devoted to them. Here, however, it is only possible to point out two or three of the leading features which characterize their membership of the British Empire.

Racial Ties

In the first place, then, it should be observed, that these self-governing communities are intimately connected with the United Kingdom, the centre of the Empire, not only by the tie of allegiance, but by the ties of blood, speech, and sentiment. In other words, they are, for the most part, 'colonies' in the truest sense of the word, viz. settlements of emigrants from the mother-country, not conquests of alien peoples. This is not, of course, universally true. A good deal of eastern Canada was won by hard fighting from the rival French colonists; Montcalm as well as Wolfe is one of Canada's national heroes. There has been much fighting between the Dutch and the English in South Africa; because, though English adventurers first touched at the Cape of Good Hope, and even formally annexed Table Bay, their proceedings were not adopted by the British Government, with the result that the Dutch settled there in the middle of

the seventeenth century, and remained masters of the Cape until the end of the eighteenth. The province of Quebec and the Dutch provinces of South Africa (Cape Colony, Transvaal, and Orange River State) are not, therefore, like the other self-governing Dominions, countries in which the English 'common law' prevails; but are governed, at least in matters affecting the private lives of the inhabitants, by French and Roman-Dutch law respectively. Still, the self-governing Dominions are, for the most part, British in a double sense.

The 'Common Law'

From this fact follows one very important consequence. It is one of the first rules of British constitutional law, that the privileges of British citizenship follow the British settler who goes out to build up a home in the wilderness. He takes with him that 'common law' which he enjoyed at home, or, at least, so much of it as is consistent with the circumstances of his position. Even before his colony has received any grant of privileges from the Crown, he is entitled to the protection of the constitutional guarantees which guarded him at home, particularly against the arbitrary action of the Crown and its officials. The Crown may, if it pleases, grant him special local privileges, by Charter or Letters Patent; but it cannot, by Orders in Council or otherwise, impose new burdens upon him. That can only be done by an Act of the Imperial Parliament; and, as a matter of fact, the central control of the colonies of British settlers, what there is of it, has, at least ever since the American Revolution, been exercised by Parliament.

Federal Ties

A second point to notice is, that the largest and most populous of these 'self-governing' Dominions are

not single communities, but, as has been hinted above, groups, formed out of pre-existing self-governing colonies, which latter retain a considerable share of independence, not merely towards the Imperial Government, but towards their own federal authorities. It is true that the Imperial Government does not communicate directly with the 'Provinces' of the Dominion of Canada, or of the Union of South Africa, though it does with the 'States' of the Australian Commonwealth. But the 'self-governing' powers of the provinces of Canada, as well as of the States of Australia, are guaranteed by law; and any breach of them by the Dominion governments can be redressed by appeal to the Judicial Committee of the Imperial Privy Council. Only it should be remembered, that, while these self-governing powers are all probably secure, they are not all equally extensive. Thus, while the British North America Act of 1867, and the Union of South Africa Act of 1909, confer only definite and express powers on the provinces of Canada and South Africa respectively, thus, by implication, leaving all other powers of 'self-government' in the hands of the Dominion Parliaments and Ministries, the Australian Commonwealth Act of 1900 reverses this process, and confers only definite and express powers on the federal government, thus, by implication, leaving all other powers of 'self-government' with the different colonies, or 'states.' One significant mark of this difference is, that the Lieutenant-Governors, or Administrators, of the Provinces of Canada and South Africa, are appointed by the Dominion Governments; while the Governors of the Australian States are appointed directly by the Crown, of course on the advice of the Secretary of State for the Colonies. Another is, that the statutes of the provincial legislatures require the assent, not only of the provincial Lieutenant-Governors or Administrators, but of the Dominion authorities; while the legislation of the various Australian states

is not subject to this double 'veto.' The provinces of Canada are now Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta, and Saskatchewan; the states of Australia are New South Wales, Victoria, Tasmania, Queensland, South Australia, and Western Australia; the provinces of South Africa are the Cape Colony, Natal, the Transvaal, and the Orange River State. The Dominion of New Zealand was at one time a federal colony, somewhat of the Canadian type; but the provincial system was abandoned in 1876. Newfoundland has always been a single community.

'Responsible Government'

By far the most important feature of the self-governing Dominions is, however, the almost complete independence of Imperial control which they enjoy, under the name of 'responsible government.' Not only have they, in nearly all cases, Parliaments consisting of two Houses, called by various names, which exercise (subject to federal rights) almost unfettered power over the affairs of their communities; but their respective Governors, or Governors-General (as the Executive heads of the Dominion governments are called), though appointed by the Crown, are bound to follow, in almost all respects, the advice of their Cabinets for the time being, which, like the Imperial Cabinet in Downing Street, are composed of Ministers chosen for their influence in the local legislature, and depending on the support of that legislature for their continuance in office. This combination of legislative and executive independence enables the Government to regulate its affairs almost wholly by the local public opinion of the day, even to the extent of adopting (as has been done in most cases) a financial system not only different from, but wholly opposed to, the system in force in the United Kingdom, and for this purpose,

even, in some cases, to enter into direct relations with foreign states, through commercial treaties or conventions negotiated by the self-governing Ministries, which are afterwards formally signed by Imperial diplomatic representatives. But perhaps the supreme example of self-government is to be found in the fact that, though the control of all the expeditionary forces of the Empire, naval and military, passes, on the outbreak of war, automatically to the Imperial War Office and Admiralty, yet, in time of peace, the raising, equipping, and control of the Dominion forces remain in the hands of their respective Governments, and, even in war, no compulsory levy of forces, or contribution to the cost of the war, is imposed on the self-governing Dominions by the Imperial Government. The splendid contributions of Canada, Australia, South Africa, New Zealand, and Newfoundland to the fighting forces of the Empire, are voluntary in this important sense. Nothing has better illustrated the fundamental principle of British colonial policy, that all the Dominions are, and always have been, regarded by the Imperial Government, not as dependencies to be exploited for the benefit of the central authority, but as voluntary partners in a great Imperial commonwealth. To many foreign critics such a system appears to be sheer political lunacy; but the results challenge a comparison which probably causes a good deal of envy to mingle with their contempt.

It is not possible, in a work of this kind, to go into details of the institutions by which Dominion self-government is carried on, and the differences between the corresponding institutions in the different self-governing Dominions. But a short general description of these institutions is necessary.

Self-governing Parliaments

In each of these communities there is a representative Parliament, in the older and more important cases consisting of two Houses, which is the supreme au-

thority in the community. The more important House is, in every case, elected on a very wide franchise, *i.e.* the larger number of adult residents (in several cases female as well as male) have votes for it; and, moreover, General Elections are frequent, usually at least every three or four years. Where there is a second or 'Upper' House, it consists sometimes, as in the case of Canada, New Zealand, Newfoundland, and the provinces and states of Quebec, Nova Scotia, New South Wales, and Queensland, of members nominated by the Governor-General or Governor on the advice of his Ministers, usually for life; in the states of Victoria, South Australia, Tasmania, and Western Australia, it is composed of members elected for fairly long periods by a restricted electorate; while the Senate or 'Upper' House of the South African Union is partly nominated and partly elective. It must not be supposed, however, that the relations between the British Houses of Lords and Commons at Westminster are exactly reproduced in the relations of the two Houses of a 'bi-cameral' Dominion Parliament; that is a matter which is usually regulated by the colonial Constitution Act itself. In the federal constitutions, the chief function of the 'Upper' House is, to guard the independence and equality of each member of the federal group, and to prevent a combination of the larger states or provinces in the federal Parliament swamping the smaller.

Dominion Executives

While in each self-governing Dominion the great mass of the government officials are, as in England, chosen by some system of examination or selection, and spend the whole of their lives in the government service, the higher officials, or Ministers, are selected in accordance with the views for the time being prevailing in the 'Lower' or popular Houses of the various Parliaments, and resign their offices immediately they cease to hold the confidence of that House. As in the

United Kingdom, this important rule depends chiefly, if not entirely, upon custom or convention, not on express law; and, when it was decided to introduce 'responsible government' into the Australian Constitutions, the framers of these Constitutions were somewhat at a loss to know how to provide for it. Ultimately, it was found that, so far as express law was concerned, the only provision which was needed was a clause in the Constitution Acts to the effect that the members of the Executive Council, or Cabinet, should be appointed, not, as in 'Crown' colonies, directly by the Crown, on the advice of a distant Secretary of State, but by the Governor or Governor-General, who is always on the spot, and can receive resignations and make new appointments without delay. But the Ministers thus appointed are described as 'Ministers of the Crown' for the colony; and, though their precise legal position is a little doubtful, in practice they exercise, within the limits of their community, powers similar to those exercised by Ministers in the United Kingdom, except that the actual decision in pardoning or reprieving criminals condemned to death in some cases rests with the Governor, as the direct representative of the Crown, and that the Governor also exercises more personal discretion than the Crown in the United Kingdom, with regard to granting or withholding the royal assent to legislation by the Parliament.[1]

Dominion Judicatures

Most of the Dominion Constitution Acts contain definite provision for maintaining the high standard of

[1] In Canada it is claimed that, even in this matter, the Governor-General is bound to follow the advice of his Ministers. On the other hand, it is not admitted that, in advising the Governor-General as to his attitude towards provincial legislation (p. 63), the Dominion Cabinet is bound merely to be guided by the consideration of the legality (as distinct from the wisdom) of the proposed provincial measure

judicial independence and integrity prevailing throughout the Empire, by securing fixity of tenure and income to the occupants of the higher judicial posts, both federal and 'state' or provincial; and most of them expressly reserve the right of appeal, at least in important cases, from the Dominion courts to the Judicial Committee of the Imperial Privy Council. But the selection, even of the superior judges, and the numbers, jurisdiction, and terms of office of the subordinate judges and magistrates, are left entirely to the governments concerned, which, it is only just to say, have most admirably in this respect maintained the high standard of the British judiciary. A sketch of the form assumed by the judicial institutions of the self-governing Dominions is reserved for a later chapter (p. 303).

All the self-governing Dominions have also more or less developed systems of local government in the narrower sense of the word, comprising shire and borough councils, sanitary boards, and the like, engaged in providing and maintaining the public amenities of civilized life, such as roads, bridges, water-supply, and drainage. A brief account of these is, however, reserved for a subsequent stage (Chapter XIV); and this chapter must conclude with an attempt to answer a question which will naturally have suggested itself to the student who has followed this account of Dominion self-government and independence. In what way then, can these 'self-governing' Dominions be said legally to form part of the British Empire at all, except, perhaps, as owning a general allegiance to the British Crown?

Imperial Ties

There are, in fact, four legal ties which, in addition to the most valuable ties of all, viz. the sympathy and good-will of the colonists themselves for the Empire of which they form part, and their unifying loyalty to the Crown, bind the self-governing Dominions to the Empire.

Dominion Governors

The first is the presence, at the head of each of them, of a direct representative of the Crown, a Governor-General, Governor, Lieutenant-Governor, or Administrator, as the case may be. Even where this official is not directly appointed by the Crown on the advice of the Secretary of State (as in the case of the provinces of Canada and South Africa), he is still the representative of the Crown, acting in the name of the Crown, and bound to guard the interests of the Crown. In the more important cases, he is appointed directly by the Crown, by Letters Patent, accompanied by Instructions which profess to describe the scope of his powers. In theory, these Instructions are important; because, if they set limits to the authority of the Governor, presumably they set limits also to the powers of his Cabinet, on whose advice he exercises his authority. In fact, they are so widely expressed, that they have very little real influence over the conduct of business; and, moreover, in some self-governing units, at least, the Ministers, though appointed by the Governor, are formally described as Ministers of the Crown.

The Governor himself, though the direct representative of the Crown, and thus a symbol of the unity of the Empire, is a British subject, and thus, like all British subjects, official as well as private, subject to the Rule of Law previously described (p. 38). If he does any act contrary to law, he can be sued (and, perhaps, even prosecuted criminally) in the courts of his own Dominion; and, after his return to the United Kingdom (for he seldom holds office as Governor for more than five years) he can certainly be prosecuted and sued in the English courts for illegal acts done, either officially or in his private capacity, in the Dominion. The latter rule is laid down by express Act

of Parliament. Needless to say, also, that a Governor who acts indiscreetly, even though not illegally, can be recalled or suspended from office by the King, acting on the advice of the Secretary of State. Moreover, in the self-governing Dominions (though not, of course, in the 'Crown colonies') the Governor-General or Governor is, as has been said, expected, in almost all the daily affairs of government, to act upon the advice of his Ministers, to refrain from taking any direct part in current politics, especially in party questions, to express no personal preferences in the choice of Ministers or policy, and, generally, to act as a constitutional ruler in the Dominion, on the model of the King in the United Kingdom. To him, however, are open, though in a minor degree, the great opportunities of unofficial and private influence which, as we have tried to explain (p. 42), make the personal character of the King so important for the welfare of his subjects. The greatest care is exercised by the Crown in the choice of Governors and Governor-Generals. The latter are often selected from members of the House of Lords who have held high political office in the United Kingdom. In one recent and well-known case, a member of the Royal House filled the office of Governor-General with great distinction for an exceptionally long term. The Governors are usually either distinguished members of the House of Commons, or successful administrators who have won their spurs in the 'Crown colonies.'

The High Commissioners and Agents-General

Mention of the personal and official ties between the United Kingdom and the self-governing Dominions would not be complete without a brief reference to the valued representatives of those Dominions at the seat of Empire. Just as the Crown sends to each Dominion a Governor or Governor-General, so the State

or Dominion sends to London an Agent-General or High Commissioner, to represent it in dealings with the Secretary of State and other Imperial and British authorities, as well as with private firms and individuals. This valuable system of exchange of ideas goes back to the days of the great Benjamin Franklin; and the opportunities which it affords for strengthening the bonds of social, literary, and economic intercourse between the United Kingdom and the Dominions, are almost unlimited. The High Commissioners are virtually in the position of colonial ambassadors, and they and the Agents-General occupy honoured positions at all Imperial ceremonies; while the splendour of the buildings in which some of them transact their business is a symbol of the rapidly growing wealth and importance of the Overseas Empire.

Assent to Dominion Legislation

The second legal tie which binds a self-governing Dominion to the Empire is the necessity for the Crown's assent to the legislation of a Dominion or Colonial Parliament. Unlike the so-called 'veto' of the Crown in the Imperial Parliament, the power of withholding assent to proposed colonial legislation is a reality; though it is exercised with care and reluctance. It may be exercised in more than one way. The Governor, by whom the assent of the Crown is first intimated, may refuse that assent. This he rarely does; unless the proposed legislation is clearly beyond the powers of the Parliament in question. If he thinks that, whilst not illegal, it is so contrary to Imperial interests or the general principles of British law that it requires reconsideration, he 'reserves' it for the pleasure of the Crown; and, in some cases, the colonial Constitution Act requires that all Bills on certain subjects shall be so reserved. In either of these cases, if the Crown's assent is not given, the measure never becomes law.

Or, finally, even if the Governor has expressed the Crown's assent, the Crown may, on learning of the step, revoke the assent by an Order in Council; and thereupon the Act ceases to be law from the date named in the Order.

Conflict with Imperial Statutes

In the third place, any provision of a colonial Act of Parliament, even of a self-governing Dominion, which is inconsistent with the provisions of an Imperial Act of Parliament *intended to apply to the locality*, is void. This rule is laid down by an Imperial statute of the year 1865, the Colonial Laws Validity Act, which, curiously enough, was not intended to limit the powers of the self-governing Dominions, but to extend them. All sorts of objections, based mainly on the wording of the Constitution Act of South Australia, had been raised against the validity of the statutes of that State; and it was desired to get rid of them once for all. Accordingly, the Act of Parliament referred to provides that any 'colonial law' (including an Order in Council) which conflicts with the provisions of an Imperial statute intended to apply to the colony in question, shall be deemed void, but that no other such law shall be deemed inconsistent with 'English law,' which in this case, undoubtedly, means Imperial law, including the 'common law' (p. 62).

Imperial Legislation

This statute brings us naturally to the fourth and last of the legal ties by which the unity of the Empire is expressed with regard to the self-governing Dominions. The so-called Imperial Parliament of the United Kingdom claims the power to legislate for all parts of the Empire, including the self-governing Dominions. As a matter of fact, this power is very rarely exercised;

and it is important to remember, that no Act of the Imperial Parliament passed since the founding of a colony is in force in that colony, unless it (expressly or by necessary implication in the Act itself) is made to apply to that colony. Such Acts of Parliament are very rare. They never affect revenue or tax-granting; that point may be regarded as settled by the American Revolution. The few which have in recent years been passed deal with such subjects as British nationality and the position of aliens (obviously an Imperial matter), merchant shipping, and copyright—all subjects on which uniformity is eminently desirable. But it is noteworthy, that even the important Copyright Act of 1911 is not imposed on the self-governing Dominions; it is left to them to adopt it or not, as they think fit. It may be that the recent and excellent steps of admitting Dominion Ministers to the Imperial Cabinet, and of holding periodical Conferences of Imperial representatives, may somewhat increase the amount of Imperial legislation. But even this is doubtful; for it seems to be generally agreed that the time is not yet ripe for a true Imperial Parliament, containing elected representatives from the Overseas Empire. Meanwhile, the United Kingdom and the self-governing Dominions rest together on the solid fact that, to the outside world, they present a united front under the Imperial Crown. If one of them is attacked, or even threatened, from without, all rush to arms to repel the invader. In such crises of the body politic, the heart counts for more than the head; for when the heart beats strongly, the brain will leap to action.

CHAPTER IV

THE TERRITORIES OF THE EMPIRE (*continued*): THE CROWN COLONIES AND BRITISH INDIA

BEFORE proceeding to consider the relationship of the 'Crown colonies' to the Empire, it will be convenient to say a few words about the Imperial authority by which they are chiefly governed, viz. the Colonial Office. That department is, of course, also concerned with the self-governing Dominions discussed in the last chapter; but in a much less degree, because, as has been explained, the self-governing Dominions manage their own affairs almost completely.

THE COLONIAL OFFICE

For some time after the first acquisition of colonies by the English, the management of them, so far as the mother-country was concerned, was left entirely in the hands of the King. The King, in his turn, either appointed some person to reside in the colony and act in his name, subject to rendering an account of his actions to the King, or the King made a grant of the colony, subject to certain provisions and reservations, to a company or individual as proprietor, who dealt with the colony as an estate to be 'settled' and developed. Examples of the former class were Barbados and Jamaica, of the latter, Virginia and Pennsylvania.

The Privy Council and the Colonies

But, as the colonial possessions of the Crown grew in extent, questions concerning their management became more and more frequent, and were naturally referred by the King to what was, in the first half of the seventeenth century, the seat of the executive government of England, the Privy Council. This body, consisting of the chief officials of the Crown, was already accustomed to deal with matters affecting the relations of England with other countries, and had even some experience of governing dependencies, such as the Channel Islands. But the credit of first creating a separate department of the Council for this purpose belongs to the Ministers of Charles I; a Commission for Foreign Plantations (really a Committee of the Council) being created in 1634, and lasting until 1641. The idea was revived by the Protector Cromwell, who, in the year 1654, created a Committee of the Council of State (as it was then called) for Trade and Plantations, to carry out the policy embodied in the Navigation Acts. At the Restoration, in 1660, a Committee of the Privy Council for Plantations was formed, which soon became a Commission, and was in the year 1672 united with the Council of Trade, another branch of the Privy Council, created, as its name implies, for dealing with the closely connected subject of external trade. This united body suffered temporary extinction in 1675; but, in the year 1695, King William constituted a permanent Board of Trade and Plantations, which gradually acquired recognition in Acts of Parliament, had various powers given to it, and in the year 1768 was put under the management of a newly created Secretary of State, a high official of whose office we shall later speak (p. 248).

Loss of the American Colonies

Unfortunately, this promising developement received a severe check by the separation of the American colonies in the year 1782; and before, by the Peace of Versailles in 1783, their independence was formally recognized, the new Secretary of State and the Board of Trade and Plantations were both abolished, as though Great Britain had gone out of business as a colonizing Power. Happily, the courageous government of Pitt soon reversed this faint-hearted policy; and, in the year 1784, a new Committee for Trade and Plantations was created, which, in the year 1801, was put under the control of the newly created Secretary of State for War. This somewhat strange union of parts lasted until the Crimean War, in 1854, when the increasing duties of the War Office led to the creation of a separate Secretary of State for War, thus leaving the affairs of the colonies exclusively to the 'Colonial Office.' The Secretary of State for the Colonies is, in normal times, a Cabinet Minister of the highest rank, though he takes precedence after the older Secretaryships for Home and Foreign Affairs (p. 229). He is always a member of Parliament, and is directly responsible to Parliament for the conduct of his office.

What is a Crown Colony?

(3) By a 'Crown colony' is meant an overseas possession of the Crown (other than British India), which does not enjoy the powers of 'self-government' described in the last chapter, or, putting the matter in positive form, is subject to the control of the Colonial Office[1] in the management of its daily affairs. Like the self-governing Dominions, each Crown colony,

[1] It is not strictly true to say that *all* the Crown colonies are under the Colonial Office. One (Ascension Island) is under the Admiralty.

or group of colonies, is placed under the rule of a resident Governor or Administrator appointed by the Crown; but, unlike the Governor of a self-governing Dominion, the Governor of a Crown colony is a real ruler, not bound to act according to the advice of his local officials, but, subject to instructions from the Colonial Office, exercising his own discretion in performing the duties of his office. The chief reason for this important distinction between the Dominions and Crown colonies is, of course, that the latter have, in some cases, at least, been acquired by conquest from foreign Powers, and are in the main inhabited by people who have not the deep-seated instinct of the Anglo-Saxon for self-government, nor his long traditions of the way in which to exercise it. It should, however, once again be remembered, that, even in the case of Crown colonies, there is no attempt, nor ever has been, to make them sources of tribute to the Imperial Government, nor even, since the repeal of the Navigation Acts (p. 55), which aimed at keeping control of the carrying trade of the Empire in the hands of Great Britain, has there been any attempt to subject the economic interests of the colonies to those of the United Kingdom or any other part of the Empire. On the other hand, though the aim has always been to make each colony self-supporting, *i.e.* to defray the expenses of its government out of its own revenues, the United Kingdom has, in times past, spent large sums of money, without asking for any share in the profits, in developing the resources of various colonies for the benefit of those colonies themselves, and in supplementing deficits in their revenues.

Institutions of Crown Colonies

It would, moreover, be a great mistake to suppose that, because the Crown colonies do not enjoy the

full powers of self-government, they are all placed under simple autocratic government. For one thing, the inhabitants of a conquered or ceded colony have usually been allowed to retain their own system of law for the regulation of their private affairs; although until the grant to them of representative institutions, the Crown claims the right of altering this, if it sees fit, by Order in Council. But, apart from this, a large number, even of the Crown colonies, have been given Constitutions which enable them to exercise a considerable control over their own affairs. There are, in fact, three well-marked types of government in the Crown colonies; and only one of these can fairly be called a purely autocratic or absolute form of government.

Representative Councils

In the highest type of Crown colony, there is a representative legislature consisting of one or two chambers; though this legislature is not entitled to the name of Parliament. Thus, in the Bahama Islands, the Bermudas, and Barbados, there is a Legislative Council nominated by the Crown, but wholly or mainly selected from the non-official inhabitants, and a wholly elective Legislative Assembly. In seven other colonies, there is a legislature which combines the character of a nominated and an elected body; some of its members being nominated by the Crown, and others elected by the inhabitants. These are the colonies of British Guiana, Jamaica, the Leeward Islands (federal), Mauritius, Ceylon, Cyprus, and Fiji. These legislatures have not, as has been hinted, the full powers of a Parliament, particularly as respects criticism of the colonial government; but they can put up a strong opposition to 'Government measures,' and they have almost complete control of local expenditure, subject to the

important and universal rule, that no taxation can be imposed by them except on the proposal of the Crown's representative. Moreover, as was mentioned in an earlier chapter (p. 19), the power of the Crown to legislate for such colonies by Order in Council disappears on the grant of representative institutions, except where it is expressly reserved by such grant. It may, moreover, be mentioned, that a grant of representative institutions of the Crown colony type does not require an Act of the Imperial Parliament, but may be, and often is, made by the Crown by Letters Patent.

Executive Councils

In the Crown colonies, there is usually also an Executive Council, consisting of high officials directly appointed by the Crown, with, in some cases, nominated unofficial members, being inhabitants appointed by the Governor with the approval of the Colonial Office. The relations of the Governor with his Executive Council are settled by the Governor's Instructions, which generally give him power to override the views of its members where they differ from his own. But the facts that the members of the Council do not owe their appointments to him, and are often persons of greater local experience than his own, naturally exercise a restraining influence upon his action. It should be mentioned also that, in the Crown colonies where there are not garrisons of 'regular' troops (p. 192), the Governor is usually, and not merely in name (as in the self-governing Dominions), the Commander-in-Chief of the local forces, but that the action of the executive is kept within legal bounds by the existence of courts of justice presided over by judges directly appointed by the Imperial Government, and incapable of being dismissed or affected in their

salaries by the Governor who, as has been explained (p. 69), is answerable for breaches of the law to them, as well as to the English courts.

Nominated Legislatures

The second type of Crown colony also has a local legislature; but it consists entirely of Crown nominees. It is therefore spoken of only as a 'Council'; and its only claim to represent local feeling is that some of its members (usually a minority) are chosen by the Crown from among the non-official inhabitants of the colony, the remainder being Crown officials. Often, however, it cannot introduce proposals for legislation; and even its financial powers are strictly limited. Moreover, where the legislature consists of nominees, the Crown can continue to legislate for the colony by Orders in Council sent out from England. Obviously, in such colonies, the personal authority wielded by the Governor is very great, being checked only by the advice of his Executive Council, and by the independent action of the judges of the courts, all of whom, it will be remembered, are appointed by the Crown on the recommendation of the Secretary of State, and are not removable by the Governor. But it should also be borne in mind, that a Governor of this type is in constant correspondence with the Colonial Office, that his proceedings are all carefully recorded, and that he naturally endeavours, by discreet and kindly behaviour, to earn a good reputation which will help him to promotion to a more important and dignified sphere of work. The colonies under this type of government are many in number, including Trinidad and Tobago, Grenada, The Gold Coast, Sierra Leone, and British Honduras. The former colony of British New Guinea, now known as Papua, was once in this list; but it now occupies a peculiar and interesting position, being placed under the

control of the Federal Government of Australia. This is an important experiment, the working of which will be watched with great interest by all students of politics.

Autocratically governed Colonies

It is only in the third and lowest group of Crown colonies that the purely autocratic rule of a Governor or Administrator is, for military reasons, maintained. They are few in number, but include the important naval stations of Gibraltar and St. Helena, Basutoland (which is administered by a Commissioner acting under the orders of the High Commissioner for South Africa as Governor), Ashanti, governed by a Chief Commissioner appointed by the Governor of the Gold Coast, Ascension Island (administered by the Admiralty), Aden and Perim, under the control of the Governor of Bombay, and Wei-Hai-Wai, which is, strictly speaking, only leased to the British Empire. The North-West Territories of Canada may also be said to be of this type; but, like British New Guinea (though in a less advanced stage) they are not under the control of the Colonial Office, but of the Federal Government of a self-governing Dominion, viz. Canada. Where colonies of this rank are under the control of the Colonial Office, the Crown can legislate for them by Order in Council.

(4) We now come to the last group of the communities which compose the British Empire, viz. the provinces of British India.

British India

As is well known, the interest of the English in India was for long of a purely commercial character, directed by joint-stock companies of an old-fashioned type, which, at the beginning of the eighteenth century,

became definitely united into the United Company of Merchants Trading to the East Indies, commonly known as 'The East India Company.'

The East India Company

This company, though not, for a long time, under the direct control of the Crown, became, in the eighteenth century, mixed up with Government loans, for which it undertook responsibility, in return for a grant or recognition of its monopoly of the trade to India; though the validity of the Crown's claim to grant such monopoly was more than doubtful. Partly to protect its traders and their rich 'forts' or settlements on the coast (Calcutta, Madras, and Bombay) from attacks by the native princes, partly to enable its members to hold their own against the efforts of other European traders (French, Dutch, and Portuguese), The East India Company was allowed to raise and maintain a considerable army, the control of which was entirely in its own hands. Very naturally, the Company was drawn into the constant rivalries and quarrels of the native rulers, some of whom were shrewd enough to see the advantage of enlisting its valuable aid on their side. In the year 1765, the Company became, in effect, a great territorial power by the grant, from the Great Mogul, of the Diwani, or right of collecting taxes nominally due to that feeble ruler, and of administering justice, in Bengal, including Bihar and Orissa.

Beginning of Crown Government in India

Hitherto the direct action of the Crown in India had been confined to the establishment of courts of justice for the British settlers, a personal rather than a territorial exercise of authority; but the acquisition of the Diwani was quickly followed by a period in which the Crown, though still declining to undertake

direct government in India, acted as a controlling and inspecting authority over the Company's administration. This was done, first, under the provisions of Lord North's 'Regulating Act' of 1773, which established a Governor-General at Calcutta, in control of the three former 'Presidencies' of Calcutta, Madras, and Bombay, with a Council to advise him, not only in executive but in legislative matters, and a Supreme Court at Calcutta, exercising jurisdiction over British subjects, and, in some cases, natives; while the Court of Directors of the Company was made to report on financial and other matters to The Treasury and the Secretary of State.

The Board of Control

The scheme of 1773 was soon superseded by a scheme introduced by Pitt in 1784, which established a regular 'Board of Control' in London, consisting of the Chancellor of the Exchequer, a Secretary of State, and four other Privy Councillors, of whom one became 'President of the Board of Control,' and, virtually, Minister for India. Under this scheme, the powers of the Court of Proprietors or shareholders in the Company were greatly reduced, while those of the Court of Directors and the Company's officials in India were placed under the close supervision of the Board of Control and the Governor-General respectively. The Company was, in fact, rapidly losing its commercial character, as the actual conduct of trade passed into private hands, and as rapidly acquiring the character of a government department with vast responsibilities and machinery. In the year 1813, it was deprived of its trade monopoly (except as to the tea trade with China), though merchants still required its licence to trade in India. Its charter was renewed in 1833; but the great territorial possessions which, by that time, the Company had acquired, were de-

finitely declared by it to be held in trust for the Crown; and its commercial monopoly and control over private traders were abolished. On the renewal of the Company's Charter in 1853, the Crown encroached further on the independence and influence of the Company, by bringing the enormous official patronage it had hitherto exercised, under Regulations of the Board of Control; and the final step was taken when, after the suppression of the native risings known as the 'Mutiny,' a great Act of Parliament of the year 1858 definitely brought the Company's territories within the dominions of the Crown, and set up a scheme of government for British India, which, with some important modifications, is in force at the present day. Of this scheme we must now proceed to give a brief account.[1]

The Modern System

By the Government of India Act of 1858, the whole of the territories formerly under the control of the East India Company were vested in the Crown; and all the powers and liabilities, by treaty or contract, of The East India Company, as well as of the old 'Board of Control,' passed to a newly created Secretary of State for India, who is the constitutional adviser of the Crown in all matters of Indian government, is always a member of the Ministry of the day, and acts as the head of the India Office.

Council of India

To assist him in his arduous and responsible duties, was created the Council of India, consisting of from eight to twelve salaried members, who are appointed by the Secretary of State, but cannot be dismissed

[1] The government machinery for India has recently been re-enacted by the Government of India Act of 1915. It is automatically amended as changes are made.

by him, thus being assured independence. They may not sit in Parliament, and are removable on an Address by both Houses. Of the members of this Council, which holds frequent sittings in London, half must have served the Crown, or at least resided, in India, for a period of at least ten years, terminating within the last five before their appointment. As a matter of fact, substantially all members of the Council are Chiefs or Indian officials of recent experience. They hold office normally for five years, which may be extended to twelve by Minute of the Secretary of State laid before Parliament. The sittings of the Council are usually presided over by the Secretary of State, who has an ordinary, as well as a casting vote.

Powers of the Secretary of State

The Secretary of State is expected to consult his Council in all matters of importance, and, as a general rule, to follow its advice. But, where he disagrees with its opinion, he is at liberty, except in cases where a majority of votes is expressly required, to disregard it, in view of his ultimate responsibility to Parliament; though, when he does so, he is expected to record his reasons, and any member of the Council may record his own reasons for the advice which he gives. Most orders of the Council, moreover, go out in the name of the Secretary of State; communications to and from the Viceroy are addressed by and to him; he may, if he pleases, withhold urgent and secret despatches from the Council; and all acts of the Council done in his absence require his approval in writing.

Government in India

But, of course, even in these days of rapid travelling and despatches, it would be impossible, as well as

highly undesirable, to attempt to rule a vast country like India from London, thousands of miles away; and, in fact, most of the responsibility for that difficult and laborious duty falls upon the representatives of the Crown in India itself, viz. the Viceroy, Governors, Lieutenant-Governors, and other administrative heads, and their Councils, and on the various ranks of that invaluable body of officials, the Indian Civil Service.

The Governor-General

The Viceroy, or Governor-General, the supreme representative of the Crown in India, was formerly connected in a special way with the province of Bengal, having his headquarters at Calcutta, its capital, the premier of the old three 'Presidencies.' But at the commencement of the present reign, by a significant act of State, the Viceroy's seat was transferred to Delhi, the capital of the ancient empire of the Moguls, which occupies a central position in Northern India. There, and at Simla, the Viceroy holds his court, which is the centre of British power, civil and military, in India; and he is the supreme head both of the military and the civil forces, throughout the territories of British India. The Viceroy is appointed directly by the Crown, on the advice of the Cabinet as a whole, and usually holds office for five years.

Governor-General in Council

To assist him in his countless duties, the Viceroy is provided with an Executive Council, consisting of a few distinguished persons, of whom three, at least, must have been in the service of the Crown in India for at least ten years, and one (the 'Legal Member') must be a barrister or advocate or pleader of at least ten years' standing. If a military officer is appointed a member of this Council, he cannot hold any military command in India during his membership; but, by a recent

amendment, a long and disturbing controversy has, for the time at least, been settled, by rendering it possible, though not compulsory, for the Commander-in-Chief to be appointed an Ordinary Member of the Viceroy's Executive Council, with precedence next after the Viceroy. The Governor of the province in which the Executive Council meets is no longer an Extraordinary Member. The Ordinary Members of this Council are appointed, not by the Viceroy, but by the Secretary of State, and by custom hold office, like the Viceroy, for five years; and, though the Viceroy may, on his own responsibility, adopt or reject any measure whereby, in his judgment, the 'safety, tranquillity, or interests of British India, or any part thereof, are, or may be . . . essentially affected,' yet the control and direction of the general affairs of British India are, in the ordinary way, in the hands, not of the Viceroy alone, but of the 'Governor-General of India in Council,' *i.e.* the Viceroy and his Executive Council.

The Legislature of India

For more than half a century, there has also been, in and for British India, a Legislative Council, which, as its name implies, is concerned with the discussion and passing of laws; but, until recently, the Legislative Council consisted merely of the members of the Viceroy's Executive Council, with the addition of a few other members nominated by the Viceroy. The number of these additional members was from time to time increased; and the proportion of nominations of unofficial persons, European and native, was gradually enlarged. But a most important step was taken in the year 1909, when an Imperial Act of Parliament was passed to enable the Governor-General in Council to make Rules (to be laid before Parliament) by virtue of which elected representatives of India might be sent

to the Legislative Council; and, ten years later, an even more important step was taken, by dividing the Legislative Council into two Chambers—a Council of State and a Legislative Assembly. The former is to consist of not more than sixty members, of whom not more than twenty may be officials, though there need not necessarily be any elected members. The latter is to consist of 140 members, of whom 100 must be elective, and, of the remainder, only 26 are to be officials. Members of the Council of State hold their seats for five years, those of the Assembly for three; but either Chamber may be sooner dissolved by the Viceroy, though not more than nine months (normally six) may elapse between a dissolution and a new session of the dissolved Chamber. Moreover, though it is clearly not intended that Responsible Government in the full sense of the phrase (pp. 64–65), shall at once be introduced into the Viceroy's administration, yet an interesting step in that direction is taken by the provisions that every member of the Viceroy's Executive Council shall be nominated a member of one of the Chambers of the Legislature, and that, from the members of the Legislative Assembly, 'Council Secretaries' may be appointed to assist the members of the Executive Council. Moreover, the severe restrictions formerly limiting the procedure and scope of the discussions in the Legislative Council are largely (though not entirely) removed; and it is expressly provided that a Budget statement shall be laid annually before both Chambers of the new Legislature.

Acts of the Indian Legislature

The laws passed by the Indian Legislature are binding throughout the whole of British India, as well as on Indian subjects of the Crown anywhere; but they require, of course, the assent of the Crown, which is given or withheld by the Viceroy or Secretary of State in manner ex-

plained in describing the legislation of Dominion governments (p. 71). Needless to say, moreover, that if they conflict with any Act of the Imperial Parliament extending to British India, they are so far void; while their scope is limited by the exceptional power conferred on the Viceroy, on occasions of emergency, of issuing Ordinances, valid for six months, subject to disallowance by the Crown, on the advice of his Executive Council alone.

The Indian Civil Service

As has been hinted above, the main burden of the daily government of British India rests upon the shoulders of the Covenanted Civil Service, a body of men recruited by strictly competitive examination from the most highly educated young men of the United Kingdom and India itself, who devote the best years of their lives to the service of India, and who may rise to the responsible duty of governing huge provinces, or of acting as the heads of departments of State at headquarters, or even of serving on the Councils of the Viceroy or the Secretary of State. There are no rigid rules of promotion, which goes partly by seniority, but, in the higher ranks, by merit, as observed by superiors, especially by the Provincial Governors and Administrators, in whose hands, and in those of the Viceroy, lies the responsibility of patronage within the service. Needless to say, the duties of those who carry on the government of India are not confined to the elementary tasks of defending the country against foreign attack, and maintaining order, or even of dispensing justice in the ordinary sense of the term. It is true that this latter task is of supreme importance in a country like India, which suffered for ages from corruption and oppression; and there is a highly organized and admirable judicial service in British India (p. 306), the higher posts in which are filled by persons directly appointed by the Secretary of State from

the ranks of advocates in the United Kingdom or India itself, or from Indian officials of judicial experience, from whose decisions there lies an appeal to the supreme tribunal of the Empire, the Judicial Committee of the Privy Council, which sits in London (p. 293). But, beyond these tasks, the Civil Servants of India are concerned with developing the resources of the country, its mines, forests, and rivers, with averting drought and famine by the extension of the water-supply, with facilitating intercourse by means of railways, with relieving distress caused by famines and catastrophes which cannot be averted, and with providing education for the teeming millions of India. In these many tasks, they naturally call in, if occasion requires it, the temporary assistance of the outside expert; and they are assisted in the clerical and subordinate parts of their work by a Provincial or Uncovenanted Civil Service, recruited almost entirely from the natives of India. But the burden and responsibility rest chiefly, it must again be said, on the members of the Covenanted Civil Service, whose services have done so much to render British rule in India not merely possible, but respected and trusted.

It would be wrong, however, to allow the reader to carry away the impression that the government of India, even in India itself, is centralized in the court of the Viceroy at Delhi or Simla. India is not a country of one nation, but of many nations; and the old racial and political divisions, which existed before the country came under British rule, have not been obliterated. These divisions are known generally as 'provinces'; but, in fact, they are of different degrees of importance and civilization, and have different forms of government under the supervision of the Viceroy.

The Provinces of India

The oldest and most important are the three original 'Presidencies,' now the provinces of Madras, Bombay,

and Bengal; and on these, together with the 'United Provinces' (Agra and Oudh), the Punjab, Bihar and Orissa, the Central Provinces, and Assam, the statute of 1919 has conferred great powers of local self-government, amounting in fact, though within a restricted list of subjects, to Responsible Government in the full sense. The 'Governor's Provinces' are not merely endowed with Executive Councils, but with salaried 'Ministers,' chosen from among the elected members of the local legislature, and holding their offices only so long as they retain their seats. These Ministers, though they are not members of the Executive Councils, advise the Governor in the administration of 'transferred subjects,' *i.e.* matters treated as suitable for provincial self-administration. The choice of such subjects has not yet been finally made; and a good deal of the importance of the new legislation will depend upon it. But the Act of last year also extends the powers of the Provincial Legislative Councils set up by the legislation of 1909, and provides that not less than seventy *per cent.* of their members shall be elective. Subject to the assent, not only of their own Governors, but of the Governor-General, and subject also to the reservation from discussion of certain subjects, the Provincial Legislative Councils may make laws for the peace and good government of their respective provinces; and the annual Budget for the province must be submitted to its Legislative Council, in the form of demands for grants, though there are provisions for enabling the Governor to mitigate the effect of a refusal of supplies, especially in 'reserved subjects,' *i.e.* subjects not handed over to 'Ministers.' In a Lieutenant-Governorship, the Lieutenant-Governor is assisted by a Legislative Council, of whose members some at least may be elective. But the powers, legislative and financial, of the Legislative Council in such a province are much more restricted than those of the legislature of a 'Governor's Province.'

The provinces of the less advanced districts of India, the North-West Frontier Province, Biluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and others, are under the administration of Chief Commissioners, also appointed by the Viceroy; and new provinces of their type may be created from time to time by the Governor-General in Council, with Legislative Councils of not more than thirty members, nominated or representative. A less advanced province may also be promoted to the rank of a Governor's Province, as was done last year (1922) in the case of Burma. In these provinces, again, it is the duty of the Commissioner to keep the Viceroy thoroughly informed of the progress of affairs, to obey his instructions, and, generally, to carry out his policy. For, it must be carefully remembered, the Government of India is not, like the Government of Canada or Australia, a federal Government, but a single government which, as a matter of convenience, entrusts large powers to local authorities, but which reserves the right to control those authorities when it sees fit to do so.

Principles of British Indian Government

Before leaving the subject of British India, it may be well to call attention to three rules affecting the government of that dependency, which are of the first importance for the welfare of the Indian peoples, and which have been laid down by Parliament for the guidance of those to whom the government of India is entrusted.

Finance

The first relates to the subject of Indian finance. For centuries before the establishment of British rule in India, the native populations had been ground under

the heel of military despotisms, which wrung from them every penny of their hard-earned savings, and stifled all industrial and commercial enterprise by plundering all who showed the least signs of prosperity. The unbending rule of British administration is, that the revenues of British India are to be applied for the government of India alone, that no expenditure is to be incurred, even for that purpose, without the approval of the Council of India (pp. 84–5), and that the accounts of all expenditure, duly audited by an official who holds his post, like the judges, without fear of arbitrary dismissal, shall be laid before the Imperial Parliament every year. It is to be feared that the 'Indian Budget,' as these accounts are called, does not excite as much interest as it should in the British House of Commons; for the firm belief which prevails, in the upright and wise administration of the Government of India, renders British members of Parliament unwilling to spare the time and labour necessary for the study of a difficult and complicated subject. But, if the slightest suspicion of illegal practices arose, there are many members of the House of Commons who would spare no pains to drag the facts to light, and exact reparation; while recent events have shown that the Secretary of State for India is responsible in a very real sense for the efficient conduct of the affairs of India.

Responsibility of Officials

A second most important rule is, that Crown officials in British India are responsible, like Crown officials throughout the rest of the Empire, both criminally and civilly, for their acts done both in the conduct of their official duties and in their private capacity. It is true that the Viceroy, the Governors, and the members of Executive Councils, are not subject to the original jurisdiction of any Indian High Court for any act done in their public capacity only; nor are they, nor any

members of such High Courts, liable to be arrested or imprisoned in any proceeding in such High Courts, nor are they liable to any original criminal jurisdiction of such High Courts, except for treason or felony. Moreover, any High Court must accept as justified any act done under written orders of the Governor-General in Council (pp. 86–7), except as regards European British subjects. But, subject to these necessary exceptions, any official committing any offence against any person under his authority is liable to prosecution in the Indian High Courts, as well as in the English High Court after his return to Great Britain; while there is a special list of misdemeanours which cover all derelictions of duty by officials.[1] No Government which was not firmly determined to rest its authority on justice and uprightness could possibly recognize such a rule in a country like India, where personal authority is the chief guarantee of the safety of the State. It may well be doubted whether the Indian peasant realizes the nature of the powerful protection which this important rule throws over him; but he cannot fail to realize, in a dim way, that the Power which controls his life is as just as it is strong, and that corruption and oppression are not features of the British Raj.

Employment of Indian Army

Thirdly, it is carefully provided by the Government of India Act that, while it is necessary for the tranquillity and defence of India that a standing army should be maintained out of her revenues, this army shall be used neither to gratify the ambition of an enterprising Viceroy, nor to enable the Imperial Government to gamble in European politics. It is

[1] One of the most stringent and wholesome of these makes it a penal offence for any higher official or revenue collector to be concerned in trade in India, otherwise than as a member of a joint-stock company.

easy to imagine the use that would be made by an autocratic European State, based on military ideals, of the warlike races of Northern India, who would like nothing better than to set out on a career of conquest under military leaders equipped with all the resources of science. As a matter of fact, the British army in India consists partly of troops raised in the United Kingdom and forming part of the British regular army (p. 192), partly of native regiments, voluntarily recruited, and led by European officers, and partly of European volunteers resident in India. But it can only be used outside India with the approval of the Imperial Parliament; and it is never so used except in cases of real emergency. Moreover, though the cost of its equipment and maintenance in India is, naturally, borne by the revenues of India, the cost of maintaining Indian troops during their rare appearances in Europe is borne by the Imperial Exchequer, to which India does not contribute. An important legal consequence of these facts is, that the native Indian Army does not come under the provisions of the Army Act, to be hereafter explained (p. 192), nor is it affected by the well-known rule laid down by the Bill of Rights against the maintenance of a standing army in time of peace without the consent of Parliament (p. 190). It is governed by Articles of War issued by the Governor-General of India in Council. At the outbreak of the great war, its numbers were approximately as follows: British troops raised in the United Kingdom and forming part of the British 'regular' army, 77,500; native troops officered by Europeans, 159,000; in addition to Indian reserves of 36,000, and European 'Volunteers' in India, 39,000.

British Protectorates

It now remains only to allude to those states and territories which, though not forming part of the

British Empire, are so closely connected with it that a brief account of their relationship to it is essential to an understanding of the government of the Empire.

Feudatory States of India

The first and most important class of these states is the feudatory States of India, *i.e.* those states in the Indian Peninsula which are governed by their native rulers, but which acknowledge the suzerainty of the British Crown. The precise relationship of each with the Indian Government is settled by the terms of a treaty; but, in substance, the Imperial suzerainty in each is expressed by the three rules: (1) that they must not enter into any direct relations with foreign states, (2) that the size of their armies is limited, and (3) that they must accept the general advice of a British Resident, who is a Crown official, and who keeps the Indian Government in touch with their affairs. This important personage naturally looks after the interests and welfare of British subjects resident in the feudatory states. But a wholesome rule forbids any European to be attached to the court of a native ruler without the permission of the Imperial Government; and any British subject who lends money to any Indian Prince or Ruling Chief, is guilty of a punishable misdemeanour. In time of war, the Princes of the feudatory states are expected to assist the Indian Government; and one of the most interesting developments of this policy, voluntarily suggested by the Native Princes themselves, is the growth of the Imperial Service troops, *i.e.* bodies of native soldiery raised and maintained by the Princes, but regularly inspected by British officers sent for the purpose by the Viceroy. At the outbreak of the great war, these troops numbered upwards of 21,000, and were freely offered for the defence of the Empire by their rulers. On the other hand, the Indian Government recognizes

its responsibility for protecting the Native States from external attack, and, if necessary, for maintaining internal order and good rule within their borders. For this purpose, British Courts may, if necessary, be established in them by the Crown by Order in Council, under the provisions of the Foreign Jurisdiction Act of 1890; and this power has been delegated to the Governor-General in Council by an Order of the year 1902. But neither British nor British Indian law is, generally speaking, in force within them.

The feudatory states of India are said to number no less than six hundred; among the more important of them being the great states of Baroda, Mysore, Kashmir, Haidarabad, Gwalior, Travancore, and Bikanir. Beyond this circle lie three others of great importance, whose connection with the British Empire is slighter, viz. the great Emirate of Afghanistan on the north-western, and the independent states of Nepal and Bhutan on the north-eastern frontier. The two latter have political relations with China, but are not allowed to enter into relations with any other state save the British Empire. The latter rule applied till lately to Afghanistan, where, and in Nepal, there is a British Resident. But none of these States owes military allegiance to the British Empire; and Afghanistan is now an absolutely independent State.

Other Protectorates

Beyond the limits of India altogether lie a large number of British Protectorates, over which, though not included in the British Empire, and not, at least in all cases, owing allegiance to the British Crown, the latter exercises great influence. They cannot be classed into different groups on any strict lines; but, broadly speaking, they may be divided into (1) countries which, though the seats of an ancient civilization, have fallen, so far as their native governments are concerned, into a state of weakness which

would, if they were left unprotected, expose them to the plots of adventurers, and (2) countries inhabited mainly by uncivilized races, but in which British colonists have been allowed to settle.

EGYPT

The chief example of the former class was Egypt, with its back territory, the Sudan. Until 1914, Egypt was nominally under the suzerainty of the Turkish Sultans, by whom it had been conquered in the twelfth century, and who treated it as a tributary, though half-independent province, under a line of hereditary rulers known as Khedives.[1] But the internal decay of Turkish rule had invited disturbances; and, since the year 1879, Egypt had been virtually under the control, first of Britain and France jointly, afterwards (from 1883) of Britain alone, exercised through a series of Agents and Consuls-General, who, while nominally acting only as advisers to the Khedive, really directed the acts of the native Ministers. On the outbreak of war with Turkey, which had hitherto been secured in its tribute, in 1914, it was felt that it was impossible for the nominal suzerainty of the Turkish Empire to continue; especially in view of the importance of the great international Suez Canal, and the fact that the reigning Khedive, Abbas Hilmi, openly espoused the enemy cause. Turkish suzerainty was, therefore, in December 1914, proclaimed to be at an end; but still Egypt was not annexed to the British Empire, the Khedivial Crown being conferred on His Highness Hussein Kamel, the lineal representative of Mahomet Ali, the founder of Egyptian independence. But the appearance of British rule was strengthened by the conversion of the Consul-Generalship into a High Commissionership,

[1] These rulers had been virtually independent of Turkish control since 1805.

the holder of which office was appointed by the British Crown, and virtually controlled the Egyptian Government under the direction of the British Foreign Office. There is a considerable native army in Egypt, led by, and largely the creation of, British officers, at the head of whom stands the Sirdar; and a varying number of troops of the regular British army is quartered there. By virtue of certain 'capitulations,' or treaties with Turkey, consular courts of justice have been set up in Egypt for the protection of British and other European residents; but the great legal reforms at present being carried out in Egypt under the guidance of British and French experts will, probably, soon render possible the establishment of a uniform judicial system for natives and foreigners alike. This probability has been strengthened by the resolve, reached after critical negotiations, of the Imperial Government to proclaim the sovereign independence of Egypt, in the spring of 1922. Egypt is, therefore, no longer even a Protectorate of the Empire. But the special British interests involved led the Imperial Government, in its formal declaration, to reserve the right of safeguarding the communications of the Empire in Egypt, of defending Egypt against foreign aggression, and of protecting foreign interests and minorities in Egypt. The position of the Sudan, which, since its conquest by General Kitchener in 1898, has been under joint British and Egyptian sovereignty, really exercised by a British Governor-General, remains unchanged.

African and other Protectorates

The other great class of British Protectorates consists, as has been said, of those countries in a backward state of civilization, in which British traders and colonists have been allowed by the native rulers to settle, and in which the British Empire has, therefore, considerable interests. Even in this class there is no uniformity. Some of these territories, such as Nigeria, Swaziland, British East Africa, Somaliland, Uganda,

and the Western Pacific, are almost Crown colonies, under the rule of Commissioners or High Commissioners appointed by the Crown, sometimes directly responsible to the Colonial Office (as in the Western Pacific), in others to a superior Colonial official (as in the case of most of the South African group), sometimes assisted by councils appointed by the Secretary of State (East Africa and Nyasaland), sometimes not, sometimes (as in Somaliland and Uganda), exercising jurisdiction over British subjects and natives alike, sometimes (as in Nigeria and Nyasaland), only over British subjects. The precise conditions in each case can only be ascertained by reference to the order in Council relating to the Protectorate. In this connection, however, it should be specially noted that, by an important Act of Parliament, the British Settlements Act of 1887, power is conferred on the Crown to establish, by Order in Council, laws and institutions which shall bind British subjects in such countries, in spite of the general rule previously explained (p. 62).

Chartered Companies

Other members of this class are really territories colonized by the efforts of Chartered Companies, such as the area of Northern Rhodesia, which until next April will continue to be administered by the British South Africa Company, through administrators appointed by it with the approval of the Colonial Office, and assisted by executive or even (in British North Borneo) legislative councils, comprising unofficial representatives of the settlers.

'Spheres of Influence'

Beyond these, again, there is an outlying fringe of tropical or oriental states (such as Zanzibar, the Malay States, and Brunei), in which British influence is practically confined to excluding dealings with foreign

Powers, giving advice through a resident representative at the court of the native ruler, and establishing consular courts, under the powers conferred by the Foreign Jurisdiction Acts, for the protection of British subjects. Through these 'spheres of influence,' the power of the British Empire finally fades away into areas, the intrusion into which of foreign Powers is resented, but which owe neither allegiance nor submission to the British Crown. Among these, the countries, such as Mesopotamia and Palestine, in regard to which a 'mandate' has been entrusted by the Peace Conference to the British Empire, will, in the future, occupy an important place. But it is too soon, in view of the uncertainty as to the extent and terms of these 'mandates,' to attempt any description of them.

CHAPTER V

THE IMPERIAL CABINET

LIKE the Imperial Parliament, that peculiar institution which we call 'the Cabinet,' and which is the real depositary, for the time being, of the powers of government, is purely English in origin, and is one of the many experiments in the art of government which England has shown to the world. Like the Imperial Parliament, also, it has expanded, from a purely English origin, to include the other countries of the United Kingdom, and, finally, all the territories of the Empire. Happily, by virtue of its greater flexibility, it has been found more easy to adapt it, than Parliament, to the performance of Imperial duties.

Something has already been said (pp. 34–36) of the events which brought Cabinet government into existence; but the Cabinet is so mysterious and so informal a body, that it is difficult to explain its working and character without dealing a little further with its history.

ORIGIN OF THE CABINET

When it became clear, after the Restoration of Charles II, that the old system of personal government by the King, acting on the advice of his Privy Council, was doomed, there was a period of doubt and hesitation, which lasted for more than half a century. In spite of the Civil War, it is possible that, if Charles II and his immediate successors had been able and honest

men, willing to devote themselves sympathetically to the task of governing the country, the old system might have survived in a slightly modified form. Certainly the usual reason given for the decline in power of the Privy Council, viz. that it had grown too large, is inadequate—English statesmanship had solved harder tasks than the mere reduction of an official body. But Charles II himself, though able, was frivolous and indifferent to power; his brother and successor was stupid and bigoted; William of Orange, though an able and even brilliant ruler, had his mind fixed on foreign, rather than domestic problems; Anne was weak and lethargic; George I and his son knew little of England, and cared less. And, in contrast with this indifference and frivolity, there lay deep in the minds of sober people, though not altogether with affection, a memory of that great Parliamentary struggle which had brought Charles I to the block, and had been followed by a period in which the power and grandeur of Cromwell's rule had made England respected, as never before, in the world. It was to Parliament then, and especially to the House of Commons, that men's eyes turned.

But the House of Commons itself was, in a sense, a defeated body. It had tried to govern England directly; and it had failed. Whether the 'Rump' Parliament which Cromwell dissolved, or Cromwell himself, was the more popular, or the least unpopular, in the country, it is difficult to say; but Cromwell could truly claim that not a voice had been raised in protest against 'Pride's Purge.' A similar fate had befallen the less ambitious attempt of Parliament to secure indirect control of the government by nominating the Council of State and the Crown's Ministers. This had long been a cherished ambition; but the Protector, in his schemes of a Constitution, would not have it, and his strong, practical sense was justified. Nevertheless, the claim of Parliament to rule England

was sound in essence, if mistaken in form; and, as often happens, was to be achieved by indirect means when direct means had failed.

Ministers in Parliament

For Charles II, who, as he expressed it himself, was determined not to 'set out on his travels again,' soon found that it was easier and safer to cajole and flatter Parliament than to override it; and, as he had none of those moral scruples which were the redeeming features in the otherwise unheroic character of his father, he proceeded to employ confidential agents to 'influence' the votes of its members. At first, he allowed his old-fashioned advisers, such as Clarendon and Middlesex, the Lord Chancellor and Lord Treasurer, to expound their policy laboriously at the meetings of the Privy Council, whilst his secret agents, whose names are only known from unofficial sources, such as diaries and Court gossip, really pulled the strings, and worked up a majority for the Crown in the House of Commons. Sometimes these agents were not even members of the House, but did their work in the lobbies and on the staircases at Westminster. Obviously, however, they had more chance of success if they had access to the House itself, and could thus raise their voices in debate, albeit with caution, in favour of the Crown's wishes. So successful were they, in some cases, that the King actually rewarded them with admission to the Privy Council itself; to the disgust of Ministers of the older type, who saw themselves superseded by unofficial interlopers, who really enjoyed that confidence which the King denied to his official advisers.

Unpopularity of System

This was a very bad kind of government; and it is satisfactory to know, that both William of Orange

and the honester spirits in Parliament thoroughly detested it, and did their best to defeat it. William of Orange would never admit that he ought to leave himself in the hands of his advisers, or be dictated to in choosing them.

The Act of Settlement

In fact, Parliament after one or two unsuccessful attempts, managed to pass into law, by the Act of Settlement of 1700, a provision by which no one holding an office or place of profit under the King, or receiving a pension from the Crown, should be capable of serving as a member of the House of Commons. This provision, had it been enforced, would have rendered Cabinet government impossible, or would, at any rate, have compelled the Cabinet to draw its members from the House of Lords exclusively.

The Place Acts

Happily, as it became clear that Cabinet government was the best solution of the pending question, how England was to be governed, this provision of the Act of Settlement (which was not to take effect till the death of Queen Anne) was repealed, and a new one substituted by the Succession to the Crown Act of 1707, to the effect that any member of the House of Commons, accepting a place of profit, or pension at pleasure, under or from the Crown, should, *ipso facto*, vacate his seat, and be incapable of election; except that persons accepting offices originally created before October, 1705 (the date of the Act of Security, which first attempted this compromise), might be afterwards elected, or re-elected, to the House of Commons. This compromise, with certain minor alterations, of which the most important is the disqualifying not merely of pensioners at pleasure, but of all pensioners

(with a few exceptions), remains in force at the present day as a foundation principle of the Cabinet System; and the rule of exclusion has been extended to persons holding Government contracts, to the judges, and to a few other classes of officials. It does not, however, apply to the holders of naval or military commissions; though officers on active service may be forbidden to take any prominent part in politics. Nor does it, curiously enough, extend to the so-called 'Parliamentary' Under-Secretaries of State, because these persons, though they receive salaries from the Exchequer, do not hold office directly under or from the Crown; being appointed by their official chiefs.

The Party System

For, as has been hinted, the opposition to the appearance of Ministers of the Crown in the House of Commons was doomed to defeat. The Revolution of 1688 practically placed the internal government of the country in the hands of a few leading statesmen, from whose ranks the King or Queen, whether he or she liked it or not, was in practice obliged to choose the Crown's Ministers, because no one outside had the necessary knowledge and authority. But these statesmen (such as Danby, Somers, Nottingham, Sancroft, Halifax, and Clarendon), though they reluctantly combined to offer the crown to William, were really divided in sentiment between the old royalist and the Parliamentarian ideas; and, when it became clear that, on the death of Queen Anne without children, the duty of choosing a successor would again fall upon Parliament, the two parties, Jacobites (or supporters of the 'Old Pretender') and Hanoverians (or favourers of the new Hanoverian line), began rapidly to organize their forces in the country for the coming struggle, and thus laid the foundation of the modern Party

System, on which the Cabinet rests. The Hanoverian party, or Whigs, won the first round, by procuring the passing of the Act of Settlement, before referred to (p. 4), which secured the Crown to the Hanoverian line. But the Jacobites, or Tories, very nearly brought off a counter-revolution on the death of Anne; and only by the narrowest margin was George I safely seated on the throne.[1] Consequently, George I and George II were compelled to do what William had always flatly refused to do, viz. choose their Ministers from one party only, and that party the Whigs, because the Tories hardly disguised their intention (which took open form in 1715 and 1745) of trying to restore the line of James II. It was during the reign of George II especially, that the Cabinet System was definitely worked out and established by Sir Robert Walpole, who, as he said, would 'Whig it with anybody; but 'ware Tory.' It was not, in fact, until the accession of George III, an English-born King, that the Tories became even luke-warm supporters of the Hanoverian line; and, even then, George III, who hated the Cabinet System, and desired to return to personal rule, chiefly made use of them to destroy Walpole's work.

Appearance of New Parties

But the system had taken too firm root to be torn up, even by the industry and resolute will of George III; and when, after the disastrous loss of the American colonies, and the failures of the war with France, Lord North's Ministry, which merely carried out the King's wishes, fell with a crash, personal government disappeared, and the Tory party, under the masculine guidance of Pitt, became as loyal to the Cabinet and Party System as the Whigs.

[1] Those who care to get a good idea of this crisis in a delightful form should read Thackeray's *Esmond*.

Radicals

In the first half of the nineteenth century, the fierce names of 'Tory' and 'Whig' (originally terms of abuse) were replaced by the milder titles of 'Conservative' and 'Liberal'; and the change marked the growth of a calmer feeling in politics, whilst the appearance of a third, or 'Radical' party, though it ultimately coalesced with the Liberals, showed that the new class of intelligent artizans created by the industrial revolution in the North, was determined to take its share in the government of the Empire.

Home Rulers

The growth of Irish feeling which demanded the repeal of the Act of Union of 1800 (p. 58*a*), gave rise to a fourth or 'Home Rule' party in the last half of the nineteenth century; though this can hardly be reckoned as part of the Cabinet System, because its members steadily refused to accept office from the Crown, even after their policy had been made part of their own programme by the official leaders of the Liberal party. The chief result, in fact, of this last step, so far as the Party System was concerned, was to cause a split in the Liberal ranks, and throw over many of the more sedate members of that party into the ranks of the Conservative party, which thereupon assumed the more sectarian title of 'Unionist.'[1]

Labour

On the other hand, the older type of Radical, dating from the beginning of the nineteenth century, the disciple of Bentham and Mill, began to merge indistinguishably in the Liberal ranks, while the newer type of artizan politician began to assume the designa-

[1] There was a temporary intermediate stage known as 'Liberal Unionism,' on which some of the emigrants rested for a while.

tion of 'Labour,' and, like the Home Ruler, to separate himself from other parties, and rest upon the powerful Trade Union organization. There is, however, this important difference between the Irish Home Ruler and the Labour Member, that the latter does not always object, if he can get satisfactory terms, to join the Ministry; and there is no reason to suppose that, despite sectional differences in its ranks, the Labour Party as a whole, if it were in a majority in Parliament, would object to form a Government.

Conventional Character of Cabinet System

Having thus attempted to sketch the history of the Cabinet system, and the changes of parties on which it rests, we may now set out briefly the rules which govern its working. One very remarkable thing about these rules is, that they do not rest (for the most part) on express law, much less on Act of Parliament, but merely upon custom and public opinion. Thus, for example, no court of law could take notice of the fact that a Minister had refused to resign office when he ought, by the rules of the system, to have done so, or the fact that an Order in Council, though nominally made by the King and Privy Council, was really the work of a single member of the Cabinet. Such errors, if errors they be, are left to be visited solely by the political action of Parliament or the electorate. As a consequence, it is impossible to give more than a vague authority for these really important rules. Another consequence is, that the rules themselves can be modified with extraordinary ease if circumstances demand it. This latter consequence has its good, as well as its doubtful side.

The King acts on the Advice of the Cabinet

(1) The first rule of the Cabinet system is: that the King, in return for the immunity from personal censure

or criticism guaranteed him by the maxim that 'the King can do no wrong,' places the whole of the executive machinery of the Crown, and, with the rare exceptions beforealluded to (pp. 43–45), the whole of the vast powers and prerogatives of the Crown, described in Chapter I, at the disposal of the Cabinet as a whole. This result was not attained without a sharp struggle. Domestic affairs, at any rate secular affairs, and the political patronage connected with them, were early secured by the Cabinet. 'As for your scoundrels of the House of Commons,' said George II to Walpole, 'you may do as you please.' But His Majesty demurred to allowing his Ministers any voice in the management of navy or army; and it was only by slow degrees that Cabinet control in these quarters was secured. The management of foreign affairs,[1] and the disposal of the higher ecclesiastical patronage of the Crown (pp. 322–323), were for long subjects of contest; till the middle of the nineteenth century, the monarch was reluctant to relinquish personal authority in these directions.

Resulting Popularity of the Crown

We need not repeat the discussion attempted in a former part of this book (pp. 40–45), as to the effect of this rule of the Cabinet System on the personal position of the King and the character of the monarchy. It is sufficient to point out here that, so far from weakening the hold of the Crown on the affections and loyalty of its subjects, it has immensely increased it. In fact, it is hardly going too far to say that, but for its adoption, the monarchy would have long ago ceased to exist. George I and George II were aliens who aroused no enthusiasm in the hearts of their British

[1] It will, of course, be observed, that the much-debated question of 'secret diplomacy' is not a question between the King and Ministers, but between Ministers and Parliament. This question is dealt with later (pp. 235–236).

subjects, and whose distant ties of blood with the English Royal House were too faint to awaken the hereditary loyalty of the people. The accession of George III was popular, as that of a native-born ruler. But, despite his personal virtues, 'Farmer George' rapidly lost his popularity by attempting to force his personal will upon the policy of the State—in other words, by refusing to accept the first principle of the Cabinet System; and it was not till disastrous failure and illness compelled him to give way, that he became popular once more. The reigns of George IV and William IV were too short to allow much test of the system; but the long reign of Queen Victoria, who, though not without some wavering in its early years, loyally accepted the principle under discussion, placed the throne firmly on a basis of popular approval which renders it not only the most splendid, but the most secure throne in the world.

(2) The second rule of the Cabinet System is, that the exercise of the powers and prerogatives thus ceded by the Crown shall be entrusted to a comparatively small body of leading statesmen, unknown to the law, but designated in popular language as the 'Ministry' or 'Cabinet.' But these terms, though used indifferently in ordinary speech, are not synonymous.

THE 'MINISTRY'

The 'Ministry' includes the whole of the Crown officials 'responsible to Parliament,' *i.e.* those officials who occupy seats in Parliament, and resign office at once if Parliament, *i.e.* the House of Commons, expresses disapproval of their policy. Whether they all resign, or only the Minister specially affected, is a delicate problem, to be settled by the circumstances of each individual case. If the disapproval of Parliament is based on purely administrative or executive conduct, the work of a single department, the Minister

in charge of that department alone resigns; unless his colleagues choose to identify themselves with him. But if the action (or inaction) condemned by the House was the result of the deliberate policy of the Cabinet, then the whole Ministry tenders its resignation.

It is this liability to loss of office on political grounds which distinguishes all the members of the 'Ministry' from the great mass of the civil servants of the Crown; though in legal position all, or nearly all, Ministers and non-political officials alike, stand on the same footing. With the rare exceptions of the judges (p. 13) and a very few other officials of exceptional importance, such as the Comptroller and Auditor General, who hold their offices during good behaviour (*quam diu bene se gesserint*),[1] all the servants of the Crown hold their offices during the Crown's pleasure (*dum bene placito*), and can, in theory, be dismissed at a moment's notice, without reason assigned. In substance, the great majority of civil servants are, as has been said, recruited by a system of examination, and (unless the contrary is distinctly specified at the time of their appointment), hold their position in the Government service for life, or until they reach the age limit or resign. They are thus known, though not with legal accuracy, as the 'permanent' civil service, and, as has been said, stand in sharp contrast with the members of the Ministry, who are liable to loss of office on political grounds. Again, it should be pointed out, that this liability to resign is not a legal obligation; though, doubtless, an official who refused to resign could be dismissed by the Crown if he remained obstinate. In fact, there is one well-known case in which a former King sent for a Minister's 'seals of office,' without giving him an opportunity to resign; but this action was universally condemned, as would be any attempt by the King, except in the clearest circumstances, to

[1] A few (*e.g.* the members of the Council of India) hold for a fixed period of years, subject, of course, to good behaviour.

hasten or influence the resignation of Ministers. But the extremely awkward position which a Minister would occupy in Parliament if he clung to office after his exercise of it had been condemned, is sufficient to ensure obedience to the rule of resignation.

The 'Cabinet'

Within the Ministry, however, the real control of the policy of the Government is exercised by a body known as the 'Cabinet,' which comprises a smaller or larger group of leading statesmen, each of whom enjoys, or is at least supposed to enjoy, the confidence of the country, and to exercise a real influence on the policy of the State. There are more than one remarkable feature in the nature and work of the Cabinet, which must be treated separately.

In the first place, the Cabinet is, as has been said, a body wholly unrecognized by law. It is often described as an 'informal committee of the Privy Council'; and there is something in its origin and nature to justify this description. For the Cabinet has, undoubtedly, taken the place in the government of the State previously occupied by the Privy Council; its members are always made Privy Councillors, and take the Privy Councillor's oath of secrecy; and the more formal resolutions of the Cabinet may be issued in the form of Orders in Council (pp. 17–18), though as a matter of fact, they are never discussed at a meeting of the Privy Council at all.

Formal Meetings of the Privy Council

A meeting of the Privy Council held by the King is, in fact, now a purely formal assembly. The Lord President of the Council (p. 244), or some Minister (usually the Lord Privy Seal) acting on his behalf, is always there; while the other members present (as a rule three) may include any Minister whose department is concerned with the business to be submitted,

one of the great Officers of State (p. 247), and any other member of the Council (generally a member of Parliament or of the Royal Household). The presence of these persons is required for the King's formal sanction to Proclamations and Orders previously approved by the Cabinet, or, in minor matters, by a Minister in charge of a department. The really essential person on such occasions is the Clerk of the Council, who enrols in accurate form on the Minutes of the Privy Council, and identifies with his signature, the various documents approved. Thus it will be seen that, if the Cabinet is a committee of the Privy Council, it is a committee which acts with complete independence of its parent body.

Moreover, it is not, as a real committee of Council would be, appointed, even formally, by the Privy Council, or by the King. It is a body formed by the Prime Minister, *i.e.* the person entrusted by His Majesty with the task of forming, not a Cabinet, but a Ministry, who, out of the persons whom he selects for recommendation to the King for appointment to various Crown offices, further selects a limited number to form the Cabinet. No doubt, in submitting his list of Ministers, the Prime Minister indicates also his choice of a Cabinet; but, in strictness, the King, though he can, at least nominally, refuse to appoint a particular person as a Minister, or even to make him a Privy Councillor, cannot object to the inclusion of any person in the Cabinet, which is, as was said before, a body unknown to the law. He could, no doubt, by striking his name off the Register of the Privy Council, in effect exclude even an existing Privy Councillor from the Cabinet; because it would be a breach of confidence for the other members of the Cabinet to talk State secrets to an outsider. But that would be an extreme measure, which would probably cause the resignation of the Prime Minister; because it would show that the King had ceased to trust him.

The Prime Minister

The Prime Minister is then, really, the important person, both in the making and continuance of a Cabinet; for he not only selects its members, but summons, not through the Clerk of the Council, but through his own private secretary, meetings of 'His Majesty's servants,' to his own house (which need not be, though it generally is, an official residence), at any time that he likes, and as often as he deems it expedient. Moreover, he may even include in his Cabinet, as has been done on many occasions, 'Ministers without portfolio,' *i.e.* persons not holding any office, or holding only nominal, or 'sinecure' offices, under the Crown. This is a practice which has often been looked askance at, especially by Parliament, which likes to make the actual holders of the great offices responsible for the general policy of the Government. But its lawfulness is undoubted, or, at least, as undoubted as anything can be about so vague a body as the Cabinet; and, indeed, it has now been formally sanctioned by a recent statute, which allows not more than three salaried Privy Councillors, holding no offices, to sit in the Commons. Further than that, a Prime Minister quite lately took the bold, but extremely popular, step of including in the Cabinet a Dominion ex-Minister, who, though he was a Privy Councillor, was not, and never had been, a member of the Imperial Parliament at all. There could be no better illustration of what is rightly called the 'flexibility' of the Cabinet System, *i.e.* the power to adapt it, quickly and without fuss, to emergencies.

Numbers of Cabinet

Another curious point about the Cabinet is the variations in its numbers. At first it consisted only of a handful of persons, some six or seven, who met in a perfectly informal way, often at the dinner-table.

Gradually it grew in size, partly to cope with the growth of State business, partly to strengthen the Government by enlisting in its support persons who were supposed to command influence in the country. At the outbreak of the European War, it had become, in the opinion of many people, unduly large, sometimes exceeding twenty in number; and its deliberations were said to be assuming much more the character of set debates than of short, informal talks. If so, it was virtually reproducing the old Privy Council, which, by reason (amongst other things) of its bulk, ceased, more than two hundred years ago, to do real business (p. 103). But the weakness of such a large Cabinet was shown in the early stages of the European War; and, as is well known, in December, 1916, the then new Prime Minister made a drastic change, by reducing its numbers to five (the so-called 'War Cabinet'), afterwards increased to six by the popular step recently alluded to. The obvious design of this change was, of course, to create a small, highly concentrated, and expeditious body, which should devote the whole time of its members to questions of general policy arising out of the war, especially those needing instant handling, while leaving all the other Ministers to devote themselves exclusively to the working of their own particular departments. The dangers of this plan, as well as its merits, are obvious; the chief being that it leaves individual Ministers free, subject to the nominal control of a Cabinet which is, presumably, fully occupied with other work, to pursue their own plans, regardless of the plans of their colleagues in other departments, and thus to risk the growth of two of the chief vices of bureaucracy, viz. sectional rivalries and overlapping. Accordingly, it has been abandoned since the armistice.

Cabinet Records

Yet another very striking feature of the work of the Cabinet is, or rather was, until recently, the fact that

it kept no formal record of its meetings. As a recently retired Prime Minister of great experience said, in the House of Commons, on the famous occasion of December, 1916, it was 'the inflexible, unwritten rule of the Cabinet, that no member shall take any note or record of the proceedings except the Prime Minister, and the Prime Minister does so for the purpose—and it is the only record of the proceedings kept—of sending his letter to the King.' It is easy to see how this rule grew up—it is not convenient to interrupt one's dinner for the purpose of framing formal resolutions, or to keep a hungry scribe in the background for the purpose. But it is one thing to explain the origin of a rule, and quite another to justify it; and it is hardly in accordance with British traditions of business capacity, that the vast responsibilities and momentous decisions of the Imperial Cabinet should depend for their execution on the casual memories of informal conversations. Accordingly, it was with some relief that the nation learnt, on the occasion alluded to, that a more business-like method was in the future to be followed, and that a record of every decision would be sent by the Prime Minister's secretary to every member of the Cabinet, and, if necessary, to any department or Minister affected by the decision.

Relations between the Prime Minister and his Colleagues

Before leaving the subject of the composition and work of the Cabinet, it is necessary to say a few more words about the peculiar position occupied in it by the Prime Minister; but this is not easy, because the position depends largely upon the personal character of the Prime Minister for the time being, and the circumstances of the time.

It is, however, at least possible to point out, that there is no such office as that of Prime Minister, and

that, until recently, even the position of Prime Minister was not officially recognized. The real founder of that position, Sir Robert Walpole, as is well known, disliked the title, and refused to allow himself to be called by it; being unwilling, with his customary shrewdness, to give occasion for jealousy. While he loved the reality of power, he was indifferent to the appearance of it; and the wise example which he set was long followed by his successors. Further than that, it was long a matter of uncertainty which of the actual offices in the Government the Prime Minister should hold; sometimes that of Chancellor of the Exchequer, sometimes that of Foreign Minister, sometimes that of First Lord of the Treasury. Gradually, however, this last office was found to be the most suitable; partly because it involved, as will be subsequently explained (p. 216), little or no actual official work, partly because the commanding position of The Treasury (p. 215) gave its nominal chief a pre-eminence in the official world, especially in the matter of patronage. At last, however, the position of Prime Minister received official recognition by the issue of a Royal Warrant, in the year 1905, directing that he should have precedence, in all State ceremonials, immediately after the Archbishop of York; and the curious, though not really important anomaly, of a Prime Minister taking official rank after one of his own colleagues, is now abolished, while the only remaining reason for associating the position with any sinecure office, viz. the necessity for providing the Prime Minister with a salary, has now been obviated by the new statute recently referred to (p. 115).

Again, it is extremely difficult to define what exactly are the powers and responsibilities of a Prime Minister, as distinct from those of his colleagues. It is sometimes said, that he is the sole means of communication between the Cabinet and the King; but this cannot be literally true, for the 'Minister in

attendance' on the person of the King cannot be supposed to be a mere letter-carrier. Perhaps it would be truer to say, that the King would not take any really momentous step without the personal advice of the Prime Minister, who, as we have seen (p. 114), virtually appoints the members of the Ministry, and can, in substance, and subject to the risk of losing his supporters, procure the resignation of any of them who differ from his policy. In the exercise of the more important patronage of the Crown, including the distribution of honours and distinctions, also, the Prime Minister has a decisive voice; it is said, for example, that recent Prime Ministers have insisted on approving the appointments to the higher judicial offices, though the Lord Chancellor is the Minister primarily concerned with such matters. Again, on all matters of general policy, at any rate those of first-class importance, it is the Prime Minister who is expected to speak the decisive word in Parliament. He is, therefore, unless he is a peer, always recognized as Leader of the House of Commons; unless, as on a recent occasion, the urgent needs of a crisis compel him to delegate his duties in this respect to a colleague. Finally, when it is desirable to make a public statement of Government plans, it is the Prime Minister who addresses a public meeting, or accords an interview to representatives of the Press. But when a message is sent to the head of a foreign State, it is despatched in the King's name by his personal secretary; though the Prime Minister and his more important colleagues may exchange public messages with Ministers in other countries.

The Ministry and Parliament

(3) The third great rule of the Cabinet System is, that the Ministry must retain the confidence of the House of Commons, or resign. It is this rule which is the essence of 'Parliamentary,' as distinguished

from merely 'constitutional' government, and which makes it almost impossible, except in times of national crisis, for any one to be appointed a Minister who is not a member of Parliament. Further, it makes it essential, or, at least, desirable, that all the more important departments of State should be represented in both Houses by chiefs who can be questioned, and defend the actions of their departments, in the House. This is usually done by appointing as head of each department a member of one House, and as Parliamentary Under-Secretary, or other official of the department, a member of the other. This is the object of the otherwise puzzling provision of a statute of 1864, which makes elaborate regulations to prevent more than four (now five) Secretaries and four (now five) Under-Secretaries of State sitting at any one time in the House of Commons; for this provision renders it almost certain that the sixth in each case will be a peer. We remember, also, that by virtue of the Place Act of 1707 (p. 105), any member of the House of Commons who accepts even one of the offices of State created before 1705, must resign his seat, though he may seek re-election. And it may be useful to add, that a good many recently created offices, such as those of the newer Secretaries of State, and the Presidents of the Board of Agriculture and the Board of Education, have been placed by Act of Parliament on the footing of 'old' offices for this purpose; while a general provision of the Representation of the People Act of 1867 enacts, that the mere transfer, from one office to another in the same Ministry, of a person who has been re-elected since his appointment to his former office, shall not involve the loss of his seat.[1] Finally, on this point (though perhaps the matter more strictly belongs to

[1] To be quite accurate, mention should be made of the fact that, by the Re-election of Ministers Act, 1919, a member of the House of Commons who accepts Ministerial office within nine months after a General Election, does not vacate his seat.

an account of Parliament) it may be explained, that the provision of the Place Act alluded to above is habitually used to evade the rule that a member of the House of Commons cannot, strictly speaking, resign his seat. Of course it would be absurd to enforce such a rule; for an unwilling member would be of no value, either to the House or his constituents. When a member wishes, therefore, to resign, he applies for, and is given as of course, the office of 'Bailiff of the Three Hundreds of Chiltern,' a Crown office with a nominal salary of a few shillings, which legally disqualifies him from sitting, under severe penalties. He then resigns this nominal office, which remains ready for the next member who wishes to resign his seat

The Cabinet and the Party System

(4) As previously explained, the Cabinet's majority in the House of Commons is maintained, not merely by the eloquence of its members and their associated Ministers, but by an elaborate party organization throughout the country (pp. 106–109). It is, accordingly, almost an independent rule of the Cabinet System (though, of course, purely dependent on custom and convenience) that all the members of the Ministry shall be drawn from the party which is in a majority in the House of Commons, and, therefore, presumably in the country. In no other way, in ordinary times, could the necessary energy and united action be forthcoming to carry through the 'programme' of the Government in proposed new legislation. This is, no doubt, the reason for the apparently unreasonable rule, that, when any proposal which is part of the Government's general policy is defeated in the Commons, the Ministry as a whole resigns; for such a defeat means, of course, that the House is opposed to the party policy. In states having 'fixed Executives,' *i.e.* Ministries which do not depend directly on the

support of the legislative body, such as the United States of America and the Swiss Republic, no such rule prevails; Ministers merely accept their defeat and try to do better next time. But the rule is of the essence of 'Parliamentary' government; and it holds even when, owing to special circumstances, there is a 'Coalition' Ministry, *i.e.* a Ministry recruited from more than one party. There is, however, a device by which such an extreme step may be avoided, though it is not one which Ministries are fond of using. It is described as 'taking off the Government Whips,' *i.e.* allowing the followers of the Government to vote independently, in accordance with their own personal views, on a particular proposal, which, though nominally made by the Government, is one to which the Ministry as a whole is indifferent. The 'Whips' are members of the House whose business it is to keep the members of the party together by the judicious distribution of patronage, social favours, politeness, and, if necessary, threats, and by the collection and distribution of the party funds. The 'Government Whips' draw salaries from the Exchequer, being usually appointed 'Junior Lords of The Treasury' (p. 216); but there are also 'Opposition Whips,' belonging to every party outside the Government, who are either paid out of the party funds, or do their somewhat arduous work from motives of patriotism or hope of favours to come. It is only in Canada that the unique arrangement prevails of paying the Leader of the Opposition a salary out of the national revenue. This apparently illogical arrangement is, however, a practical recognition of the value to every Government of systematic and independent, but responsible criticism; and the existence of such criticism is, undoubtedly, one of the most valuable features of the Party System. The drawback in practice to it is not so much (as might have been feared) its effectiveness in weakening the hands of the Government, but

its real unwillingness to probe into abuses by which the wielders of the criticism look forward to profit when their turn comes to obtain office.

Criticisms of the Cabinet System

It is impossible to conclude even this imperfect account of the Cabinet System without alluding, however briefly, to one of the more serious charges which have been brought against it in recent times by critics who have, perhaps, been more keen to mark defects than virtues. It is said that, by reason of the fact that the Cabinet combines the executive power of the Crown (Rule 1) with the legislative power which it exercises as commanding a majority in the House of Commons (Rule 3), it is in fact a despotism, which is inconsistent with the alleged fundamental rule of the British Constitution (so eloquently insisted on by Montesquieu, Delolme, and other foreign admirers of that Constitution), that the executive and legislative powers of the State should be kept wholly distinct. As a matter of fact, it is very doubtful whether such a principle ever prevailed in practice in England; and, if it did, it had disappeared, probably before Montesquieu's day, certainly before Delolme's. These eminent writers were misled by the forms of the Constitution, and did not understand its practical working, which is hardly surprising, as no really lucid account of that working appeared in England itself until the middle of the nineteenth century, when Bagehot wrote his admirable book on *The English Constitution*. In truth, the 'separation of powers,' which does exist in some countries, is the very opposite of British 'Parliamentary' government, as understood, not merely in the United Kingdom but in the self-governing Dominions. Nor is it right to assume, as is too often done, that it is by virtue of its position as Ministry of the Crown that the Cabinet exercises its great power, at least in

ordinary times. It exercises that power because its leading members are also leading members of one or other House of Parliament, and especially of the House of Commons, and because, in that capacity, they can induce the House of Commons to vote any amount of money, or to pass any legislation, which they may desire, as well as to give any amount of time to 'Government business,' and thus, practically, to extinguish the time available for the legislative projects of the ordinary unofficial member ('private business'). They therefore wield, for the time being, the supreme power in the United Kingdom, and, subject to the important reservations previously explained (pp. 64–65), in the British Empire. But they hold this power on a precarious tenure. A single hostile vote of the House of Commons, which may be given at any moment, may force them and their colleagues to resign, subject to the possibility, in certain circumstances, also previously explained (p. 36), of an 'appeal to the people' by means of a General Election. If the Ministry is unsuccessful in that appeal, its fate is decided; if it succeeds, it obtains a fresh 'mandate' or lease of power, which is, however, thus obviously, in the last resort, derived from the popular will, and held at its pleasure. Even if it holds the House of Commons, the Cabinet has to face periodical General Elections not less frequently (in ordinary times) than every five years (p. 145); and these, though they do not, if favourable, create new Ministries (that is a popular error for which the Press is to blame), yet serve to remind the continuing Ministry that it derives its great powers, not from any inherent or permanent authority, but from that ultimate source of power in every true democracy, public opinion.

Merits of Party System

With regard to the wider subject of the merits of the Party System as a whole, it has already been

pointed out (p. 107), that the original purpose of the system was to secure the adoption or continuance of a policy which its inventors believed to be vital to the welfare of the nation, and that its effect in arousing and maintaining a healthy interest in politics, and in carrying through reforms which are opposed by a great mass of selfish prejudice and inertia, remains its primary justification. But it should also be pointed out, that the system of Party Government has another and indisputable merit, in that it ensures, in ordinary times, not merely (as previously indicated) a steady and organized criticism of the policy of the Government, which is healthy in its effects, but a very deliberate and thorough discussion of arguments for and against any proposed legislation. It is, indeed, not quite certain that the effect of the Party System on legislation has not been unduly to delay many desirable measures; for opposition fostered by argument and organization sometimes strengthens prejudice, instead of removing it. Still, it is unquestionably desirable, that all great legislative changes should be preceded by widely-spread popular discussion, not merely to prevent hasty action, but to enable the measures in question to sink into the popular mind. And if there appears to be danger of undue delay, the excellent common sense of the British people (which has been fostered by this long-established habit of party discussion) usually proves itself able, as in the notable example of the recent Reform Bill, to keep party spirit within due bounds.

THE 'CAUCUS'

A similarly hopeful view may be taken of what, a generation ago, did undoubtedly appear to be a real danger of the Party System, viz. the increasing power of the party officials, or 'caucus,' in the management of political business, especially in the distribution of

patronage. In every kind of organization, there is always the danger that the man will be made a slave of the machine, and that the natural and, in many ways, commendable desire for efficiency will make means of more importance than ends. But again, the sturdy independence of the national character makes it unsuitable material for the application of excessive discipline; and, indeed, in recent years, it is not at all certain that the habit of organization, both in politics and other matters, has not been allowed to become too faint. Moreover, the sudden admission of a very large number of women voters to the exercise of the franchise may be expected to deliver a severe shock to the Party System, which will effectually prevent it, for some years at least, exercising an oppressive influence.

The Party System and Imperial Politics

It is a much graver charge against the Party System, that it accords badly with the wise handling of the great Imperial problems which are now looming before British statesmen. The otherwise regrettable indifference to colonial affairs which characterized the past century has, undoubtedly, had one redeeming feature, in that it has prevented colonial questions becoming entangled in a system which was devised to deal mainly, if not exclusively, with the internal affairs of the United Kingdom. Almost the only proposal on colonial subjects which has ever been made a party question was the proposal for separation; and that was, happily, laughed out of court many years ago. All leading statesmen in Great Britain now approach Imperial problems in a grave and serious spirit, and desire to take full advantage of the wisdom and co-operation of the statesmen of the Outer Empire. But it is a grave question whether the old machinery which, as has been said, was chiefly devised

to handle internal politics, can be adapted to the wider problems of Empire—in plain words, whether the British House of Commons, organized on a long tradition of party government, can adapt itself, even with alterations of structure, to the new conditions, or whether a new Imperial legislature will be needed. That is why it is so very difficult to say whether the Imperial Conference, held at irregular intervals since the year 1897, under the presidency of the Prime Minister or the Secretary of State for the Colonies, and comprising delegates from the self-governing Dominions, and, on the most recent occasions, representatives of Indian opinion, ought to be classed as an expansion of the Imperial Cabinet, or as an independent institution of the greatest promise and value. All that can be said at present is, that the recent decision to hold regular annual sessions of the Conference, and to make its composition as comprehensive as possible, has been received with profound satisfaction by those who desire the growth of Imperial unity, and that, whilst it is, obviously, impossible for a body whose members are, during the greater part of the year, scattered over the surface of the globe, and absorbed in local responsibilities, to exercise direct executive authority, yet the resolutions of the Conference are likely to exercise increasing influence on the policy of the Imperial Cabinet.[1]

[1] Since the above was put into print, the recent decisions which enable the Premiers of the Dominions to communicate directly with the Prime Minister of the Empire, and provide for permanent representation of the Dominions in the Imperial (War) Cabinet, have made important contributions to the progress of Imperial organization (Note of 1918).

CHAPTER VI

THE IMPERIAL PARLIAMENT (STRUCTURE)

IT is extremely difficult to know where, at the present day, a description of the Parliament at Westminster should appear in an account of the Government of the British Empire. Writers who lived half a century ago, when the belief in Parliamentary institutions was at its height, and the Parliament at Westminster was regarded with almost superstitious veneration, were accustomed to treat Parliament as the supreme, if not the sole, source of power in the Empire. But the rapid growth of Dominion self-government since that date, as well as the growing tendency of Parliament itself to leave many of its nominal duties in the hands of the Cabinet or individual Ministers, have greatly altered the position. We know that, as a matter of fact, only a comparatively small part of the vast business of government comes directly before Parliament, and that most of that is business which immediately concerns the United Kingdom only. This is natural; for, in spite of its Imperial claims, the Parliament at Westminster is, in origin and constitution, a product of the United Kingdom alone; and it cannot shake off the limitations of its origin. Not until the self-governing Dominions, at least, send elected representatives to the seat of Empire, will there be a true Imperial Parliament; and the difficulties of space and time, to say nothing of other difficulties, make such a step unlikely for the present. Mean-

while, the Parliament at Westminster claims to exercise, in co-operation with the King, the supreme control, direct and indirect, over the whole of the Empire, and, by virtue of that claim, must be treated as an Imperial institution.

The history of Parliament need not further detain us. We have seen (p. 27) that it originated in England in the thirteenth century, as a measure devised by the Crown and its Ministers to strengthen the royal power by the grant of taxes, that it rapidly became a centre for the discussion of grievances and the promotion of legislation, that it more gradually acquired the right to criticise, and, ultimately, to control the policy of the Crown, that, finally, by the growth of the Cabinet System, it succeeded, not merely in controlling, but, to a certain extent, in shaping that policy, and appointing means for its execution. We proceed now to explain the structure and working of Parliament itself.

The 'Houses'

It is commonly said, that Parliament consists of two Houses; and that is practically true. But the well-known expression, the 'Three Estates of the Realm,' should remind us that Parliament once consisted of three parts, viz. Lords, lay Commons, and spiritual or clerical Commons.

The House of Clergy

This last consisted of the dean or prior, and one 'proctor' (or agent) chosen by the clergy of each cathedral 'chapter' or governing body, and the archdeacons and two proctors chosen by the parochial clergy of each diocese, who were summoned, through the so-called 'Præmunientes' clause in the writs of summons sent by the King to the bishops, to attend

the meetings of Parliament. With that strong conservatism which marks all British institutions, this clause is still inserted in the writs to the bishops sent at the summoning of each Parliament; but it has long ceased to have any meaning. For, though Edward I was determined to compel the attendance of the clerical representatives, in order that the clergy might not be able afterwards to object to pay taxes on the ground that they had not consented to them, he, probably, did not really desire the ordinary clergy to take any part in the general business of Parliament, while the clerical representatives equally had no such desire. Accordingly, even before Parliament had separated into 'Houses,' the clerical Commons ceased to be an effective part of Parliament, merely putting in an appearance to hear the King's speech at the opening of the session, and then departing to hold their own 'Convocations' or Parliaments, at the neighbouring Chapter House of St. Paul's Cathedral or elsewhere. Thence they were summoned, at the close of the session, to give a formal assent to the taxes granted by the lay Parliament, to which they had to contribute. Even this formality was abandoned at the Restoration of Charles II, when, by an agreement between Lord Clarendon, the Chancellor, and Dr. Sheldon, the Archbishop of Canterbury, afterwards recognized by statute, it was settled, that, instead of giving this formal consent through Convocation, the beneficed clergy should vote as freeholders, at the election of members of the House of Commons in their own counties, and be taxed on the value of their benefices. A curious result of this irregular proceeding appeared in the year 1801, when Mr. Horne Tooke, a clergyman, succeeded in being elected a member of the House of Commons, and taking his seat, on the ground that he was no longer represented, as a clergyman, in the clerical House. But this contention, logical as it was, was soon afterwards overruled, by the Act which disqualifies any

clergyman of the Church of England, and any Catholic priest, from sitting in the House of Commons.

Separation of Lay Houses

Very soon, however, after the definite establishment of Parliament, the working members divided themselves into two Houses, the Lords and the Commons; and this division has ever since continued. This separation was so natural and unconscious, that no formal account of it survives; and it is difficult, owing to the state of the early Parliamentary records, to decide exactly when it took place. We are, however, justified in believing that it was before Parliament was fifty years old. It was natural that the elected members for the shires and boroughs should withdraw themselves from the great nobles, lay and clerical, who received personal writs of summons from the King, and in whose presence they could hardly discuss with freedom the grievances of humbler folk. But what was not so natural, and yet was vitally important, was, that the Knights of the Shire, the natural leaders at that time of the Commons, did not separate themselves, as in some other countries, from the members for the cities and boroughs, but united with them to form a single 'estate of the realm,' represented by a single House of Commons, which, as the growing wealth of the boroughs supplemented the skill and authority of the Knights of the Shire, soon learned to hold its own both against the Crown and the Lords. By this separation into two Houses, it will be observed, it became impossible for the Crown to secure a majority in Parliament by the simple process of summoning more peers; because the consent of each House separately had to be obtained for all measures. We proceed, therefore, to examine the composition of each House, before dealing with the work of Parliament as a whole.

Hereditary Peers

The House of Lords consists mainly of hereditary peers of various degrees—dukes, marquises, earls, viscounts, and barons; that is, peers whose ancestors were also members of the House, or whose descendants will be in due course. There is no legal limit on the power of the Crown to create such peerages; and they are frequently conferred for political, military, and other services. But it seems to have been decided in the seventeenth century (though the point is not very clear), that the Crown could not refuse a summons to the House of Lords to any man who was the male heir, according to the feudal rules of descent, of his ancestor who had received a summons, and had actually taken his seat; and this rule is in force at the present day. It should be remembered, however, that the feudal rules of descent limit the inheritance to the eldest among the males of equal degree ('primogeniture'); while women cannot sit in the House of Lords. It follows, therefore, that there can be only one holder of each peerage in Parliament at the same time; and indeed, when a peerage descends on co-heiresses, not only the seat in Parliament, but the peerage itself, is 'in abeyance,' until the Crown chooses to select which of them shall bear the title. Moreover, when a peerage is created by Letters Patent, as it now invariably is, the grant may restrict the descent not merely to males, but to males in the direct line of heirship from the original holder of the peerage. But it was, unfortunately, also decided, so late as the year 1856, that the Crown, though it might create peerages for life, could not of itself confer upon life peers the right to sit in the House of Lords. And Lord Wensleydale, who had been so created, was not allowed to take his seat. At present the number of hereditary peers in the House of Lords is about 600. Only peers of Great Britain

or the United Kingdom (as distinguished from Scottish and Irish peers) have, as such, a right to seats.

Life and Representative Peers

By far the smaller part of the House of Lords consists of peers whose seats are held only for life, or, in some cases, for even shorter periods. They may be divided into four classes.

Prelates

(1) The oldest is that of the English prelates. From the earliest times, the archbishops and bishops of England sat in the great councils of the realm, even in the old English Witans. Naturally they formed part of the earliest Parliaments, the centre of which was the Council of Magnates of the Norman and Plantagenet reigns, of which they had also been members. Along with them sat the 'mitred abbots,' or heads of the greater ecclesiastical monasteries. Down to the Reformation, especially after the slaughter of the lay nobles in the Wars of the Roses, these clerical peers even outnumbered the lay peers; but the mitred abbots disappeared at the Reformation, when the monasteries were suppressed, and the number of lay peers was gradually increased by the creation of new peerages, whilst, after the sixteenth century, no new bishoprics were created for two hundred years. Further, when, in the nineteenth century, the creation of new bishoprics became common, it was provided that an increase in their number should not increase the number of episcopal peers in Parliament. The two archbishops, and the bishops of Winchester, London, and Durham, have seats as of right; the remaining twenty-one episcopal seats being occupied by the other diocesan bishops according to the seniority of their election to their episcopal office. The 'suffragan' or assistant bishops (p. 323) do not sit in the House of Lords; and the four Irish bishops who sat

from the Union of 1800 (p. 51), by a system of rotation, disappeared on the disestablishment of the Irish Church in 1869, as did the Welsh bishops on the coming into effect of the Welsh Church Act of 1914 (p. 49). As has been before remarked (p. 51), there never have been any Scottish bishops, as such, in the House of Lords; though there is nothing to prevent any clergyman, of whatever denomination, who holds a peerage of the United Kingdom, from sitting as an hereditary peer. A recent heir of the great Admiral Nelson long so sat.

Scottish Peers

(2) The second class, in order of date, of non-hereditary seats in the House of Lords is occupied by the Scottish representative peers. By the Scottish Act of Union (p. 51), sixteen peers of Scotland are to be chosen for each Parliament by their fellow peers of Scotland; and the picturesque and ancient solemnity takes place at the Royal Palace of Holyrood at the summoning of each new Parliament. A Scottish peer who holds also a peerage of the United Kingdom cannot vote at such an election, or sit as a Scottish Representative Peer; though he may sit as an hereditary peer by virtue of his United Kingdom peerage. As the acquisition of such latter peerages by Scottish peers is not infrequent, and as the Crown is apparently prohibited by the Act of Union from creating new Scottish peerages, it seems not unlikely that, at no very distant date, the sixteen Scottish Representative Peers will elect one another, in default of other electors, or even be unable to keep up their full numbers. Meanwhile, a non-representative Scottish peer enjoys all the privileges of a peer of the United Kingdom other than those connected with a seat in Parliament, and is under the same disabilities. For example, he cannot be elected a member of the House of Commons, or vote at such an election.

Irish Peers

(3) The third class of non-hereditary seats in the House of Lords is that occupied by the twenty-eight Irish Representative Peers. These are, like their Scottish colleagues, elected by their fellow peers of Ireland; but, unlike them, they are chosen for life, and an election only takes place when a vacancy occurs by death or 'attainder,' *i.e.* conviction for treason or felony. For it is said that an Irish peer cannot refuse election (at least if he is resident in Ireland), and that he cannot resign his seat. It is also said, that an Irish Representative Peer who acquires a peerage of the United Kingdom does not thereby cease to be a Representative Peer; and, as the Crown is expressly authorized to keep up the number of Irish peerages to one hundred by new creations, there seems to be no prospect of a lack of electors to Irish representative peerages, so long as the latter exist. Another difference between the cases of Scotland and Ireland is, that an Irish peer (not having a seat in the House of Lords) may be elected to the House of Commons for a constituency in Great Britain. Lord Palmerston was a conspicuous example of this rule. A non-representative Irish peer enjoys also the other privileges, and is subject to the other disabilities, of a peer of the United Kingdom.

Lords of Appeal

(4) The last and most modern class of non-hereditary peers are the 'Lords of Appeal in Ordinary.' It has long been customary to bestow hereditary peerages on the holders of the highest legal offices, such as the Lord Chancellorship of Great Britain and the Chief Justiceship of England. But, as we shall later see (p. 291), the House of Lords acts as the highest court of appeal from the ordinary law courts

of the United Kingdom; and it is desirable that on such occasions, it should be strengthened by the presence of other lawyers of eminence, less engaged with other affairs which occupy the Lord Chancellor and the Chief Justice. This was, in fact, the motive of the life-peerage bestowed on Lord Wensleydale (p. 132); and when the intended purpose was frustrated by the action of the House of Lords itself, it became necessary for the Crown to obtain powers to carry it out. Accordingly, on the great re-settlement of the judicial system which took place in 1875–6, the Crown was empowered to create not more than four (since increased to six) judges or barristers of experience, Lords of Appeal in Ordinary, as barons with seats in the House of Lords; and it was understood that these legal peers should also take a substantial part in the sittings of the supreme Imperial tribunal of appeal, the Judicial Committee of the Privy Council (p. 293). By an amending Act of Parliament, these 'Law Lords' do not vacate their seats in the House of Lords on resigning their offices; and their children are, like the children of hereditary barons, entitled to prefix the word 'Honourable' to their names.

House of Commons

The House of Commons, though more uniform than the House of Lords, because it is composed entirely of 'representatives,' *i.e.* persons elected by others, known as their 'constituents,' to seats in the House, and liable to lose them if they are not periodically re-elected, is not entirely uniform in character.

In the first place, there are two, or, to be strict, three, different kinds of constituencies, or groups of electors, which send members to the House of Commons. From the earliest days of Parliament, as has been before mentioned (p. 27), 'Knights of the Shire' on the one

hand, and 'citizens and burgesses' on the other, were summoned through the sheriffs.

County Constituencies

The shire, or county, is an ancient institution of great importance, accustomed to act as a whole for military, police, and judicial purposes.

It will be possible, in a later chapter, to say something of its history and present uses; here it is sufficient to note that, during the long period from the definite appearance of Parliament in 1295 to the passing of the great Reform Bill of 1832, if we make allowance for the interesting, but brief, appearance of Cromwell's reformed Parliaments, each ordinary shire, great or small, in England, sent two members to each Parliament, while, as has been mentioned (p. 49) on the definite union of England and Wales in 1536, the Welsh counties were given one member each. The 'Palatine' counties of Lancaster, Chester, and Durham, which had their own peculiar governments under the Dukes and Earls of Lancaster, the Earls of Chester, and the Prince Bishops of Durham, did not send members until comparatively recent times; and Monmouth, as before pointed out (p. 49), did not become a county till 1536. Thus, the county members grew from 72 to 86, and from 86 to 92; but there they remained fixed, in spite of the growth of their constituencies, and the suggestions made from time to time for their increase, until the first Reform Act of 1832. They were the back-bone of the House of Commons in the days of its infancy and stormy manhood. They braved the great and haughty Queen Elizabeth, and the crafty James; they raised the banner of defiance, under Hampden, Pym, Eliot, and Coke, against Charles I; they resisted the flood of corruption which, from the easy-going days of Charles II to the times when Indian 'Nabobs' returned from the

East to spend their hastily acquired wealth in England, threatened to overwhelm the independence of the House.

'Knights of the Shire'

At first, as their name implies, they were 'belted knights,' *i.e.* landowners of the degree of knighthood; and, though this strict requirement was abandoned very early in the history of Parliament (1413), they were required to be resident in the counties which they represented; and this rule was not formally abolished till 1774. For about a century and a half, from 1710 to 1858, county members required the property qualification of £600 a year, in possession or expectancy, arising from the ownership of land; and there was a curious tradition, arising from an old Act of Parliament, that no lawyer could be a county member. Both these requirements have now disappeared; and, from the beginning of modern Parliamentary reform in 1832, each new Reform Act has made an increase in the number of county constituencies, by dividing the larger counties into 'divisions,' each returning a single member to Parliament. The number of these divisions is now 372.

Borough Constituencies

The history of the Parliamentary 'cities and boroughs' (there is no legal distinction between these) is much less satisfactory. Apparently, for the first two centuries of Parliament, the Crown used to summon the representatives of boroughs selected at random; though, naturally, certain important towns, like London, Winchester, York, and others, were always represented. There is a theory, though it is not yet proved, that only boroughs directly 'in the King's hand,' or 'on the royal demesnes,' *i.e.* boroughs which paid their taxes (or 'ferm') direct to the Exchequer,

were included; and we must always be careful to remember that, for at least a century after 1295, the burgesses of a borough were most unwilling to be represented, partly because they had to pay the wages of their representatives, still more because they had to pay higher taxes than the unrepresented boroughs. It was not until the end of the fifteenth century, that representation in Parliament began to be regarded as a privilege, and that a borough used to petition for the insertion in its 'charter,' or grant of privileges, of the right of Parliamentary representation. The little borough of Much Wenlock in Shropshire is said to have been the first, or one of the first, to secure this grant, in the reign of Edward IV. Unfortunately, the Crown's advisers took advantage of this growing desire, and, during the sixteenth century, began to induce the Crown to make grants of Parliamentary representation to little towns, of no real importance, which happened to be specially under Crown influence, *e.g.* towns or even villages in the royal Duchies of Cornwall and Lancaster.

Rotten Boroughs'

This was the beginning of the system of 'rotten' or corrupt boroughs, which was the great political scandal of the eighteenth century. For, though the great changes in commerce brought about by the discoveries of new trade routes, in the sixteenth and seventeenth centuries, made some formerly insignificant villages into great towns, and some formerly important towns into mere villages, the right of sending members to Parliament remained nominally with the latter, but was really bought up by rich and powerful neighbouring landowners, who treated these constituencies as 'pocket' boroughs, *i.e.* seats to which they could nominate any one whom they pleased, with a certainty that the nominal electors, often only a mere handful in number, would vote as they were told. There is even a well-authenti-

cated story to the effect that the Mayor and Aldermen of a famous borough, having been committed to prison by the House of Commons for corruptly procuring the return of a member, actually sold the 'next presentation' whilst in prison, to a neighbouring landowner.

The First Reform Act

This scandalous state of things, which was, of course, maintained in order that the Crown's Ministers and the great landowners might destroy the independence of the House of Commons by influencing the votes of the borough members (who were far more numerous than the county members), was at last put an end to by the great Reform Act of 1832, which abolished no less than fifty-six of the 'rotten' boroughs, and took away one member each from thirty more, adding sixty-five of the seats thus abolished to the county divisions, and transferring sixty-five more to new and important towns previously unrepresented. This policy was further extended by the Reform Acts of 1867 and 1885, till to-day, with the great increase in the number of county divisions and of new Parliamentary 'boroughs' in populous districts which have never been boroughs in the true sense at all—*e.g.* the vast suburbs of London, there is scarcely any apparent difference in character between a county and a borough constituency, except that elections are still conducted in the former by the sheriff, while, in the latter, the mayor is the returning officer.

The course of procedure in Scotland and Ireland, since the respective Unions of 1707 and 1800 (pp. 51, 56) has been, broadly speaking, the same as in England in the matter of Parliamentary constituencies. But there have been slight differences. Altogether there are now 707 members of the House of Commons, of whom 372 represent county divisions, 320 are elected for boroughs, and 15 by university constituencies.

The Ancient 'Forty Shilling Franchise'

Equally important were, though they have at last disappeared, the differences between the counties and the boroughs in the matter of the 'franchise,' or right to vote at Parliamentary elections. After a short period of uncertainty, the county franchise was confined by Act of Parliament to resident owners of 'free tenements to the value of forty shillings by the year at the least above all charges'; which expression was legally construed to mean persons owning freehold estates worth forty shillings a year. This sum represented, in the first half of the fifteenth century, when the statute was passed, a purchasing power equivalent to at least ten times the amount at the present day; and the county electors of that time must have been substantial yeomen, not readily open to intimidation or bribery. But the rapid fall in the value of money which took place in the sixteenth century, owing to the discovery of the silver mines of South America, gradually converted the 'forty shilling freehold' into a merely nominal qualification, especially as the holder might be a life tenant only. Accordingly, in the bad days of the eighteenth and early nineteenth centuries, wealthy landowners created 'faggot' votes, by making grants of small patches of land for life to their servants and dependents, on the understanding that they should use the votes thus obtained in accordance with the donor's wishes.

Modern County Franchises

This practice was checked, though not entirely extinguished, by the Reform Act of 1832, which rendered it of less consequence, by making copyhold and leasehold ownership of substantial value, and even a short tenancy at a substantial rent (the famous 'Chandos'

clause) a qualification; while the Acts of 1867, which give the county franchise to all occupiers[1] of land worth twelve pounds a year, and the Act of 1884, which conferred the residential and lodger franchises on the counties, rendered it still less important. It is one of the quaint stories of political history, that Richard Cobden, the political and economic reformer, long believed, and stated in his public speeches, that the 'forty shilling franchise' was a democratic novelty created by the Reform Act of 1832, instead of an aristocratic privilege set up in 1430.

The Ancient Borough Franchises

Unlike the county franchise, the old borough franchise was obscure, irregular, and confused. There was never any uniform borough franchise throughout the kingdom till 1832; but, in each borough the persons who enjoyed the privileges of self-government, according to the charter or traditions of the borough, alone exercised the Parliamentary franchise. Thus, in one borough, the vote would be exerciseable only by the occupants of certain ancient tenements, or 'potwallopers' ('potboilers'); in another only by the members of certain craft gilds or industrial associations; in another, only by the members of the leet jury or court —for these alone were 'burgesses' in the strict sense. The natural result was the disgraceful orgy of corruption and intimidation before described (p. 139).

Modern Borough Franchises

The Reform Act of 1832 made an almost clean sweep of these anomalies, and set up in their place a uniform borough franchise which could be claimed by all persons

[1] The reader must be careful to distinguish 'occupation' which merely means having exclusive possession, from 'residence,' which involves actual dwelling. A man 'occupies' his shop or office; he resides in his house.

occupying land or houses of the annual value of ten pounds, within the borough, while the Act of 1867 added the residential and lodger franchises; so that, from that year, in the boroughs at least, practically every permanent male resident who was the head of a household, an independent business man, or even a lodger of fair social position, has been entitled to a Parliamentary vote. The history of the franchise in Scotland and Ireland, though by no means exactly the same as that of England, has, on the whole, followed similar lines; and, since 1884, the franchise in the three countries of the United Kingdom has been substantially the same.

But, of course, the most sweeping changes ever made in the Parliamentary franchise are those introduced by the Reform Bill presented in the year 1917, which not only made a vast increase in the number of electors, by conferring on women as well as on men the right to vote, but has removed many of the old abuses and difficulties which rendered the vote of the average elector liable to be withheld, or made it valueless when it was given. By that Bill, which in the following year (1918) passed into law, there now are, apart from university constituencies, only two possible qualifications for the Parliamentary vote, viz. residence, and occupation of 'land or premises.' Any man who has resided for a brief period in a constituency (county or borough), or has occupied [1] business premises therein of the annual value of ten pounds, will be entitled to be placed on the register of voters; while any woman of the age of thirty years, who, or whose husband, is entitled to be put on the local government register in respect of any land or premises in the constituency, by occupying any dwelling-house, or land or premises of five pounds annual value, there, may claim to exercise the Parliamentary franchise.

[1] The difference between occupation and residence has been previously explained (p. 142 *n*). There is no legal definition of premises.

University Franchise

The universities of the United Kingdom, ancient and modern, are by the new Act grouped into constituencies; and every graduate (other than an honorary graduate), male of full age, female of the age of thirty, will be entitled to vote for the election of members to represent his university in Parliament. The university franchise was created so far back as the seventeenth century; but, until 1918, it was confined to the ancient universities of England, Scotland, and Ireland, and to the University of London.

'Plural Voting'

One other change of great importance introduced by the new Bill is the restriction within narrow limits of 'plural voting,' *i.e.* voting for more than one constituency by virtue of different qualifications. A man may not now vote at any General Election in more than two constituencies, of which one must be the place where he resides; while a woman may not give more than two votes in all.

Summoning of Parliament

The right to summon a Parliament is vested in the King alone; and, except in cases of crisis, there never has been any legal limit on the exercise of that right, beyond the fact that, by a provision of the first Triennial Act of 1641, since frequently repeated, the summoning of Parliament cannot be delayed beyond three years after the last previous Parliament has been dissolved, and that, by a vague provision of the Bill of Rights of 1689, 'for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently.' But the right in question is exercised on the advice of the Cabinet; and, as a matter of fact, it has for centuries been

necessary to have at least one session of Parliament every year (frequently more), because the Crown could not do its work without it. For one thing, in time of peace, it is, as we shall see (p. 190), illegal for the Crown to raise or maintain a single 'regular' soldier within the realm without the consent of Parliament, which is only given for one year; whilst, in time of war, the enormous expense of the navy and army renders constant application to Parliament for money absolutely necessary. For another, the Crown has long been dependent, even for the ordinary expenses of government, upon Parliamentary grants of taxes; and Parliament takes care, by voting 'supplies' for one year only, to make an application for renewal next year a certainty. But, happily, this important rule does not make it necessary to hold a General Election every year; because the same Parliament may, and usually does, continue to hold sessions, or meetings, for several years, with only such elections as are rendered necessary by death or resignation of seats in the House of Commons, which latter vacancies are filled by what are called 'bye' elections.

Quinquennial Parliaments

After a good deal of changing, the duration of Parliament is now, by the Parliament Act of 1911, limited to five years, unless extended by an ordinary Act of Parliament itself. But again it must be remembered, that the life of Parliament may be cut short at any time by a 'dissolution,' or proclamation of the King, dismissing Parliament, which is, as a matter of fact, followed almost immediately by the issue of writs to summon a new one.

Method of Election

It is not possible here to explain in detail how a General Election is conducted. Briefly speaking, a

writ for each constituency is sent, either (in the case of county divisions) to the sheriff of the county, or (in the case of boroughs) to the mayor. These officials, or 'returning officers,' give notice that the elections for their districts will be held at a certain place on dates formerly fixed (within strict limits) by themselves, but now, under the new Reform Bill, to be on the eighth day after the issue of the Proclamation summoning the Parliament. The only thing which actually takes place on the day thus fixed, is the nomination of candidates, *i.e.* the persons seeking election; unless, of course, the election should be 'uncontested,' *i.e.* no more candidates should be proposed than there are vacant seats to be filled. In such a case, the returning officer simply declares the candidate or candidates nominated, to be duly elected. But, in ordinary cases, he adjourns the election that a 'poll,' or counting of votes, may be held, to decide between the rival candidates; and this will now be the ninth day following that of the nomination, *i.e.* the seventeenth after the issue of the Proclamation summoning the Parliament.

Polling

It is, in fact, this process of 'polling' which is commonly, but incorrectly, spoken of as the 'election.' Before the year 1872, this process might take several days, or even weeks; and it was conducted by the electors openly recording their votes by word of mouth in favour of their chosen candidates. If, as frequently happened, the right of any elector to vote was denied, the question of his right had to be discussed and settled by the sheriff or mayor, then and there. As a natural consequence, when party feeling ran high, an election was often a scene of open bribery, violence, and trickery, prolonged over a long period; and it was always an occasion of great expense.

The 'Ballot'

At last, after a long and bitter struggle, the supporters of secret voting succeeded in passing the famous Ballot Act of 1872, which provides that all voting at Parliamentary elections (other than for university constituencies) shall be by 'ballot,' *i.e.* by placing in a closed receptacle a slip of paper on which the elector's choice is indicated in such a way that no sign of it appears to the by-standers. The ballot papers are afterwards opened and counted in the presence of the returning officer, under strict precautions to ensure accuracy and secrecy as to the names of the voters. A provision of the new Reform Act even allows the sending of ballot-papers through the post, and voting by an agent or 'proxy,' by persons on the 'absent voters' list; but application to be placed on this list must be made by the voter, when the register is made up, on the ground that, owing to the nature of his business, he may be unable to attend at the polling place on election day.

The 'Electoral Roll'

Moreover, no question as to the right of the person tendering a vote to do so is discussed during the polling. All the voters have previously been put upon a 'register' by the local authorities, whose duty it will be to make up a complete list, every half-year, of those entitled to vote, and to receive and decide, subject to appeal to a county court, all objections to the register. Should any objection be raised at the polling as to the identity of the person claiming to vote, *e.g.* whether he is really the 'John Smith' who is on the register, or as to whether the voter has already voted elsewhere, the polling officer merely takes a note of the fact, and allows the claimant, on making a formal declaration of his right, to give his vote, subject to later investiga-

tion. As each ballot-paper is marked with the voter's number on the register, there is no difficulty in tracing it afterwards; if the voter is prosecuted for 'personation,' *i.e.* pretending to be a person other than that he really is, or for voting oftener than he is entitled to do. But, without official authority, no attempt to discover the marker of any ballot-paper is allowed.

'Polling Booths'

By these means, and by having several 'polling stations' scattered at convenient spots all over the constituency, the whole of the poll, even in the most populous constituencies, is taken (with rare exceptions) on a single day; and the result is made up and declared, almost immediately, by the returning officer, assisted by a staff of trained clerks, who count the ballot-papers in the presence of the candidates' agents. An even more desirable reform has been effected by the provision of the new Reform Act, before alluded to (p. 143), which requires that the pollings for all the constituencies in the United Kingdom (other than university constituencies) shall take place on the same day. This provision will put still further restriction in practice upon the limited amount of 'plural voting' (p. 144) allowed by the Bill; for, despite the long hours during which the polling stations are now open, it will be difficult for an elector having a residential vote, say, in London, to give an occupation vote in Aberdeen, on the same day. Perhaps not less important, it will prevent the accidental fact of the constituencies first consulted voting in a certain way, exercising an undue influence upon the voting at the later polls.

Disqualifications for Electors and Members

Brief mention should, perhaps, here be made of certain positive 'disqualifications' which prevent a

person otherwise qualified to be elected, or to vote for election, to the House of Commons, exercising his right. In times past this subject has been connected with fierce and bitter jealousies based on religious prejudice. Roman Catholics, Protestant Nonconformists, Jews, Quakers, and other religious bodies, have from time to time been, on one pretext or another, excluded. Happily, however, the last of these 'disabilities' disappeared thirty years ago; and now only such reasonable disqualifications as want of age, conviction for serious crime (including corrupt practices at elections), bankruptcy, insanity, alien nationality, and (for being elected) Church of England or Roman Catholic ministry, remain. Most of these disqualifications, but not quite all, apply also to membership of the House of Lords; and, of course, no peer can vote at any election to the House of Commons, or be elected thereto, with the single exception, before noted (p. 135), of an Irish non-representative peer, who may be elected for any constituency in Great Britain, and, having been so elected, may vote in any similar constituency for which he is otherwise qualified. The returning officer at an election may not give an ordinary vote; but if two or more candidates for a seat poll an equal number of votes, he may give a decisive or 'casting' vote. Apparently, there is no law which prevents a candidate, otherwise qualified, voting for himself. Women are now eligible for membership on the same terms as men.

Election Petitions

Another great improvement has taken place in comparatively recent times, in the matter of disputed elections. For long the House of Commons jealously asserted its own right to decide such matters. At first each case was referred to a 'select committee' of the House, chosen *ad hoc*, i.e. to decide the particular case. The consequence was, that the most powerful party in the House, usually, of course, the party

supporting the Ministry, took care to appoint on the committee a majority of its own members, who invariably decided in favour of the party candidate. In the year 1770, an Act of Parliament, known as Grenville's Act, was passed to provide for the creation, at the opening of each new Parliament, of a 'standing' or permanent committee, to deal with disputed elections during that Parliament; and there was thus some guarantee, though not very much, that disputes would be settled according to law, and not according to party prejudice. But a far better plan was adopted in 1868, when the trial of 'election petitions' was entrusted to the High Court of Justice, which appoints, at the beginning of each year, three of its judges, chosen by rotation, to hear all cases which may arise during the year. Such cases are heard and tried on the spot, as much like ordinary actions as possible; the petitioner, or person who objects to the return made by the returning officer, acting as plaintiff, and the successful candidate as defendant. There is, however, no jury; and the Court consists of two judges. A very valuable provision of the Act enables the judges to promise a witness that, if he will make a full disclosure, he shall be protected from punishment for any share which he may have taken in any 'election offence,' such as bribery, intimidation, 'treating,' personation, illegal expenditure, or the like. At the close of the evidence and arguments, the Court gives its decision, which, however, takes the form of a report to the Speaker, or Chairman of the House, as to the result of the trial; and the House itself carries the decision into effect, either by declaring the seat vacant, or any candidate to be duly elected. If the trial has disclosed offences against the 'Corrupt Practices Acts,' prosecutions in due course follow, except against offenders protected as above described; and, if the evidence shows wholesale demoralization, the constituency may be 'disfranchised,' or deprived

of its representation, by Act of Parliament, for a longer or shorter period. A further guarantee of the purity of elections is now promised by the stringent provisions of the new Reform Act, which limit the expenditure which may be incurred by a candidate in his election contest, and by the provision that the expenses of returning officers shall be defrayed by The Treasury, except in the case of 'freak' candidates.

Party Organization

Before leaving the subject of Parliamentary elections, it is necessary to point out, that the process above described only deals with the legal, as distinguished from the practical side of affairs. In theory, each constituency chooses as its representative the man in whom it has the greatest confidence, and relies on him to exercise his own judgment in dealing with all matters in which he is called upon to take part in Parliament. In practice, this ideal state of affairs is never attained; and, *in* all probability, the results would be very disappointing if it were. For a House of Commons thus chosen would be a debating society, not a business meeting. Its members would have no cohesion, no common plans. Each would have his own little pet scheme to run, which would stand no chance of being carried, except by a rather unwholesome system of bargaining for support by mutual promises of votes. Such a House would neither effectively support a Government, nor, on the other hand, criticize it effectively. Its support would be vacillating and uncertain; its criticism would be feeble, and would be disregarded.

These difficulties were felt, almost unconsciously, more than two centuries ago, when it became clear that the real power in the State was passing to the House of Commons; and they were met by the adoption of what is known as the 'Party System,' before referred to (pp. 106-109), *i.e.* the voluntary association

of themselves by the electors throughout the kingdom into great groups, with elaborate arrangements, both at headquarters in London, and in each constituency, for nominating and supporting candidates favoured by the group or 'party.' This process necessarily involves the adoption by each party thus formed of 'principles,' *i.e.* fundamental objects to be attained or beliefs to be carried into action, and of a 'programme,' or list of measures believed to be desirable to further these objects and beliefs; and membership of the party is conditional upon the acceptance of these principles and programme. In order to be ready for a General Election, which may come 'like a thief in the night,' it is necessary for the leaders of the party to be constantly in touch with their followers in the House, and for the latter to be in touch with their constituents. This necessity results in a frequent exchange of ideas and a good deal of personal intercourse, which again have a good effect in stimulating interest in politics, and creating a healthy public opinion. Supporters of autocracy, practical and theoretical, are very apt to decry the Party System; and there can be no doubt that, like many other institutions, it is liable to great abuse. For example, the discipline necessarily exercised over their followers by the leaders of a party through its 'Whips' or officials, may be secured by promises of patronage, and may degenerate into tyranny; whilst the corresponding support needed by the private members from their constituents may be obtained by flattery and servility, which may render the member a mere voting machine. For all that, it is tolerably clear that no other means could, in the past, have enabled public opinion effectively to control the policy of the Government, and that the alternative would either have been a 'bureaucracy,' in which the work of Government is carried on by officials or departments, having little union and regardless of public opinion, or it would have been a

'group-system' in which little bands of members of the House would have bargained with one another to secure a majority.

Absence of Imperial Representation in Parliament

Reserving for the next chapter an account of the work of Parliament, and the methods by which it accomplishes it, we may end here with another reference to what is, undoubtedly, the most anomalous feature of the Imperial Parliament. This is the fact that, though it claims to exercise sovereign authority throughout the British Empire, it is not really representative, in the strict sense, of any part of the Empire outside the United Kingdom. No members are elected to it, even from such adjacent possessions as the Channel Islands and the Isle of Man; much less from the distant self-governing Dominions of Canada, South Africa, or Australia, the Crown colonies, or the great dependency of India. Distinguished colonials have been from time to time elected by constituencies in the United Kingdom; and their presence has been of great value to the House. But this practice has been entirely haphazard; and these members have been in no sense entitled to speak as representatives of their colonies. The inevitable result has been, that Parliament has hesitated to exercise its authority over the Outer Empire—has, in fact, almost ceased to do so as regards the self-governing Dominions (p. 64). Perhaps, on the whole, this result has been good; at any rate it has prevented the growth of that spirit of active antagonism which led to the American revolution, and it has fostered, in the self-governing Dominions, a healthy spirit of self-reliance. On the other hand, it has prevented the growth of a close Imperial organization; it has allowed a good many anomalies and inconsistencies, some of which are not without danger, to grow

up; it has left the control of the Crown colonies and India too much in the hands of officials; and it has tended to encourage the perhaps excessive growth of rival Parliamentary institutions, which may some day prove a serious stumbling-block in the path of a really Imperial Parliament.

CHAPTER VII

THE WORK OF THE IMPERIAL PARLIAMENT

As has been pointed out before (p. 88), the Parliament at Westminster is distinguished from many other legislative bodies by the fact that its work is by no means confined to the making of laws. It will be also remembered, that the House of Commons was not originally created for that purpose at all, but merely for the humble purpose of voting taxes on demand. This original purpose it, of course, still fulfils; and the financial side of its work is, or should be, of extreme importance. Beyond legislation and finance, however, Parliament, and especially the House of Commons, is concerned both with supporting and criticizing the 'Ministry of the day,' *i.e.* the men who actually carry on the daily work of government, with expressing, by formal resolution or otherwise, the public opinion of the country on matters of public interest, with eliciting information on matters of State, and especially about grievances alleged to be suffered by the private citizen at the hands of Government officials, and, finally, to a slight extent, with the administration of justice. Of these matters in their order.

LEGISLATION

We mean by 'legislation' the issuing of formal laws intended to apply generally to all classes of the community, or to some considerable class in it, or else to

some special locality only or to some individual or family only. To all Parliamentary legislation is given the name 'Act of Parliament,' or 'statute'; though the latter word is less precise, because some forms of legislation not made by Parliament are also 'statutes'—*e.g.* the statutes of a college.

'Public' and 'Private' Acts

Acts of Parliament which are intended to affect the community as a whole, or a considerable class within it, are called 'Public Acts'; those intended to affect only a special locality (such as an Act authorizing the provision of a water-supply for a single town) are called 'Local Acts'; those intended to affect only an individual or a small group of individuals (such as an Act settling a family estate or imposing a divorce on married persons) are known as 'Personal' Acts; and 'Local' and 'Personal' Acts are known collectively as 'Private Acts.'[1] All Acts of the Imperial Parliament are equally binding on all courts of justice throughout the Empire; but whereas every such court is supposed to know and observe all the provisions of every existing Public Act, a judge is not supposed to be aware of the existence or provisions of a Private Act, unless his attention is called to it by one of the parties before him. Moreover, Private Acts are not usually printed and published with the ordinary collections of Acts of Parliament; though copies of them can, of course, be purchased from the King's Printer. Also there is, as we shall see, some considerable difference between Public and Private Acts in the ways in which they are respectively brought into existence.

For the process of 'passing' an Act of Parliament is one of considerable length and intricacy, which is

[1] There is a narrower sense in which only the last class rank as 'Private Acts.' This narrow class receives the royal assent in a special form.

designed, no doubt, to prevent hasty legislation, but which, in fact, renders the work of Parliament extremely and, indeed, in some respects, unnecessarily slow. Thus, for example, there is the famous rule, so old that its origin is unknown,[1] to the effect that every Bill, or proposal of legislation, must be 'read' and agreed to three separate times in each House of Parliament before it becomes law; while in between the different 'readings' are sandwiched discussions in 'committee' of an informal, but often extremely lengthy character, in which each clause of the Bill is subject to minute examination. But it will be better to sketch briefly the steps by which an ordinary Public Bill is converted into an Act of Parliament.

Public Bills

The first formal step is, of course, the drawing up or 'drafting' of the Bill itself. As we have previously seen (p. 17), this step was originally left to the King's advisers after the 'prayer' or 'petition' for the Bill, presented by Parliament, had been granted by the King. But, for centuries now, every project for a Public Act has been presented to Parliament in the exact form in which its supporters, or 'promoters,' wish it to pass, that is, with the solemn form of enactment by King, Lords, and Commons (p. 14), and then each clause of the Bill set out and numbered in regular order. If the Bill is a 'Government measure,' that is, a proposal introduced by the Cabinet on its collective responsibility, it is 'drafted' by one of the Parliamentary Counsel to the Treasury (barristers appointed by the Crown for the purpose), or by some independent expert engaged for the particular

[1] The writer ventures to guess that it was connected with the three annual 'crown-wearing' days (Michaelmas, Christmas, and Easter) on which the Norman Kings met their Magnates in different parts of the country.

task. If it is a 'private member's Bill,'[1] *i.e.* a proposal made by a member of Parliament not holding Government office, it is drafted by himself or any one whom he may employ for the purpose. It bears upon its back the name of at least one member of the House who is its introducer or 'sponsor.'

First Reading

Strictly speaking, no member could formerly introduce a Bill without leave of the House; and a motion for 'leave to introduce' was the first public step in the passing of a Bill. But such leave was never, or rarely, refused; and now any member may, after notice, introduce a Bill, by 'laying it on the table,' which, in effect, means by circulating it in printed form among the members of the House. But, before this step can actually take place, the Bill is 'read' for a first time, a process which is thus, also, purely formal.

Second Reading

The real crisis in the fate of a Bill comes on the second reading, which takes place on a day fixed by the House. The object and scope of the measure are then fully explained and advocated by its proposer and seconder; and the motion for second reading may be opposed in a direct or indirect manner, *e.g.* by a negative or an amendment, suggesting postponement.

Committee

If, however, it is carried, the Bill is referred to a committee, usually one of the Standing Committees,[2] but in certain cases (p. 169) to a Committee of the whole

[1] It will be remembered (p. 17) that a 'private member's Bill' is by no means necessarily a 'Private Bill.'

[2] 'Standing Committees' are committees of sixty to eighty members. A Bill may also be referred to 'Select,' or specially appointed, Committee.

House, with the Chairman of Committees instead of the Speaker (or Lord Chancellor if the measure is in the Lords) in the chair. In committee, the Bill is discussed informally, clause by clause, and any amendments in it may be made, subject to the rule that, in the absence of formal 'Instructions,' previously issued by resolution in the House itself, no amendment enlarging the scope of the Bill, or introducing irrelevant matter, may be proposed.

Report of Progress

Another purely formal step is the 'reporting of progress' made by the committee with the Bill, to the House, and the obtaining of leave for the committee to 'sit again.' But when the committee has finished its labours, the Bill is laid before (or 'reported to') the House in its complete form; and a discussion of the Bill in its 'report stage' may take place, unless the Bill has passed through Committee of the whole House unaltered.

Third Reading

At this stage, verbal amendments may be made by the House itself; but, if these are extensive, the Bill may be re-committed, for further discussion of the whole or part, in committee. When all these stages have been safely passed, the Bill is 'read' a third time in the House; and this in some cases (though not invariably) takes place as a matter of course.

Other House

The Bill has now, so far as the House in which it began is concerned, been successful; but we must not forget that Parliament consists of two Houses having, *primâ facie*, exactly equal powers in legislation, though, as we shall see, this equality has lately undergone substantial modification. The Bill is, therefore, sent to the other House for its concurrence;

and the same process which has taken place in the one House is (with slight modifications) repeated in the other, and, if the other House concurs, the Bill is returned to the House of its origin, with a message to that effect. The measure is then ready for the formality of the royal assent.

Differences between the Houses

It may be, however, that there is a difference of opinion, partial or complete, between the two Houses, as to the merits of a Bill. In the former case, steps may be taken to come to an agreement—formerly by a 'free' or 'formal' conference, which was a debate between 'managers' appointed by each House, or (according to modern practice) by informal negotiations between members of the two Houses, in the course of which a compromise is usually reached.

It may, however, be that the two Houses are definitely at issue on a measure; and, until a few years ago, it was impossible to speak with certainty as to what would then happen. If a measure sent by the Commons to the Lords were of little public importance or interest, it would be 'dropped,' *i.e.* allowed to disappear on its rejection by the Lords; if it were a matter of first-class importance, in the view of the Ministry, and the latter had the support of the Crown, the Ministry might allow the House of Lords to know that, if necessary, it would advise the Crown to create a sufficient number of new peers to enable the Bill to be carried. This was actually done in 1712, to secure a majority for the Peace of Utrecht; it has been more than once threatened, notably to secure the passing of the Reform Bill of 1832, and the Parliament Bill of 1911. But the Crown may, unless the country has had a recent opportunity of expressing its opinion, before taking this extreme step, require the Cabinet to 'appeal to the people' (p. 36), by a

dissolution and General Election. If the Cabinet obtains an increased, or only slightly diminished majority at the election, the Lords either give way or the new peers will be created; if the Cabinet's majority falls substantially, the Bill is dropped, as not having the support of the country.

Parliament Act of 1911

The important subject of disagreement between the two Houses has, however, been recently put on an altogether different footing by the Parliament Act of 1911, previously alluded to. By that measure, if a Public Bill (p. 156), not being a 'Money' Bill (p. 164), or a Bill for increasing the duration of Parliament beyond five years (p. 145), is passed by the House of Commons, in the same form, in three successive sessions, and sent up to the House of Lords one month before the end of each session, and is not passed unaltered by that House, the Bill may, on the third rejection, be presented to the Crown for royal assent, and, on receiving it, will become law, without the assent of the House of Lords. It should be carefully observed that, though the three sessions must be consecutive, they need not all be in the same Parliament —in other words, there may be a General Election during the passing of the measure, and, if the new Parliament is of like mind with its predecessor, the Bill will go on. There are also careful provisions in the Act enabling the House of Commons to accept 'suggestions' of alteration made by the Lords, without forfeiting its privileges under the Act; and a Bill passed under the provisions of the Act receives a special form of 'enacting' words, showing that it is so passed, as was done, for example, in the 'Home Rule' Act of 1914. In the case of Bills dealing with finance ('Money Bills'), additional and more stringent provisions apply; but these will be best dealt with

when we come to speak of the peculiar privileges of the Commons in finance matters.

Private Bills

The course of a 'Private' Bill (p. 156) through Parliament differs from that followed by a 'Public' Bill, mainly in that the introduction is preceded by the lodging of a petition at the Private Bill Office by a fixed date in the year, and that the Bill, before being presented, must, in case of doubt, receive a certificate (the granting of which may be opposed) that the Standing Orders of the House, which regulate such matters, have been complied with. Further, if the Bill passes its second reading (p. 158), it is referred to a small 'select' committee of the House, which acts as a kind of judicial body, and hears arguments by counsel (barristers) for and against the expediency of the measure. It is then 'reported,' either amended or unamended by the committee, to the House, and read a third time, like a 'Public' Bill.

Provisional Orders

Finally, Parliament exercises what may be called an indirect power of legislation through 'Provisional' and other Orders. The former are issued by Government departments under the authority of various Acts of Parliament dealing with public facilities such as the supply of gas, water, and electricity, the building of light railways, harbours, and piers, the confirming of doubtful marriages, or the making of detailed arrangements for local government. These Orders, when made, are incorporated into the Schedule to a Bill, which, though introduced as a 'Public Bill,' passes through much the same stages as a 'Private Bill.' They are, in fact, in many cases, practically Private Bills; for the Provisional Order itself is often founded on a scheme

promoted by a railway or other company. But, instead of being passed as a separate Act, it is included in the Schedule to a Provisional Orders Confirmation Act, several of which are passed during each ordinary session.

Control of Ministry

The second of the great duties undertaken by Parliament is the control of the Ministry or Cabinet in the daily conduct of government. This duty has grown, historically, out of the claims of Parliament in the matter of finance, the earliest of the functions of Parliament, and its most successful instrument in acquiring power. For, as we have seen, the original duty of Parliament to vote taxation rapidly developed (pp. 33–34) into the right to forbid the levy of any new taxation without its consent, then into the right to 'appropriate' any taxes which it might grant, to particular objects, and, as a consequence, to check and examine the expenditure of such grants.

Privilege of Commons

It is also well known, that, very early in its history, the House of Commons, as distinct from the House of Lords, acquired the right of initiation in all grants of taxation—that is to say, the right that all proposals by the Crown for the levy of taxation should be presented to, and discussed by, the Commons, before being so much as mentioned in the Lords. This right was early guaranteed by a special form of 'preamble,' prefixed to every Finance or Consolidated Fund Bill (p. 170), to the effect that 'the Commons of the United Kingdom of Great Britain and Ireland . . . have freely and voluntarily [or 'cheerfully'] resolved to (give and) grant unto your Majesty.' The right is, moreover, specially alluded to in the King's Speech at the opening and close of

each session, in a paragraph specially addressed to the 'Members of the House of Commons.'

Tacking

But the exclusive privileges of the Commons in the matter of finance now extend much further than the mere right of 'initiation.' For, shortly after the Restoration of Charles II, the House of Commons, flushed with its victory in the Civil War, began to question the right of the Lords even to make any amendment in a Money Bill sent up from the Commons; while any step taken by the Lords so much as suggesting a new tax or expenditure was fiercely resented by the Commons. The first definite step was taken in 1671, and was followed in 1678 by a formal resolution of the House of Commons, which was effectively backed up by the rather unscrupulous practice of 'tacking' any measure likely to be disapproved of by the Lords to a Bill embodying the whole financial scheme of the year, and leaving the Lords to accept or reject the two things together. Inasmuch as a rejection of the financial scheme would have practically involved the stoppage of government, the Lords were seldom prepared to take the responsibility of such a step. But they rightly resented, as an unfair weapon, this process of 'tacking'; and it was rarely resorted to, though, undoubtedly, when an entirely new scheme of taxation is proposed, it is difficult to avoid introducing into the measure clauses not of a strictly financial character. Moreover, the Lords did not admit openly their inability to amend, much less to reject entirely, a Money Bill; though in practice they ceased almost entirely to do either before the middle of the eighteenth century. Such protests as they made were confined mainly to refusing or amending measures which were substantially political in character, though they involved, incidentally, some financial changes, *e.g.* the famous Paper Duties Bill of 1860.

The Struggle of 1909

At last, however, the Lords, on the presentation of the famous 'Budget' of 1909, determined to challenge the claim of the Commons to the sole authority in matters of finance, and, somewhat rashly, instead of making mere amendments, boldly threw out the Bill on the second reading.

New Provision

The Commons at once responded to the challenge; and though, after a General Election had given the Ministry a majority, the Lords gave way, and passed the Finance Bill, the Ministry introduced and carried through both Houses (though not without a bitter struggle) the Parliament Act of 1911, which not only, as we have seen (p. 161), placed severe restrictions on the power of the Lords to reject or amend an ordinary Public Bill sent up by the Commons, but, in the case of financial measures, in effect abolished that power altogether, by providing that any Money Bill, certified by the Speaker of the House of Commons as such, may, if not assented to by the Lords within a month of session after being received from the Commons, be presented for the royal assent without further delay.

Having thus explained the peculiar privileges of the House of Commons in financial matters, we may now proceed to describe the passing of the annual 'Budget,' or financial scheme, of the Government.

The 'Budget'

We say, advisedly, 'of the Government,' because it is one of the firmest and wisest rules of the House of Commons, that no proposal for the levy or expenditure of national funds can come from any one but the Crown, acting through one of its Ministers, usually the Chancellor of the Exchequer, in the House. This rule,

which is ordained by the House itself in the interests of economy, is based upon the sound principle, that any one who makes a foolish financial proposal shall be liable to suffer for it by loss of office; and it is necessary as a check on that most dangerous of virtues, a readiness to be generous at other people's expense. In bodies where a similar 'self-denying ordinance' does not prevail, nothing is more tempting for a private member than to propose an expenditure of public funds which will be popular with his constituents, and of which they will only have to pay an imperceptible proportion. The natural result is waste and extravagance, if not something worse; and the British rule is so strict, that not even the House of Commons, as a whole, can do more in this direction than respectfully address the Crown, inviting it to place a particular item 'on the estimates,' and expressing the willingness of the House to vote the required amount, if asked.

The 'Budget Speech'

Thus the presentation of the annual estimates of receipts and expenditure, commonly known as the 'Budget speech,'[1] is one of the critical items of the Government programme, and is the subject of long, secret, and minute preparation at 'The Treasury,' *i.e.* the office, presently to be described (pp. 214-217), in which the financial work of the Government is done. Secrecy is necessary, in order to prevent pressure and evasion by powerful persons whose interests are likely to be affected by the proposed measures; and, with the latter object, the Budget speech is never begun in the House until business in the Government revenue offices (*e.g.* the Customs) has closed for the day. The Chancellor of the Exchequer then, in a speech of some length, sums up the financial position, giving a sketch

[1] The name 'Budget' is said to have been derived from a financial pamphlet entitled *The Budget Opened*, published under the Ministry of Sir Robert Walpole.

of the revenue and expenditure for the previous year (April to April), noting items in which the estimates or forecasts for that year have been exceeded or diminished, forecasting the requirements of the current year, and estimating what new taxes will be required in order to meet them. This is always necessary; because, though most items of revenue go on from year to year under permanent Acts of Parliament (*e.g.* Death Duties, or taxes on property passing on death), the House is always very careful, as before explained (p. 34), to leave a large deficit, which will compel Ministers to come next year with fresh demands for taxation, and thus give the House an opportunity of criticizing their conduct in office.

THE 'GIBSON BOWLES' ACT

Until very recently, the 'Budget' speech always ended with a curious proposal, the effect of which requires a word of explanation, even though it has now disappeared. The speech is always watched with particular care by the class of merchants engaged in foreign trade, especially those who import such articles as tea, wine, rum, tobacco, and the like, upon which Customs duties are levied at the ports. These duties, especially the duties on tea and tobacco, are largely relied upon by the Chancellor of the Exchequer, in normal times, to 'balance' his Budget, *i.e.* to make up the deficit before referred to. Of course these duties are, in ordinary times, really paid out of the money of the consumer of the articles thus taxed; because the importing merchant immediately adds the amount of them to the prices which he charges for his goods. But there are always large stocks of these articles lying 'in bond' at the Customs warehouses, *i.e.* waiting there until the importers shall see fit to pay the Customs duties. If, therefore, an importer could be certain, or even fairly sure, that an increased

duty was going to be placed on tea, in, say, three months (about the time it usually takes to pass a Budget into law) he could immediately take 'out of bond' an enormous amount of tea at the old lower rate of duty, pretend to his customers that he had paid the extra duty, charge them with it, and put the money in his own pocket, thus defrauding both the Exchequer and the public. To prevent practices of this kind, the Chancellor of the Exchequer, at the conclusion of his speech, would ask the House to resolve that, if the proposed new taxes were passed into law, they should, contrary to the usual rule of legislation, be made payable, not from the date when the Act imposing them received the royal assent, but from the date of the Budget speech. This resolution was always carried at once; and, thereupon, the Customs authorities would insist on payment of the new taxes at once on all goods taken out of bond—undertaking, of course, to return the difference, if Parliament finally refused to impose them. If the new proposals related to income tax, banks and other institutions entrusted with the payment of interest or dividends (*i.e.* earnings of shares) would deduct 'at the source' the new income tax also.

But these two practices were always a puzzle to students of the British Constitution, whether theoretical or practical; for they had always been taught that it was a fixed rule of that Constitution, that taxes could only be levied under the authority of a complete Act of Parliament. Accordingly, in the year 1912, Mr. Gibson Bowles, at one time a well-known member of Parliament, determined to raise the question, by suing the Bank of England to get back income tax deducted, on this ground, from the interest payable to him on some Irish Loan Stock. He succeeded in his action; but the immediate result was the passing of the Provisional Collection of Taxes Act of 1913, which, with certain important reservations, provides that

whenever the House of Commons resolves, in Committee of Ways and Means, that it is expedient that any proposed variation or renewal of existing customs or excise [1] duties, or income tax, shall have 'statutory force,' all authorities usually collecting such duties or tax may begin to collect them at once, subject to liability to refund, if the proposals are not passed into law within a limited time.

Mention of the Committee of Ways and Means brings us to another important rule of the House of Commons regarding finance. For, by a Standing Order more than two hundred years old, the House has resolved not to proceed upon any Bill for grant, or for releasing or compounding Crown debts, but (*i.e.* except) in Committee of the whole House. There are, in fact, two Committees of the whole House specially concerned with finance, viz. the Committee of Ways and Means and the Committee of Supply; though they are, of course, composed of the same persons.

Committee of Supply

In Committee of Supply, the Government proposals of expenditure are discussed one by one, and, of course, usually agreed to; because any refusal would probably be treated as a vote of want of confidence in the Government, which would involve its downfall. But, short of refusal, the House can do a great deal in Committee of Supply to express its opinion of the policy of the Cabinet. Thus, for example, it is open to any member, when the salaries of any department come up for discussion, to move to 'reduce the vote by £100,' as a protest against alleged defects in the working of that department; and, though, eventually, the motion will be 'by leave of the House,

[1] *i.e.* duties on the manufacture within the kingdom, of such articles as whisky, patent medicines, motor spirit, and mineral waters, or on the sale of tobacco or intoxicating liquors. Other 'licence duties' are also included under this head.

withdrawn,' yet, in the discussion, there will have been room for a good deal of plain speaking, which will not be without effect.

Consolidated Fund Bills

When the Committee of Supply has finished a sitting, its Chairman 'reports progress' to the House, *i.e.* formally announces to the Speaker the business done; and a 'Consolidated Fund Bill' is introduced, from time to time during the session, granting to the Crown a corresponding sum out of the 'Consolidated Fund' of the United Kingdom, *i.e.* the balance and accruing revenue of the Exchequer from all sources, and empowering The Treasury, if need be, to borrow by short drafts, known as 'Treasury Bills,' on the security of the fund, any sums which may be necessary to make good the grant. These Consolidated Fund Bills pass through all the stages of legislation previously described (pp. 158–159); but being short, and, virtually, already agreed upon, they very quickly become law, though they afford another opportunity for criticism of the Ministry. Of course they are 'Money Bills,' specially protected by the Parliament Act of 1911 (p. 165).

Committee of Ways and Means and Finance Bills

Meanwhile, the House, sitting as a Committee of Ways and Means, has been considering how the deficit of the year is to be provided for; and the resolutions passed in this Committee have been duly 'reported' to the House (p. 159), and embodied in one or more 'Finance Bills,' which, like the Consolidated Fund Bills, have to go through all the regular stages, subject to the provisions of the Parliament Act (p. 165). But, as these Bills often impose new and searching taxes, they give rise to much more debate than Consolidated Fund Bills, and are often not passed until nearly the end of the session.

The Appropriation Act

Finally, the whole financial scheme of the year is embodied in the 'Appropriation Bill,' which contains, in its numerous Schedules, a kind of balance sheet of the national income and expenditure; though, of course, it is impossible to go much into details, even in ordinary times, whilst, in time of war, nothing but the bare totals of naval and military expenditure are given, for obvious reasons. In such a time, also, only 'dummy,' *i.e.* blank, estimates for such expenditure are presented to the House; and large 'votes of credit,' or resolutions authorizing expenditure of round sums, are asked for and obtained at frequent intervals, which enable the Government to go on borrowing money to meet current expenses.

Supplementary Estimates

In ordinary times, the expenditure of each financial year is provided for out of the revenue of that year; and there is another important order of the House which forbids money voted for one year to be expended after the year has expired. Thus, even if a department has been so lucky as to have a balance at the end of the year, it cannot hold it in reserve, but must return it to The Treasury; unless, of course, the House gives special permission to the contrary. If the original estimates should have proved insufficient for the service of the year, 'supplementary' estimates must be presented and authorized; and, in times of strain, even a supplementary Appropriation Act may be necessary.

Criticism of Government

Leaving an account of the methods of collecting and expending the revenue granted by Parliament, and the important subject of 'auditing,' or examining the

national accounts, until we come to deal with The Treasury, under whose direction these important duties are mainly (though not entirely) carried out, we proceed now to touch briefly on another important duty of Parliament, viz. supporting, criticizing, or, if necessary, defeating, the policy of the Crown; always remembering, of course, that no criticism is ever directed against the King personally, because, in all matters political, he acts on the advice of his Ministers (pp. 44–45). Inasmuch as it is of the essence of the Parliamentary or 'Cabinet' system of government, as understood throughout the British Empire, that every department of State should have at its head a Minister who is a member of Parliament, and who can therefore be questioned and defend his department in Parliament, it will be perceived that every department of State is 'responsible' to Parliament in a very real sense.

'Questions'

Ministers occupy seats in either House on the 'Treasury Bench,' or row of seats on the floor of the House, on the right hand of the Lord Chancellor or Speaker respectively; and one of the earliest items in each day's proceedings, is a formidable array of questions on every conceivable subject, of which private (*i.e.* unofficial) members of the House have given notice. The object of the notice is, of course, to enable the Minister concerned to get the necessary information (often involving great investigation) to enable him to reply to his questioner. By a useful reform effected a few years ago, some of these replies are given in writing, and published with the official Reports of the Debates ('Hansard'), which are, of course, freely accessible, not only to members, but to any person who chooses to examine them. But the more important are answered by word of mouth in the House, in the presence, not only of members, but of strangers occupy-

ing one of the various 'galleries,' which, though not strictly part of the House, are so placed that all the proceedings are, or should be, audible there.

If the questioner is not satisfied with the Minister's reply, he often puts an impromptu 'supplementary' question, 'arising out of the reply'; and, under cover of such a proceeding, or even in the wording of his original question, he will attempt to introduce arguments against the Minister's action. But the Minister attacked may defend himself by saying, 'I must have notice of that question,' or Mr. Speaker may intervene, and say: 'The hon. member must not make a speech.'

Motion for Adjournment

If, however, the matter is of importance, and the House is not satisfied with the Minister's reply, the questioner may ask leave to 'move the adjournment of the House'; and, if forty members support his request, a debate (nominally on that motion, but really on the substance of the question) takes place; and the Government, which formally opposes the motion, if defeated, must resign, or at least, the Minister in question must.

Resolution of Want of Confidence

A still more extreme step is the moving of a formal resolution condemning the policy of the Government, either as revealed in the report of a Royal Commission, *i.e.* a body appointed by the Crown to investigate, independently of Parliament, the facts of an alleged failure or misconduct by a Government department, or by such sources of information as the newspapers, or even common report. In still more extreme cases, a general vote of want of confidence in the Government may be moved. As a rule, opportunity for a debate on such a motion will only be granted by the Government on the request of the leader of a substantial party in the House; and the power which the Govern-

ment exercises (not as servants of the Crown, but as leaders of the House itself) of arranging the 'programme' of the House, enables it to prevent the time of Parliament being wasted in debating motions of this kind which have no chance of success. But no Government would dare to deny opportunities for such a debate if it were really the desire of the House that it should take place; for to do so would merely result in the House refusing to support the Government, and, in the case of the House of Commons, at least, such refusal would be fatal to the Government's existence. It has, however, long been the practice for Liberal Governments to disregard 'votes of censure' by the House of Lords; because they are always in a minority there, and have no chance of getting a majority in that House by a General Election.

Resignation of Government

The debate on a resolution expressing a want of confidence in the Government is, of course, a test of strength between the Government and the Opposition; and if the resolution is carried, or only defeated by a very small majority, the Government, in the former case invariably, in the latter usually, tenders its resignation to the King, or, if circumstances are favourable (p. 45), requests him to dissolve Parliament, that the electors may decide between the parties.

Informal Committees

In addition to these occasional steps, and, indeed, with a view of prompting them, many groups of members, or 'committees,' are voluntarily formed to enable their members to keep a vigilant eye on the action of the Government in regard to some matter in which those members are specially interested, such as agriculture, the navy, tariff reform, and so on. It is not very easy to be sure as to the relationship between

these groups (which are not, of course, appointed by either House itself),[1] and the regular party organization (pp. 151–152); but it will usually be found that they are composed of members of one party, and they may, therefore, perhaps, be described as sub-parties, formed to stimulate, or 'ginger up,' their own nominal chiefs.

Secret Sessions

A few words may, perhaps, here be usefully said about a rare form of Parliamentary discussion which has, of late, owing to special circumstances, been of unusual prominence. When they are asked questions in either House, Ministers may, of course, refuse to answer, on the ground that to do so would be against the interests of the State, by revealing information of value to enemies, open or secret. Such a step is, obviously, likely to be of frequent occurrence in time of war; and the patriotism of the House will usually support the Minister in such a refusal. But the Government may think it wise to take the House into its confidence, in what is called a 'secret session.' It is not, perhaps, generally known that all debates, in both Houses, are, in theory, secret; in the Lords, because they are the hereditary counsellors of the Crown, in the Commons, because, at an early date, to protect its own independence, the House insisted on 'secrecy of debate' as a guarantee against intimidation by the King. Down to the end of the Civil War, this secrecy was maintained in actual practice; and it is only from private diaries of members, which, though regarded with great jealousy by the House, were in fact kept from the middle of the seventeenth century, that we know anything, beyond the bare official 'Journals,' of what actually took place in debate. With the great increase of interest, however, in the proceedings of Parliament which grew out of the

[1] Therefore, of course, they are not 'committees of the House.'

Civil War, and the growth of newspapers and other periodical literature, more and more the fiction of secrecy broke down; and the suspicion grew also, that any insistence on the privilege of secrecy was likely to be at least as much in the private and corrupt interests of members of the House, as in the desire to prevent interference by the Crown. At last, in the third quarter of the eighteenth century, in a series of quarrels between the House and the authorities of the City of London, who, under the guidance of the notorious John Wilkes, championed the cause of the printers of the debates, the House of Commons was definitely defeated; and the publication, both of debates and voting lists, became a regular thing. Still the House refused to recognize publicity as a right of the citizen; though it appointed a printer who supplied copies of Parliamentary Papers to all and sundry, and even allowed a Strangers' Gallery to be built on the edge of the debating chamber. Finally, however, in 1875, the right to exclude strangers was restricted in the Commons to the Speaker or the Chairman of Committees, and is now only exercised on a formal resolution of the House, moved by the Prime Minister or Minister of the Crown, on occasions of great gravity.

The House and its Constituencies

As a final example of the way in which Parliament, and especially the House of Commons, collects and expresses the will of the country, we may refer to the intimate connection which exists between members of Parliament and their constituents. The member or candidate for the constituency is the person to whom the average elector naturally turns for guidance in understanding political affairs. True, he may read the accounts of Parliamentary debates in the newspapers; but these accounts, less extensive than they formerly were, especially in the local Press, do not bring home very vividly to the average elector the

meaning of things. For this he looks to the speeches delivered from time to time at local meetings by his member or candidate; and a conscientious member takes his duty in this respect very seriously, not entirely in his own interests. Moreover, he is in daily touch with individual constituents; and his letter-bag, especially during a session of Parliament, is heavy. It is true that this activity has its doubtful side; especially when it is concerned with the procuring or according of favours. None the less, it is an essential element in the working of really popular government, and especially in the ventilation and removal of those grievances which, if left unnoticed, are apt to rankle, and produce a dangerous feeling of unrest.

Petitions

From the earliest times, the House of Commons has been a centre for the redress of grievances; and, formerly, 'receivers and triers of petitions' were appointed at the commencement of each session. As new ways of dealing with grievances were invented, the course of procedure changed; but the presentation of petitions to Parliament on public subjects became so popular in the sixteenth and seventeenth centuries, that a Committee of Grievances sat regularly during those years, and, in 1661, an Act was passed to prevent the presentation of petitions in a tumultuous or disorderly manner. The right of all subjects to petition the King was, however, reaffirmed in the most unqualified manner by the Bill of Rights of 1689; and, in substance, all the more important of these petitions find their way to the House of Commons, by which they are dealt with in a systematic manner. They can only be presented by a member of the House, and are not commonly read or debated upon, but merely announced in summary form. Nevertheless, if there appears to be real ground for action, the petition might be discussed; and upon it, or upon any

matter of public interest, either House might pass a formal resolution, or even go to the length of presenting a formal Address to the Crown, expressing its views as to the course to be adopted, and even urging action in a specified direction. Such resolutions need not by any means be hostile to the Government; they may even, in times of crisis, be a solemn expression of the united determination of the nation to stand behind the Crown and its Ministers, and support their policy. Such resolutions and Addresses may come, not only from the Imperial Parliament, but also from the Parliaments of the self-governing Dominions, and the Legislative Councils of the Crown Colonies and India. Everywhere throughout the Empire the legislative body is the natural centre of popular manifestation; and, the more truly 'representative' it is, the more genuine is that manifestation.

Judicial Work of Parliament

As was said at the beginning of this chapter, Parliament is, to a certain extent, concerned with judicial proceedings; but the expression 'High Court of Parliament' should not mislead us into supposing that any substantial share of the ordinary work of administering justice falls to its lot. The House of Lords, it is true, is, as we shall see, the supreme court of appeal from the courts of the United Kingdom in civil, and, to a very slight degree, in criminal cases; but in this capacity it is hardly a part of Parliament, and sits independently of Parliament as a whole. The House of Lords also acts as a tribunal for the trial of peers accused of treason or felony, and as a quasi-judicial 'Committee of Privileges,' when there is a disputed claim to a peerage.

Impeachment

But the only judicial proceeding in which Parliament as a whole takes part is the almost obsolete

process of impeachment, before alluded to (pp. 32–33), in which 'Managers,' appointed by the Commons, appear at the bar of the House of Lords, and accuse persons who are alleged to have misconducted themselves in an official capacity. Even this proceeding is not strictly judicial; because, in spite of the fact that the person accused is charged with 'high crimes and misdemeanours,' no crime definitely known to the law need be, or usually is, alleged against him. If the Lords find the accused guilty, and the Commons demand judgment, practically any punishment may be imposed, regardless of precedent. The proceedings are, in fact, in the nature of a solemn and deliberate act of justice, unfettered by precise legal rules.

Intermissions of Parliament: Dissolution

In concluding this chapter, it may, perhaps, be well to distinguish between three kinds of interruptions of Parliamentary business which have been alluded to in it, and which are apt to be confused. As has been before remarked (p. 36), the Crown, acting on the advice of its Ministers, or, possibly (p. 45), on its own initiative, may *dissolve* Parliament, *i.e.* put an end altogether to its existence. Needless to say, this step, though it does not affect any Bills which have actually received the royal assent, puts an end to all incompleted business; for, by a General Election, the membership of the House of Commons may be entirely changed.

Prorogation

But, at the end of the Session, *i.e.* the annual meeting of Parliament, Parliament is *prorogued* by the King until the next assembling; and this step is not followed, at any rate necessarily, by a General Election, but the same Parliament meets again, when summoned

by proclamation after the 'recess,' which, in normal times, lasts from mid-August to February. Strange to say, by a rule the reason of which is not apparent, all pending business likewise drops on this occasion, as on a dissolution, and has all to be begun again in the next session.

Adjournment

Finally, during the session, each House *adjourns* itself from day to day, or over the week-end, or a short vacation, or merely for a few hours, by simple resolution. This step has no legal effect on business, which is taken up, according to the time-table of the House, which is regulated by the Standing Orders, just where it left off. That is one reason why, during a war or great crisis, Parliament is not prorogued, much less dissolved, if it can be avoided. It is merely adjourned from time to time, ready to take up its work again, as the needs of the moment require.

CHAPTER VIII

THE FIGHTING SERVICES

As has been before pointed out (p. 5), it is one of the oldest, if not the very oldest duty of the King to lead his people in war; and the right and duty of the Crown to train, equip, and control a sufficient military force to defend its dominions from attack, has never, except in time of revolution, been denied. But the common sense of the British people, sharpened by experience, has not been blind to the dangers which might attend the exercise of these rights, and has devised certain safeguards against them. Moreover, the enormous cost of modern warfare, and even of preparation for warfare, has long rendered it impossible for the Crown to perform its military duties without frequent recourse to Parliament for the grant of money; and Parliament has, not unnaturally, made of this fact a powerful lever for securing national control over military policy and administration. The King and his advisers, on the other hand, have wisely seen, that a hearty national co-operation in the work of providing and maintaining the fighting services is far more valuable than a sullen submission to autocratic levy of men and money. The result has been a series of arrangements which form an important part in the government of the Empire.

The Royal Navy

The oldest of the present fighting forces of the Crown of a professional character is the Royal Navy.

Owing to her insular position, England has been from time to time engaged in maritime war from the earliest days of her history; and the ill-omened Ship-Money Writs issued by Charles I were said to have been taken from precedents used before the Norman Conquest. But it was not until the late fourteenth century that a general system was established for the naval forces of the Crown by the creation of the office of Lord High Admiral, and the recognition by Parliament of the King's right to require the services of seafaring men for the Royal Navy—the so-called right of 'impressment.' This right has never been abandoned; and, for many generations, sailors who were perfectly prepared to serve in the Navy insisted on going through the form of being 'impressed,' because it was attended by the payment of bounties which they preferred to regular pay. But, for the last century, at least, the Royal Navy has been so popular, and the conditions of pay and other provisions have been so much improved, that service in the Navy has been voluntary.

The Tudor Revival

With the interest in maritime affairs aroused by the great discoveries of the fifteenth and sixteenth centuries, the growth of the Royal Navy proceeded apace, especially under the Tudor monarchs, who were fully alive to the importance of supremacy at sea; and England entered upon a series of Titanic rivalries with Spain, Holland, and France, for the acquisition of that supremacy, which left her, or rather the British Empire into which she had expanded, at the Peace of 1815, the first Naval Power in the world. Superb as have been the bravery and enterprise of British sailors in acquiring that position, it is almost equally creditable to the moderation and good sense of British statesmanship, that it has been so justly and wisely used, as to arouse little jealousy and suspicion. And when the

hour of supreme trial came, it was the proud lot of the British Navy to find arrayed in comradeship with it, the fleets of practically all the civilized Powers of the world, with the exception of that which had thrown down a sinister challenge to its existence.

The Admiralty

So great had the power of the Lord High Admiral, the head of this mighty force, become, even in the seventeenth century, that we find Charles I adopting the practice which, as we shall see, was adopted also with regard to the great offices of Lord High Treasurer and Lord Chancellor, of 'putting it into commission.' The practice was quite in accordance with the views of the Parliamentarian party, who, though they took a great share in the developement and improvement of the English Navy, and made its name famous throughout the world, had no love for great officials; and, though the office was revived, on the Restoration of Charles II, for the King's brother, the future James II, that step did not add to its popularity, and, by a statute of the year 1690, the practice of putting the office into commission was regularized. From the year 1708, in fact, save for the brief tenure of the office by the Duke of Clarence, afterwards King William IV, from 1827 to 1828, there has been no Lord High Admiral of England, much less of the Empire; and 'My Lords of the Admiralty' have ruled the destinies of the Navy.

Growth of Admiralty Offices

Meanwhile, however, the growing needs of the Royal Navy had been met by the growth of an administrative system which comprised a Navy Board, created so far back as 1546, a Victualling Board, and a Treasurer of the Navy, all acting in subordination to

the Admiralty; and, though Parliament had never shown any jealousy of the Navy at all corresponding with that which, as we shall see (pp. 189-190), manifested itself in connection with the army, it had, by a great statute of the year 1661, empowered the Crown to issue 'Articles,' or regulations, for the control and discipline of the Navy, and to appoint naval courts martial, or special tribunals for the trial and punishment of offences by officers and men of the fleet. This latter jurisdiction must be carefully distinguished from the jurisdiction exercised by the 'Court of Admiralty' over all offences committed by British subjects on British ships on the high seas, and over certain purely civil business, such as salvage claims and actions against ships, which jurisdiction had been the subject of fierce dispute in the sixteenth and seventeenth centuries, and has nothing to do with the discipline of the Royal Navy.

Reforms of 1832

In the year 1832, the management of the Navy was placed substantially on its present basis (though there have been, and constantly are, changes of detail), by Sir James Graham, who procured the abolition of the semi-independent Navy and Victualling Boards, and the transfer of their duties to the Admiralty Board. Thus the whole business of the Navy, military as well as civil, became concentrated in the hands of the 'Lords Commissioners for executing the office of Lord High Admiral,' who are appointed by Letters Patent. The number of such Commissioners varies from time to time, according to the requirements of the situation; but the Board always comprises a 'First Lord,' a 'First' and other 'Naval Lords,' and one or more 'Civil Lords.' In addition, a Parliamentary, a Financial, and a Permanent Secretary, are appointed members of the Admiralty Board, but not by the Letters Patent appointing the Lords Commissioners.

Working of the Board of Admiralty

Unlike the Treasury Board (p. 216), which now never meets, the Admiralty Board has never ceased since 1832, except for a brief and bad period, to hold regular and frequent meetings at which genuine business is genuinely discussed. But it must not be supposed that the decisions of the Board, like those of an ordinary committee, are arrived at by the simple process of counting votes. Though the Lords Commissioners are all legally on the same footing, and any two of them can sign for 'The Admiralty,' the 'First Lord,' who is always a member of the Ministry, and, in ordinary times, of the Cabinet, is, and is intended to be, much more than a mere chairman; because he, and he alone, is directly responsible to King and Parliament for the administration of the navy. This fact was always understood after the reorganization of 1832; but it was put beyond question by two Orders in Council of 1869 and 1872 respectively, which definitely subordinated the other members of the Commission to the First Lord, and gave him power to arrange the distribution of business among his colleagues. Thus, the decisive voice at the Board is with the First Lord, who, if his colleagues attempted to overrule him, would decline to take responsibility for their decision, and either resign his office (which would mean the dissolution of the Commission), or procure the dismissal by the Cabinet of any colleague who persisted in opposing him. The position of the 'Junior Lords' of the Admiralty, is, therefore, anomalous. They are, in theory, responsible for the decisions of the Board, but cannot control, though, doubtless, they can and do influence, its policy. The bulk of their time is, probably, occupied with the immense and important duties of the administrative work entrusted to them by the Minute of the First Lord—the recruiting and management of the men of the navy and the education of, the

issue of commissions to, and promotions of, its officers, the building, manning, and moving of the ships, the construction of naval docks and harbours, the maintenance and working of the 'yards' or works in which the vast machinery of construction and repair goes on, the appointment and duties of the civilian staff, and the great business of finance. It is in these matters that the expert does his important work. The Parliamentary and Financial Secretaries to the Admiralty may sit in the House of Commons; but the other members of the Board, even if they cannot all be called 'permanent,' are excluded from the House by the operation of the Place Act of 1707 (p. 105).

Naval Enlistment and Discipline Acts

As has been before remarked (p. 184), there has never been any constitutional check on the maintenance or recruitment of the navy, other than that imposed by the necessity of getting money for these objects from Parliament. But the old haphazard methods of recruiting have been replaced by a scientific and highly successful system under the provisions of the Naval Enlistment Acts, which make provision for the period of service, discharge, and pension of the men; a special provision being that no man can be compelled to serve for more than five years. Likewise, also, the maintenance of discipline in the navy, originally a matter of undisputed prerogative, is now governed by the provisions of the Naval Discipline Acts, which incorporate, with many additions, the Articles of War issued by the Crown under the provisions of the Act of 1661 (p. 184), and, further, authorize the creation, when occasion requires, of naval 'courts martial,' comprised of officers of the Fleet, which have power to try officers and men of the Royal Navy for offences, not only against naval discipline, but also against the common law. Further, the Acts make

provision for 'courts of enquiry,' also of a naval character; for the purpose of investigating events which demand explanation, though no one can at first be accused of responsibility for them. Unlike the soldier (p. 208), the sailor in the Royal Navy is, therefore, practically (though not legally) exempt from the jurisdiction of the ordinary courts of justice; and this practical exemption is, no doubt, largely due to the fact that he has very few opportunities of inflicting harm on the private citizen, while to remove him from his ship or squadron for purposes of trial, might involve unnecessary inconvenience and expense. Needless to say, the Rule of Law (p. 38) previously described, applies to the sailor as much as to the soldier.

Naval Reserves

In addition to the regular officers and men of His Majesty's Navy, on full pay, amounting, at the outbreak of the European war, to 150,000, there are more than one powerful adjunct which have proved their great worth in war. There is, for example, the Royal Naval Reserve, constituted under an Act of Parliament of 1859, and merged into the Royal Fleet Reserve by the Naval Reserve Act of 1900. By the original scheme, the members of the R.N.R. enlisted for a period of five years, and were liable to twenty-eight days of training in each year; but these requirements were a good deal stiffened by the Act of 1900, and all limit of numbers in this force was removed by the Naval Forces Act of 1903, which also sanctioned the creation of a body of Royal Marine Volunteers, available for service beyond the four seas. It was under the provisions of these Naval Reserve Acts that the invaluable auxiliaries of the regular Fleet known familiarly as the 'mine-sweepers' were organized. Then, too, it may be noted that the men of the Coast Guard (a system of coast defence which

has been in existence since the reign of Edward I) and other sea-faring men in the Government service, as well as navy pensioners, may, in case of emergency, be called upon to serve. Inasmuch as these all are, or have been, professional sailors, the value of their services is very great.

Land Forces

As has already been remarked (p. 7), the earliest land forces of the Crown were of the nature of civilian soldiers, or militia, only liable to serve for defence, and, according to strict theory, only in their own counties.

The Feudal Array

When the Norman Conquest had shown the need of a professional army, it was raised on feudal principles, by making the liability to service dependent upon the holding of a landed fief or estate. But the feudal array thus provided for soon ceased to be, if it ever was, a 'standing' or permanently embodied army; its members being only bound to serve the King for forty days in each year.

Commissions of Array

For this and other reasons it soon became obsolete; and, after some attempted schemes of Edward I, which have not received the attention they deserve, the feudal levy was replaced by 'commissions of array,' *i.e.* virtually, armies of professional soldiers recruited by their immediate officers, by virtue of royal commissions, or authorities, issued to them by the King. These commissions were intensely unpopular, on account both of the character of the soldiers (*solidarii* or 'shilling-men') raised by them, and of the high-handed methods used by the holders of them to procure recruits. Many Acts of Parliament were

passed to prohibit such methods, as well as the resulting steps of 'billeting' or compulsory lodging of such men (usually strangers to the locality), and the granting of unusual powers of discipline and trial to the officers receiving the commissions. Nevertheless, the difficulty of finding the money to pay them remained the chief legal obstacle to the raising of such troops; until the use made of commissions of array by the Stuart Kings to overawe their subjects, and establish autocratic government, led the champions of freedom definitely to challenge their legality.

The practice of issuing commissions for trial by 'martial law' was the more odious, in that it was extended by James I and his son, not merely to professional soldiers, but to other 'dissolute persons . . . for any robbery, felony, mutiny or other outrage, or misdemeanour,' *i.e.* to private citizens for offences known to, and properly triable by, the ordinary law courts.

The Petition of Right

After various protests, the Parliament of 1628 procured the acceptance by the King of the famous statute known as the 'Petition of Right,' because it declined to admit that it was creating new law, and professed to be merely a re-affirmation of existing law. By that Act, which is still in force, after a full and explicit recital of these and other grievances, His Majesty is prayed 'to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever'; and His Majesty, despite his obvious unwillingness, was constrained to grant that 'right shall be done as is desired.' It should be particularly noticed, in view of subsequent and recent happenings, that the

prohibition of trial by martial law (as to the nature of which something will hereafter be said) was not by the Petition of Right restricted to time of peace, in spite of a suggestion to that effect by the House of Lords, made at the time of its passing.

The occurrence of the Civil War shortly after the passing of the Petition of Right somewhat masked the importance of that document for a time; but it by no means altered the attitude of the nation towards a professional army. For even Cromwell's New Model, which included the famous 'Ironsides,' notwithstanding its glorious exploits and its Parliamentary character, was intensely unpopular; and the very success of Cromwell had an obvious effect on military arrangements down to the great French War at the end of the eighteenth century.

The Bill of Rights

Accordingly, when James II showed a disposition to imitate the policy of his father, by establishing a camp of professional soldiers on Hounslow Heath to overawe London, his subjects deposed him, and, in the great Bill of Rights, in 1689, in which they offered the throne to William of Orange and his wife, they made it an express condition of their offer, that 'the raising or keeping a standing army within the kingdom, in time of peace, unless it be with the consent of Parliament, is against law.' This statute, likewise, remains on the Statute Book; and thus the legal position of the professional land soldier is, obviously, different from that of his maritime comrade, because, quite apart from questions of ways and means, the Crown does an unlawful act, and all persons who take part in the proceedings do unlawful acts, if they equip a single regular soldier within the kingdom (which does not include India), *in time of peace, without the express* sanction of Parliament.

It is, however, one of the strangest facts in English history, that the very event which rendered the existence of a standing, or 'regular' army within the realm, *primâ facie*, illegal, also rendered it necessary. But the apparent oddity is easily explained. Naturally, the dethroned monarch and his descendants would not submit to the loss of their inheritance without an effort; and there were many rulers (especially the powerful King of France) only too willing to make use of the Stuart or Jacobite claims, to embarrass William of Orange, whom they hated as the champion of Protestantism and liberty.

'Mutiny Acts'

Accordingly, it became necessary to provide in some way for the suspension of the provisions of the Petition of Right and the Bill of Rights above quoted; and this was done by the passing of annual 'Mutiny Acts,' which, after expressly repeating or 'reciting' these provisions, declared that, for one year, they should be in abeyance. At first these Mutiny Acts did not go further; but, in 1712, they began to fix definitely the number of soldiers which might be raised by the Crown under their permission, and this practice has continued ever since. About that time, also, began the practice, easy but not very straightforward, of attaching the words 'in time of peace,' which, as we have seen, were really in the clause of the Bill of Rights (p. 190), which deals with a standing army, to the 'recital' of the clauses of the Petition of Right (p. 190) dealing with martial law and billeting, in which they do not occur; and this practice, being embodied in Acts of Parliament, may be said to justify the view, that the limitation to 'time of peace' must be now read into the Petition of Right, though it certainly does not justify the statement that 'the framers of the Petition of Right knew well what they meant

when they made a condition of peace the ground of the illegality of unconstitutional procedure.'

The Army Act

The Mutiny Acts extend in a long and almost unbroken series from 1689 to the middle of the nineteenth century, as standing witnesses to the growing control of Parliament over the regular army; for they increase as they go on in complexity and length, by the insertion of many clauses dealing with the discipline, training, billeting, and general management of the regular troops. Thus an elaborate code of 'military law' (very different from, though it is often called by the same name, the 'martial law' prohibited by the Petition of Right), came into existence; but it is applicable only to 'regular' soldiers, including the militia or Territorials when 'embodied' or called out for service. At length, in the last quarter of the nineteenth century, a very useful step was taken. What may be called the 'permanent' parts of military law (though of course they are altered from time to time) were separated from the temporary provisions which suspend the Petition of Right and the Bill of Rights, and embodied in a permanent statute, commonly called the 'Army Act, 1881,' but more properly 'The Army Act,' because, by an admirable arrangement, when any alteration is made in its provisions by an amending Act, that alteration is immediately incorporated into the Act itself, so that the British officer who has to work under it knows exactly where he is. The odd thing is, that this 'permanent' statute is in a very true sense 'annual'; because it is re-enacted or revived year by year by the Army (Annual) Act, which has taken the place of the original Mutiny Acts of William and Anne, and is, usually, quite short. It is this Act, which we will continue to call, for clearness, the 'Mutiny Act,' which authorizes

exactly the maximum number of regular troops which the King may levy and maintain; and it is remarkable, that Parliament has continued to pass this Act during the great war, notwithstanding that the prohibition of the Bill of Rights as to a standing army is confined to 'time of peace.' This annual Mutiny Act, as has been said, also suspends the operation of the clauses about martial law and billeting in the Petition of Right, and, if necessary, makes alterations in the 'permanent' Army Act, which are then incorporated into the latter statute.

Discipline of the Regular Army

The management and control of the army have, as has been before said (p. 7), always been recognized, except in times of revolution, as being the peculiar prerogative of the King.

Articles of War

Accordingly, soon after the practical necessity of a permanent standing army had become apparent, at the end of the seventeenth century, the King began to issue from time to time 'Articles of War' for the government of the troops. These Articles dealt mainly with minor offences; because the Mutiny Acts themselves, as a rule, dealt with capital offences, whereby men might be 'forejudged of life and limb.' But, at the beginning of George I's reign, it was thought better to put this royal prerogative on a constitutional footing; and so, by an Act of Parliament of the year 1717, the King was definitely empowered to issue Articles of War—a fact which does not, of itself, deprive him of his independent prerogative.

'King's Regulations'

As, however, the provisions of the Mutiny Acts became more and more detailed, the scope of the King's

prerogative in this respect, whether derived from common law or the Acts themselves, became, in practice, more and more restricted; because, of course, the King cannot, by Articles of War, alter the provisions of an Act of Parliament. The 'King's Regulations,' therefore, are concerned mainly with the minor affairs of military life, such as the soldier's uniform and equipment, the etiquette of the barracks and the mess-room, the formalities required in communicating with the authorities, and so on; while the really important rules affecting the soldier—the terms of his enlistment, his billeting and transport, and his trial and punishment for alleged offences—are governed by the Army Act. This is an important fact, in view of a great constitutional question which must hereafter be discussed; but the great prerogative power which still belongs to the Crown in army administration was vividly illustrated by the step taken in 1872, when the sale of commissions, which for long had been openly practised under Army Regulations, was abolished by Royal Warrant.

Parliamentary Control of Army

It was long before Parliament obtained any further hold over the army than that contained in the Mutiny Acts. Of course the necessity of coming to Parliament for money to pay the troops and provide equipment and provisions compelled some sort of account of its management to be given.

The Secretary at War

But the Secretary at War, an important official on whom this duty fell, was not part of the Ministry of the day; and if, for reasons of obvious convenience, he occupied a seat in the House of Commons, he did not admit that he was responsible to that House. The sums voted by Parliament for the army were

handed over to the Paymaster of the Forces, who was not by any means necessarily a member of Parliament at all, and who was responsible for his acts to the King alone.

Army Estimates

The first definite step taken to bring the regular army under the control of Parliament was the enactment, in the year 1783, as part of Burke's schemes of reform, of an Act requiring the Secretary at War to prepare and lay annual estimates of military expenditure before Parliament, and to obtain and examine the accounts of the Paymaster, whose defalcations in the past had been notorious.

Commander-in-Chief and Secretary of State

But a far greater step was taken in the year 1793, when, as a consequence of the great French War, the military control of the army was placed under a professional Commander-in-Chief, while its administrative control was placed under a newly created Secretary of State for War. Thus began that system of 'dual control' of the army, by the 'Horse Guards' or headquarters of the Commander-in-Chief, and the 'War Office' or bureau of the Secretary of State, which was the parent of so much friction and confusion. Moreover, the old office, now become meaningless and dangerous, of Secretary at War, was not then abolished.

The definite establishment of the principle that in army administration, as in other departments of State, Parliament is supreme, did not come until after the Crimean War, when, by the separation of the War and Colonial Offices (p. 76), and the abolition of the Secretaryship at War, the Secretary of State for War, always a member of the Ministry, and, in normal times, a member of the Cabinet, acquired complete control of

the army, and, of course, therewith complete responsibility to Parliament, tempered only by the surviving powers of the Commander-in-Chief.

Reforms of 1870

The latter office was, moreover, definitely subordinated to that of the Secretary of State by Mr. Cardwell's reforms of 1870, which created, in effect, three sub-departments of the War Office, the first, purely military, under the Commander-in-Chief, the second dealing with equipment and commissariat, taking over the duties of the old Ordnance Board, and the third dealing with finance. The two latter sub-departments were presided over respectively by a Surveyor-General and a Financial Secretary, both of whom might be members of the House of Commons, but who were distinctly subordinates of the Secretary of State.

Reforms of 1888, 1895, and 1904

Further reforms, of a partial nature, were introduced by Mr. Stanhope in 1888, and Lord Hartington in 1895; but the most complete change was made in 1904, when, as the result of the recommendations of Lord Esher's Commission, the office of Commander-in-Chief was definitely abolished, and the government of the army entrusted to an Army Council, created from time to time by Letters Patent, and consisting of the Secretary of State, the Parliamentary Under-Secretary for War, the Financial Secretary to the War Office, with four professional members, viz. the Chief of the General Staff, the Adjutant-General, the Quarter-master-General, and the Master-General of Ordnance.

The Army Council

This body, whose duties were regulated by Order in Council, and which consists, as we have just seen, of

three Ministers and four professional officials of high rank, has the virtual control of the daily administration of the army, issues formal Orders relating to its government, and, under the Defence of the Realm Acts, about many other matters relating to public safety, regulates promotions, carries out the decisions of the Imperial Cabinet on the subject of the direction of campaigns, and the movement of troops, and, through the Committee of Imperial Defence (p. 206), co-operates with the Royal Navy. The fact that the Army Council contains a majority of non-Parliamentary members, may appear to be inconsistent with that Parliamentary control of the army which is essential to the principles of the British Constitution; but, apart from the fact that the Secretary of State is President of the Council, it is clear, from the terms of the Letters Patent constituting the Council, and the Order in Council regulating its duties, that the Council is only to act as a highly responsible and qualified deputy of the Secretary of State, who is responsible to King and Parliament for the business of the War Office. And, though the Secretary of State need not be actually a member of the Imperial Cabinet, he is so closely in touch with it as to make him morally certain of its support, so long as he retains office. Finally, though the reforms of 1904 contemplated the appointment of an Inspector-General of the Forces, whose office might conceivably have retained a good deal of the old independent authority of the Commander-in-Chief, in fact, after a single experiment, this new office has fallen into abeyance. Judged by results, the first few years of the working of the new scheme may be said to have been highly satisfactory; for, by the admission of all parties, there has rarely been launched by any army organization a more efficient force than the Expeditionary Army which, called in August, 1914, to withstand the shock of the most elaborately prepared and overwhelmingly

numerous army of invasion ever seen in the history of modern Europe, perhaps of the world, gallantly performed its heroic task.

The subject of army recruiting—*i.e.* the terms of and liability to service in the British army, is now, naturally, in a fluid state; and we can give only the barest outlines. Briefly speaking, however, there are now four chief sections of the army, each of which stands, legally, on a distinct footing.

The Regular Army

(1) The first of these is the 'regular' or professional section—infantry, cavalry, and horse and foot artillery, and engineers. These are recruited under the terms of the Army Act, on a voluntary system, which authorizes the Crown to accept their services for a period not exceeding twelve years. In practice, the period for which the regular private soldier enlists is now seven years with the colours and five in the 'reserve' (p. 200); while it would seem that acceptance of a commission by an officer binds him to serve during the Crown's pleasure, though, in time of peace, the officer can, in practice, resign his commission at any time. Moreover, the length and terms of service may be extended or varied by the Secretary of State, within the limits prescribed by the Army Act; and there are provisions for suspending the right to a discharge at the expiry of a period of service, if the Empire is then at war, and for prolonging it voluntarily, if the soldier so desires. Owing to the great changes wrought by the European War, it is impossible now to give any idea of the probable future numbers of the regular army; but, at the outbreak of the war, it numbered about 120,000 men. The members of the regular army are liable to be sent anywhere, at any time, on service.

The Royal Marines

(2) The Royal Marines are a body of regular troops, infantry and artillery, of great value, which occupies a curious legal position. Its members are liable to serve both on land and sea. They are raised under the provisions of the Mutiny Acts, though these Acts do not fix their numbers; and when they are serving on land, or on any merchant ship or transport, they are, with certain reservations, subject to the provisions of the Army Act. But when they are serving on board a ship of war, they are subject to the provisions of the Naval Discipline Acts (p. 186-187); unless they are 'borne on the books' for service on shore, when only parts of those provisions apply to them.

New Armies

(3) The 'new' armies raised at the outbreak of the war, and at one time by far the largest part of the armed forces of the Crown, differed in more than one respect from the 'regular' or 'standing' army. In the first place, they were enlisted, at any rate so far as the non-commissioned ranks were concerned, for three years or the duration of the war only; and over five millions of men were voluntarily so enlisted. In the second place, after the passing of the Military Service Acts of 1916 and 1918, every male British subject ordinarily resident in Great Britain, between the ages of eighteen and fifty-one, was liable, subject to certain exceptions, for general service in them, during the war, and was, indeed, deemed, on attaining, or, if he had attained at a certain date, the age of eighteen and had not attained forty-one, to have been enlisted therein and transferred to the 'reserve' (p. 200). From this reserve he could be called up as required; and, as a matter of fact, such persons were systematically called up for active service, subject to the requirements of essential indus-

tries and various exemptions on account of illness, hardship, or other ground of postponement. These armies likewise comprised all branches of the land service. They have, however, been almost entirely demobilized since the armistice.

The Territorial Army

(4) The Territorial and Reserve Forces, which have substantially taken the places both of the old militia and the 'Volunteers'[1] of the nineteenth century. These are not, in ordinary times, strictly a part of the standing army, but rather materials from which a standing army may be speedily raised.

The Army Reserve

The 'reserves' are in substance ex-soldiers who, on the expiry of their period of service with the colours (p. 198), are transferred to the reserve under the provisions of the Army Act, and others, likewise usually men of some military experience, who have directly enlisted into the reserve under the provisions of the Reserve Forces Act of 1882. These form Class I of the Army Reserve, are the first liable to be called up for service, and may be called upon to serve anywhere. Class II of the Army Reserve comprises Greenwich and Chelsea out-pensioners, and other time-expired men; and they are not liable to foreign service. At the outbreak of the war, these two classes together numbered about 146,000 effectives. If Parliament is not sitting when the Army Reserve is 'called out,' it must be summoned by the Crown to meet within ten days. In time of peace, the members of the Army Reserve are subject to short periods of annual training.

[1] The term, though familiar, is misleading; for the members of the regular army have long been volunteers in the strict sense. But the colloquial use of the term signified the amateur soldiers of the latter half of the nineteenth century.

THE MILITIA RESERVE

The Militia Reserve has now became practically obsolete; because most of its members have been transferred to the 'Special Reserve' created under the provisions of the recent Territorial and Reserve Forces Act of 1907 (p. 202). While it existed, it comprised such trained militia-men (p. 7) as voluntarily enlisted into it—a step which entailed the liability to foreign service if called to the colours. Whilst in reserve, the members of the Militia Reserve were subject to the same annual training as the members of the Army Reserve.

THE SPECIAL RESERVE ('MILITIA')

The Special Reserve, as has been said, was a creation of the new scheme for the improvement of the civilian forces contained in the Territorial and Reserve Forces Act, 1907. This scheme had for its object the conversion of the two civilian forces of 'Militia' and 'Volunteers' into a new and more efficient body of 'Territorials,' for purposes of defence. But its framers had to face the fact that they were dealing with two legally different bodies; for the Militia was, in theory at least, a body recruited by compulsory liability to serve under the Militia Ballot Act (p. 7), while the Volunteer Corps were on a purely voluntary basis. Moreover, there were differences with regard to training, pay, equipment, and allowances, between the two bodies. The Act, accordingly, authorizes the transfer, by Order in Council, of militia battalions to a new Special Reserve [1]; and, under this power, a large part of the old militia, including especially the 'Militia Reserve,' have been so transferred, to the number, at the outbreak of the great war, of about 63,000. The Special Reserve [1] is placed very much on the same footing as the Army Reserve; except, of course, that its members cannot, unless they come under

[1] Now, under the amending Act of 1921, 'The Militia.'

the Military Service Acts before described (p. 199), be compelled to serve abroad, and that they may, on the other hand, be liable to special courses of training.

But the chief object of the scheme of 1907 was, of course, the creation and maintenance of a body of trained citizen soldiers for defence purposes, on a more solid and uniform basis than that of the old 'Volunteers.' The nucleus of this force was formed by the transfer to it of existing 'Yeomanry'[1] and 'Volunteer' units, on their existing conditions of service; but the scheme contemplated the addition, by voluntary enlistment for a period not exceeding four years, of men willing to devote a substantial part, though not the whole, of their time to annual periods of concentrated training, and modified continuous training, in the duties of a soldier.

Territorial Associations

The special novelty of the scheme was, however, the creation of representative county associations, under the presidency of the Lord Lieutenants (pp. 7, 272), which should be responsible to a large extent for the raising, equipment, and maintenance of the Territorial corps; though when the Territorials are embodied, or 'called out,' they then become subject to military law, and to most intents part of the regular army, except that, apart from the provisions of the Military Service Acts (p. 199), they cannot be sent abroad without their own consent. The embodiment is effected by the Army Council, but may only take place after some part of the Army Reserve (p. 200) has been called out; though it *must* take place when the whole of Class I of the Army Reserve has been called out, unless within one month Parliament addresses the Crown against the step. The response to the scheme

[1] The yeomanry were volunteer cavalry, liable to be called out as militia, but in other respects on much the same legal footing as the 'Volunteers.'

of 1907 was satisfactory. The effective numbers of the Territorials at the outbreak of the war were just over a quarter of a million; and they have given a first-rate account of themselves. Until they are 'called out,' however, the Territorials are not within the provisions of the Bill of Rights concerning the maintenance of a 'standing army.'

The Air Force

As the sheets of this book were passing through the press, there was created, by the Air Force (Constitution) Act of 1917, a distinct new administrative and combatant branch of the armed forces of the Crown in the United Kingdom, viz. the Air Force, under the control of a new Air Council. This latter body, which is presided over by a new Secretary of State, and is to consist of him and such other members as shall be appointed by Order in Council, is to administer the recently created Air Force, which has already performed such brilliant services in the war, and whose rôle in the future is, probably, destined to be even more important. For this purpose an Order in Council may, and, doubtless, will,[1] transfer to the Air Council and the Secretary of State, in respect of the Air Force, any statutory powers now exercised by the Army Council and the Secretary of State for War, with regard to the army; and provision is made for incorporating into the Naval Discipline Act and the Army Act (pp. 186, 192) the necessary resultant changes. Thus the members of the new Air Force, like their comrades on sea and land, will be subject to the provisions, and enjoy the protection of, 'military law' (p. 192). The numbers of the Air Force are to be fixed from time to time by Parliament, presumably in the annual 'Mutiny Acts' (p. 193); but, subject to

[1] An Order in Council dated December 21, 1917, has already appointed the members of the Air Council, and allotted their duties.

this constitutional provision, any man in the Army Reserve, which includes, it will be remembered, all persons liable to serve under the Military Service Acts who have not actually been called up, may be transferred to it. Moreover, any member of the two Air units existing at the date of the passing of the Act, viz. the Royal Naval Air Service and the Royal Flying Corps, may, with the consent of the Admiralty or the Army Council respectively, be transferred to the new Air Service. But it is noteworthy that any member of such units who joined before a date to be fixed, may, within three months after receiving notice of his transfer, refuse to be transferred, and that no such person can be compelled by such transfer to serve with the Air Force for longer than he was liable previously to serve.

Colonial and Indian Forces

It is from no inclination to undervalue the splendid services to the Empire rendered by the forces of the Colonies and India, but simply owing to the limits of space, that the account of their naval and military systems must be brief. For nothing could illustrate more clearly the principles of liberty and self-government on which that Empire is based. Even when it became clear that the Empire was faced with a war of unparalleled magnitude, in which its very existence was at stake, there was no attempt to override those principles. Happily, though the need for it seemed to be remote, some provision had already been made to meet a crisis such as that which arose in August, 1914. All the self-governing Dominions had voluntarily testified their wishes to contribute, in one way or another, to the provision of an Imperial Navy; some by building and equipping local squadrons, which, while primarily concerned with defending their own shores, should, at the outbreak of war, pass at once

under the central control of the British Admiralty, others by voting subsidies towards the up-keep and increase of the British Navy, others again by presenting complete ships to the Admiralty, to be used as it should deem best. The exploits of some of these newest recruits to the navy of Drake and Hawkins will not soon be forgotten; they proved themselves worthy of traditions the most splendid in the history of naval warfare. The same principle of liberty prevailed in regard to the land forces of the Outer Empire. Most of the self-governing Dominions, if not quite all, had adopted the principle of compulsory defence service. On the outbreak of the war, all sent large contingents to the Imperial forces; and some ultimately adopted schemes of compulsory foreign service, whilst others continued to rely on voluntary foreign service. The men they sent to the war proved to be some of the finest soldiers in the world; the Dominion graves in Gallipoli and France will remain a standing testimony to the heroic sacrifices made in one of the most desperate struggles in military history. It was a similar story in the Crown colonies. Some of them adopted conscription; others did not—in one case for the very excellent reason that every white man there volunteered. Every man from the Indian army (p. 95) who could be spared from his primary duty of defending the Indian frontier, came willingly for service in Europe, Asia, or Africa. The Native Chiefs of India poured out their treasure in the cause of the Empire and sent their Imperial Service troops (p. 96) to the front; while the loyal coloured races of Africa volunteered for labour behind the lines, which was only less valuable than actual fighting in the trenches. Never has there been a more spontaneous and enthusiastic rally of nations to a common flag. Never has a jealous rival's fond dream of a dissolving Empire been more rudely dispelled. It is hardly too much to say, that the challenge of August, 1914, was answered by a

trumpet call which heralded the re-birth of the British Empire.

The Committee of Imperial Defence

It is satisfactory to be able to say, that the possibilities of a really Imperial scheme of naval and military organization have not, despite the proverbial slowness of the British mind in such directions, been entirely neglected. From the year 1895, there existed a committee of the Cabinet, known as the 'Defence Committee.' It was, at first, purely informal, kept no minutes, and held no regular sittings. In the year 1902, it was remodelled, and its composition and purposes frankly explained to the House of Commons. It consisted of the Prime Minister, the Secretaries of State for War and India, the First Lord of the Admiralty, the First Sea Lord, and the Directors of Naval and Military Intelligence. In 1904, it was furnished with a secretarial staff, and began to keep formal minutes. Shortly after the outbreak of the recent war, the Committee of Imperial Defence was strengthened, and became a body having almost executive power to enforce its own decisions; but it remained, in theory, a committee of the Cabinet (which was then a large body) supplemented by expert assistance. Its relations to the Cabinet, however, were obscure and not very satisfactory, until the drastic rearrangements which took place in December, 1916 (p. 116), once more left it the great expert War Council of the Empire.

'Martial Law'

We have now left for discussion only the one important constitutional point before referred to (p. 192), viz. the legal position of the military authorities in connection with what is commonly known as 'martial law.' Perhaps one of the most important facts to

remember on this question is, that it is not, necessarily, a military question at all; though the circumstances in which it arises render it inevitably associated, in the minds of lawyers and the public, with the military forces of the Crown. The question would, however, really be in substance the same, if the Crown, in proclaiming 'martial law,' entrusted the execution of it to the police, or a body of civilian volunteers. It is only because the superior efficiency of the soldier for the purpose in fact makes the choice of the Crown fall invariably upon him, and because the striking contrast between the military and the civilian character of the soldier is thereby brought out, that the discussion inevitably assumes the shape of a contest between the claims of military and civil law.

MILITARY LAW

We have first, then, to remember that, by virtue of the provisions of the Naval Discipline Act and the Army Act, before explained (pp. 186, 192), the regular members of the Royal Navy, Army, and Air Force at all times, and the members of the Territorial and Reserve Forces when embodied or 'called out,' are under a peculiar and elaborate code of law, not applicable to civilians, but as much true law, being expressly authorized by Act of Parliament, as any other part of British law. Whether they are also under any further 'prerogative' authority of the Crown, is a question which has been touched on before (p. 193), but is not material to our present purpose; for such authority clearly cannot give the soldiers rights against civilians. But really it is a great mistake to assume that these elaborate codes of military law, the Naval Discipline Act and the Army Act, confer any substantial rights on the sailor or soldier. They subject him to a large number of liabilities, and deprive him of a very considerable number of rights which belong to the civilian

citizen. Thus, they deprive him, in a large number of cases, of the elementary right of trial by jury which is supposed to belong to practically every subject of the Empire, at any rate when charged with a serious offence. Further than that, he is deprived, in respect of all matters arising out of military discipline, of a good many of the ordinary remedies open to the civilian for the vindication of his rights, such as actions for defamation, assault, false imprisonment, and the like. On the other hand—and this is of the essence of the question we are discussing—the soldier is by no means freed from liability to be prosecuted, or even (except in trifling cases) sued by the private citizen, in the ordinary courts, for any offences against the ordinary law which he may have committed, even in the course of his military duty. This is part of the great Rule of Law before explained (p. 38); and it holds, even in time of war.

Military Action

In the second place, it must again be remembered, that two of the primary duties of the Crown are the conduct of war and the maintenance of internal order. In so far as warlike operations are conducted in alien territory, they are hardly likely to affect British subjects directly; and the interesting question of how far damage done to the property of a British subject in hostile territory occupied by British troops could give the owner a legal claim against the military authorities, seems not to have been discussed. Needless to say, the subjects of the hostile Power, and even neutral or allied subjects resident in the hostile territory, would have no legal redress in British courts. In so far as the conduct of war involves interference with private rights in British territory, the Crown has, by long-established rules of the common law, certain powers which it may justly use in defence of the realm;

and these powers have lately been widely extended by the various Defence of the Realm Acts, and the Orders of the Army Council and other bodies thereunder. But, in so far as the action of the military authorities exceeds these powers, the persons responsible for that action can be made legally liable in the ordinary courts, as has been shown by many recent cases. Only, it must be remembered, the private citizen cannot make a superior officer (military or civil) liable for the illegal act of his subordinate, unless it can be shown that the superior actually authorized the illegal act; because the subordinate is not the servant of the superior, but of the Crown, which, of course, cannot be made directly liable. It must be carefully observed, moreover, that the remedy of the citizen is limited to cases of *illegal* acts, and does not extend to cases of mere hardship. Thus, if a military officer orders stores for his troops in the King's name, and in the proper course of his duty, he cannot be personally sued for them, unless he undertook to be personally liable; because he avowedly acted as the King's agent.

Maintenance of Order

But it is when the Crown acts in its second great capacity, as maintainer of internal order, that the most serious questions arise. For it is the undoubted right and duty of the Crown to take any steps which may be necessary to put down disorder; and it is, equally clearly, the undoubted duty of every male subject of active years to assist the King and his officers, civil or military, in repressing disorders, in any manner that may be reasonably necessary, even to the shedding of blood. If any authority is needed for this proposition, it may be found in the clause of the Sheriffs Act of 1887, which enacts that 'every person in a county . . . shall be ready and apparelled at the command of the sheriff and at the cry of the

country to arrest a felon'; while the sheriff is empowered by the same statute to 'take the power of the county and arrest and commit to prison any one resisting the execution of a writ.'

'Calling out the Military'

When, therefore, the King or his official 'calls out the military' to repress disorder, it is not in the least because he is not entitled to call on other persons, but merely because it is far better to make use of a disciplined and expert force when serious measures are necessary, than to rely upon untrained civilians.

'Reading of the Riot Act' and Proclamation of 'Martial Law'

And, similarly, though it is advisable to take the preliminary step of 'reading the Riot Act' (as it is called), *i.e.* formally reciting the proclamation contained in the Riot Act, or, in graver cases, of 'proclaiming martial law,' neither of these steps is in the least essential, nor, except on the question of penalties, does the taking or omission of them in the least alter the legal position. They are, in fact, merely in the nature of warnings by the Crown that it is about to perform a vital duty which may involve the use of force, and that all persons who would avoid the risk necessarily entailed by the use of force, had better keep away from the scene of disorder.

Finally, the so-called 'courts martial' held in the course of the proceedings have little or nothing in common with the formal and strictly legal naval and military courts martial held under the Naval Discipline Acts and the Army Act, which are regular, though somewhat exceptional, courts of justice. And the so-called 'sentences' of the so-called 'courts martial' held under a proclamation of 'martial law,' are not

judicial sentences at all; that is to say, they are not founded on any precise law, but are merely acts of a peculiarly solemn nature done in the course of repressing disorder. The moment the disorder has ceased, their continuance becomes strictly illegal.

It is obvious, then, that if any question arises as to the legality of any sentence by a 'court martial' of this kind, or of any act done in the course of the repression of the disorder, the points to be decided are simply two, which really are one, viz. (i) Was there in fact a state of disorder which rendered the use of force necessary? (ii) Was the particular act reasonably necessary to repress it? And these are questions which are submitted to a jury, in the ordinary way, on any prosecution of any person, civilian or soldier, for having taken part in such acts, or in any action for assault, wrongful imprisonment, damage to property, or defamation, brought by a private citizen for injury suffered by him, or which are decided by the Court on any application by a person imprisoned under them for his 'Habeas Corpus' (pp. 36–38). If these questions are answered in the affirmative, there is no legal redress, however innocent the complainant. He has merely been the unfortunate victim of public disaster, and can only appeal for compensation on the ground of hardship.

Legal Liability if Acts Unnecessary

But if it should appear to the jury or the Court that the acts in question were not justified by the facts, the complainant will have his full legal remedy; and the wrong-doer will be subject to the appropriate penalty for his offence, subject to the Crown's power of pardon, or to an Act of Indemnity passed by Parliament, which can, of course, legalize anything, even after the event.

Dual Position of Soldier

But, when the alleged offender is a soldier, then the case may be a peculiarly hard one; for, as before explained (p. 208), the soldier is subject to two laws, viz. the ordinary law of the land, which says: 'Any one committing homicide without legal justification is liable to be hanged,' and military law, which says: 'Any soldier refusing to obey the orders of his superior officer is liable to be shot.' It is obvious, therefore, that if a soldier fires on a crowd at the order of his superior officer, he has to run the risk of being hanged; while, if he refuses to fire, he runs the risk of being shot. Happily, British law, even military law, imposes no absolute obligation on the soldier to obey the orders of his immediately superior officer[1]; but it is not fair to expect a soldier, perhaps not a very well-educated man, to decide in a hurry whether the case justifies him in taking the extreme step of refusing to obey orders. In the event, therefore, of his being put on his trial for murder or manslaughter, he might very well plead his officer's orders, or the so-called 'reading of the Riot Act' (p. 210), or a proclamation of 'martial law,' as evidence that he was reasonable in what he did, and therefore justified. And, while none of these facts, nor all three together, would necessarily be a justification, there can be little doubt that each or all of them would weigh heavily with the judge in summing up to the jury, and with the jury in arriving at their verdict; while, in the event of that verdict being unfavourable, there would remain the final remedy of a royal pardon or an Act of Indemnity (p. 211). Only, it must be remembered, that, in the event of a private citizen bringing an action for damages for assault, false imprisonment, injury to property, or any similar

[1] Such an obligation would, as has been pointed out, be fatal to military discipline; because it would justify the soldier in shooting his colonel at the command of his lieutenant.

act done by a soldier in obedience to military orders, the royal pardon would be no excuse; for the Crown cannot pardon an injury inflicted on a private citizen—only an Act of Indemnity can do that, though, of course, the Crown can, if it likes, pay the soldier's damages for him.

Position of 'Courts Martial'

Finally, it must be remembered, that the case of the officer who sits on a so-called 'court martial,' under a proclamation of 'martial law,' is still more critical. For, as we have seen (pp. 189-190), the King has no power to issue commissions for such trials in any circumstances, being forbidden to do so in express words by the Petition of Right; unless, possibly, the misquotation of the words of that statute in the preamble to the modern Mutiny Acts (p. 191) may be held, by implication, to modify that provision in time of war. There is, in fact, a fairly recent decision of the Judicial Committee of the Privy Council which seems to take that view; and, though it is not binding on the courts of the United Kingdom, it might be followed in those courts, and would, probably, be held binding in Colonial and Indian courts, from which an appeal lies to the Judicial Committee (p. 293). But, apart from this doubt, an officer so acting, and imposing a sentence of death upon an alleged rebel, would, legally speaking, be guilty of murder if it were carried out, and could only take refuge behind a royal pardon (which would really be an exercise of the dispensing power declared illegal by the Bill of Rights (p. 233)), or an Act of Parliament, such as the Defence of the Realm Act, or an Act of Indemnity.

CHAPTER IX

THE TREASURY AND THE SECRETARIES OF STATE

We have now to consider how the general work of the Government is parcelled out among the different 'departments' of State, most of which have distinct legal powers, though all are under the general control of the Cabinet.

The Treasury

The oldest and most important of these is 'The Treasury,' the superior or directing part of a still older institution known as 'The Exchequer,' the name of which still survives, and is now appropriated by the more mechanical and formal part of the ancient machine.

The Exchequer

The ancient Exchequer, or revenue office of the Norman kings, comprised virtually all the great officers of State—the Justitiar, the Lord Chancellor, the Chief Constable, and the Marshal; and a wonderfully vivid account of its proceedings in the twelfth century, known as the 'Dialogues of the Exchequer' (p. 31), supposed to have been written by Bishop Richard of London, a nephew of Bishop Roger of Salisbury, the reputed founder of the Exchequer, still survives. Even from that account, however, we can see that the Exchequer was already passing practically into the hands of a

special official, the Treasurer, afterwards the 'Lord High Treasurer,' whose 'Pipe Roll,' or record of the work of the Exchequer, was the primary proof of its numerous proceedings; though, for a time, they were all, down to the minutest detail, also recorded in the Chancery Roll of the Lord Chancellor, as well as in a private roll kept by a personal deputy or secretary of the King.

The Lord High Treasurer

As time went on, the Treasurer became a more and more important person; and the office, in Tudor times, was often held by the most powerful Minister of the day; the older office of Justitiar having disappeared, and those of the Constable and Marshal having become mere ceremonial offices about the King's Household.[1] A very significant clause in the important Seals Act of 1535, previously alluded to (p. 31), excepts the Lord Treasurer's warrants from the strict rules which, by that Act, were made to apply to other documents leading up to the use of the Great Seal of England. So important, indeed, did the office become, that the Kings showed some hesitation in filling it; and, in the year 1612, it was 'put into commission,' *i.e.* parcelled out among a small group or 'Board' of persons, known as 'Lords Commissioners of His Majesty's Treasury,' all of nominally equal powers, though the real primacy lay with the 'First Lord.' At the same time, the purely financial work of the Exchequer was separated from the general policy of the Government, which remained under the control of the Treasury Board; though this arrangement did not become permanent till 1643. The last 'Lord High Treasurer' was appointed in 1714, by the dying act of Queen Anne, who,

[1] One of the chief reasons for their loss of real power was that they became hereditary (p. 23); while the office of Lord Chancellor, being always, until the Reformation, held by a cleric, did not.

in the scene so graphically described by Thackeray, in the work before alluded to (p. 107 n.), handed the 'white staff' of the Treasurer to the Earl of Shrewsbury.

The Treasury Board

During the critical period when the old powers of the Privy Council were passing to the modern Cabinet (pp. 102-103), the Treasury Board seems to have acted for a while as the seat of government; its meetings being often attended by the King in person. But, on the accession of George III, who gave up the miscellaneous official revenue of the Crown for a 'Civil List,' or fixed annual income for life guaranteed by Parliament, the King ceased to attend meetings of the Board, which thus passed virtually into the control of the 'First Lord,' who usually, as has been said (p. 118), was the Prime Minister of the day, and who chose his own colleagues, though the latter continued to be appointed by Letters Patent under the Great Seal. In the second quarter of the nineteenth century, the Treasury Board gradually ceased to meet; while, by an Act of Parliament of the year 1849, the numerous documents required by law to be issued by 'The Treasury,' were declared to be formally correct if authenticated by the signatures of two of the Lords Commissioners, usually the 'Junior Lords,' who, as before mentioned (p. 122), are now employed in the subordinate work of the Government.

The Chancellor of the Exchequer

Meanwhile, the special care of the finance of the country had devolved upon the Chancellor of the Exchequer, a very ancient but originally humble official, who had gradually risen in importance, and who, when the rich sinecure offices of the Exchequer, such as those of the Auditors, the 'Tellers,' and the 'Clerk of the Bills,' were abolished after the passing

of the first Reform Act, became the second person in the Treasury, and, as has been said, virtually Finance Minister of State; though the precedence of the 'First Lord,' even in purely Exchequer business, is preserved by the fact that he holds, in addition, the office of Treasurer of the Exchequer. The Chancellor is a member of the Treasury Board, taking precedence of the 'Junior Lords' by virtue of his patent as Under-Treasurer; and, being invariably, and necessarily, a member of the House of Commons, he usually acts as Leader of that House, if the Prime Minister is in the Lords, or unable to act. It is, however, in his capacity of a Minister of the Crown that he makes the important 'Budget' statement previously described (pp. 166-167); though his influential position as Leader, or, at least, a prominent member, of the House of Commons, naturally adds weight to his financial proposals. Still, like all departments of State, and, perhaps, even more so, his office remains under the supreme control of the Prime Minister as First Lord of the Treasury; unless indeed, as has occasionally happened, the same person fills both offices. Thus, though all details of financial business are left to him, he would never think of proposing to the House a really new principle of taxation without consulting the Prime Minister, or, indeed, the Cabinet as a whole.

Having already described the complicated process through which the Chancellor of the Exchequer's 'Budget' has to pass in Parliament before it becomes law (pp. 166-171), we have here only to deal with the duties of The Treasury in carrying it into effect, after it has been embodied in the Consolidated Fund Acts, the Finance Act, and the Appropriation Act of the year. These duties may be summed up under three heads of collection, expenditure, and audit of the national revenue. Under the first head, a brief allusion must also be made to the important operation known as 'raising a Government loan.'

Collection of the National Revenue

(1) The collection of the royal revenue in early days had an indirect as well as a direct importance, owing to the various experiments which were tried before a satisfactory scheme was reached. Thus, the ancient plan of collecting through the sheriffs of the counties had much to do with the bringing into existence of the Exchequer itself; and a mark of this ancient connection still survives in the picturesque ceremony by which, on each 12th of November, two or more sheriffs for each county (except the 'Palatines') are nominated in the ancient 'Court of Exchequer' in the presence of the Chancellor himself. Another indirect result was the creation of the now extinct Court of the Barons of the Exchequer, which for centuries acted as an ordinary 'common law' court, though its functions were supposed to be restricted to the decision of disputes on revenue questions, such as the famous 'Ship Money' case. Historians are beginning to suspect, also, that the responsibility of manorial lords for the 'Danegeld' of their serfs did a great deal to cause the drawing up of Domesday Book, and the defining of the 'feudal system'; while it is quite clear that the efforts of the Exchequer, in the twelfth century, to introduce more direct methods by the distribution or 'assessment' of the liability to taxes by means of sworn groups or 'juries,' chosen from the neighbourhood affected, had much to do with the introduction of the jury system of trial in ordinary cases (p. 12).

Collecting Departments

But, for a long time now, the collection of the revenue has been entrusted to various officials, or groups of officials, assisted by a large number of subordinates or clerks, who or which are really sub-

departments of the Treasury. For the most part, these officials are 'permanent civil servants,' *e.g.* the Boards of Customs and Excise and of Inland Revenue, and the Commissioners of Woods and Forests; but one great 'collecting department,' the Post Office, is, with that curious irregularity so frequent in British institutions, always held by a Responsible Minister, retiring on a change of Government, and being, not infrequently, a member of the Cabinet. His true position, however, as a subordinate of The Treasury, is shown by the fact that changes in postal rates or facilities, which may involve loss of revenue, require the sanction of that body. And the Chairmen of the revenue boards, important as their duties are, do not speak for their departments in Parliament, being represented there by the Chancellor of the Exchequer or the Financial Secretary to The Treasury. The Commissioners of Woods and Forests (other than the President of the Board of Agriculture), who have charge of the ancient Crown estates, are, indeed, expressly made ineligible by Act of Parliament to the House of Commons; while the other officials referred to fall under the general exclusion of the Place Acts (p. 105).

Methods of Collection

The actual collection of the various taxes payable into the royal revenue is effected in various ways. Some are paid in response to direct demands made personally on the tax-payer by the different sub-departments, *e.g.* much of the income and property tax. Others are collected on the passage of goods through the ports, *e.g.* the customs duties, and are known as 'indirect taxes.' Others again, such as the 'Death Duties' and some of the 'Land Duties' payable under the famous Finance Act of 1909–10 (p. 165), are collected by means of stamps, which must be impressed on or affixed to the various documents

connected with the occasions on which they are payable. In this last list are included also the various Government duties payable on transfers of land, stocks, and shares, on receipts given for the payment of money, and on commercial documents, such as bills of exchange and promissory notes, bills of lading, and the like. Income tax, again, is partly 'collected at the source,' *i.e.* deducted by the bodies disbursing various forms of interest and profits (p. 168), who afterwards hand the proceeds to The Treasury. Finally, by a somewhat recent arrangement, local authorities, such as county and borough councils, to be hereafter described (Chapter XIV), collect what were formerly called 'assessed taxes,' but are now more properly described as 'local taxation licence duties,' such as duties on armorial bearings, dog, gun, and game licences, and taxes on the use of vehicles and male servants.

Consolidated Fund Act

One of the most important reforms ever made in the management of the royal revenue was introduced in the year 1787, as part of Burke's scheme of financial reform. Before that date, the proceeds of various taxes were paid into separate accounts at the Exchequer; and various payments were charged upon each. This was a thoroughly bad system; because it was, naturally, impossible to forecast accurately either the amount which would be produced by the tax, or the amount of the charges upon it. Naturally it often happened that, while one fund would be unable to meet the charges upon it, and so the public creditors would have to wait for their money, another fund had a huge balance, which could not be made available for making up the deficit elsewhere. Worse still, this huge balance might be left for years in the hands of some Commissioner or other official appointed to collect it, who, in the meantime, invested it in his

own name and drew the interest or profits of the investment, or, as not infrequently happened, appropriated the capital to his personal uses. By the Act of 1787, however, the whole, not only of the 'taxes,' in the ordinary sense of the word, but of the net revenue arising from Crown lands, the fees charged in legal proceedings, and the payments for services rendered by the State, such as the delivery of letters by the Post Office, are made payable into one 'Consolidated Fund' at the Banks of England or Ireland, to the account of the Exchequer; and all payments on the national account are made payable thereout, in manner to be hereafter described (p. 223).

Government Loans

The account of this important step leads naturally to a brief mention of yet another source from which the national revenue, in the widest sense of the term, may be raised. It not infrequently happens, that the amount arising from taxation and other normal income of the State is insufficient to meet the expenditure authorized by Parliament. It then becomes necessary to raise a loan, temporary or permanent, on the security of the national revenue.

Non-funded Debt and Funded Debt

Various expedients have from time to time been resorted to for this purpose; but, substantially speaking, only two are now in use, viz. first, Treasury Bills, or promises at short dates, authorized by Act of Parliament, to repay loans advanced by banks and other business firms, for temporary needs, either under the Consolidated Fund Acts previously described ('Ways and Means Bills'), or by special Acts of Parliament ('Supply Bills'), and, second, permanent loans, also charged on the security of the Consolidated Fund for the time being, and bearing interest in perpetuity, at various rates, payable out of such

fund, and commonly known by the generic name of 'Consols,'[1] though new names, such as 'War Loan,' etc., have recently been adopted to distinguish some 'issues' or loans from others. It is true that some of these loans are repayable at fixed dates, but they are, none the less, treated as permanent securities. Midway between them, come Exchequer Bonds and 'War Savings Certificates,' repayable at comparatively short dates. These are really in the nature of Treasury Bills; though they are not intended to be put into circulation for commercial purposes. One of the most anxious duties of the Chancellor of the Exchequer is, to decide on the terms which shall be offered to the public for the issue of a loan authorized by Parliament; and, if the value of money falls below the rate of interest which the State is paying, it is his duty to 'convert' the loan in question into another, issued at a lower rate, if the terms of the former permit of this operation.

'Conversion'

This, of course, cannot be done if the loan is not repayable before a date which has not arrived; but, in other cases, the Chancellor of the Exchequer can usually, in such circumstances, by threatening to pay off the holders of stock 'at par,' *i.e.* at the nominal value of their loan (£100 for £100 secured), compel them to accept a lower rate of interest. On the other hand, as an inducement to the public to take up a loan in an emergency, he can offer to issue it 'at a discount,' *i.e.* to give every lender of, say, ninety-five pounds £100 of stock.

The Bank of England

All these complicated transactions are carried out by the Bank of England, which is thus, obviously, in effect a Government institution. But it remains

[1] Because they represent a 'consolidation' of a large number of old miscellaneous loans.

also a company carrying on a large commercial business of its own [1]; and the most stringent precautions are taken, in the various Bank Charter Acts, to prevent the Directors of the Bank from dipping their hands into the public funds, or, on the other hand, from financing Government schemes which are not authorized by the House of Commons.

Expenditure of National Revenue

(2) Stringent precautions are also taken to ensure the regular and accurate payment of all expenditure out of the Consolidated Fund. A root principle, as before explained, is, that, as revenue is granted to the Crown, all national expenditure thereout is by the Crown. But it is an equally important principle, that all expenditure shall be sanctioned by the House of Commons, which, in normal times, fixes, within wide limits, not only the amounts but the dates of all expenditure.

The Comptroller and Auditor General

The highly important official whose duty it is to see that both these principles are rigidly enforced, is the Comptroller and Auditor General, who is appointed by Letters Patent on the rare tenure of 'good behaviour,' whose salary is charged on the 'Consolidated Fund,' and who can only, in the absence of definite misconduct, be dismissed on the request of both Houses of Parliament, while he cannot hold any other office 'at pleasure' under the Crown. He presides over the Exchequer and Audit Department, and, upon the requisition for money by The Treasury, signed by two of the 'Lords' under the requirements of the Act of 1849, before alluded to (p. 216), he

[1] Thus 'Bank of England stock,' or, more shortly, 'Bank stock,' is not equivalent to 'Consols,' but means a holding in the capital of the Bank itself as a commercial concern. The rate of dividend on it is generally very high.

examines the demand with care, to see that its purpose and amount have been duly authorized by Parliament.

'Consolidated Fund Services'

If it forms part of the 'Consolidated Fund Services,' *i.e.* those payments which, such as the interest on the various national debts, the 'Civil List' (or royal income), the judges' salaries, and a few authorized pensions, are payable as of course year by year, he merely issues a credit on the Exchequer balance at the Bank of England or Ireland for payment of the amount.

'Supply Services'

If, however, the demand is on account of 'supply services,' *i.e.* payments only authorized from year to year by Parliament, which include by far the larger part of the national expenditure, he has further to see, not only that the proposed payment comes within the limit of the Parliamentary sanction, but bears the royal sign-manual directing The Treasury to expend so much out of the sum voted by Parliament for that particular purpose.

In either case, the Bank of England or Ireland, on receiving the order duly approved by the Comptroller, allows The Treasury to draw for the amount, which is either placed to the credit of the department concerned, or to that of the Paymaster-General, another important official, who is, however, a member of the Ministry, and, therefore, nominally at least, responsible to Parliament, for distribution to the particular department through which the payment is actually made. Thus a large part of the national expenditure passes, nominally at least, through the hands of the Paymaster-General; and, formerly, the holders of the office, being paid by fees varying with the amount passing through their hands, amassed enormous fortunes. It was one of the noblest acts of Burke that, though a really poor

man, he refused, when Paymaster, to take the enormous emoluments of his office, and thereby set an example which has since been widely followed, by the practical abolition of all payments by fees in Government offices, and the substitution of fixed salaries which are not, however, except in the rare cases before mentioned, charged on the 'Consolidated Fund,' but voted by Parliament year by year. Parliament has thus an additional and very powerful hold on the great bulk of the 'permanent' officials of the Crown.

Audit of National Accounts

(3) Finally, it is necessary to see that the spending departments do actually expend the national revenue in manner authorized by Parliament; and this object is supposed to be achieved by a rather severe process of 'audit.'

In the first place, the various departments engaged in the expenditure on 'supply services' render monthly accounts to the Comptroller of their actual expenditure; and these accounts are carefully examined by him before being passed on to The Treasury, not merely to see that they balance, but to make sure that the items of expenditure have been duly authorized. These monthly accounts lead up to the 'appropriation accounts.' In the case of 'Consolidated Fund Services,' the account is rendered by The Treasury itself to the Comptroller, who has, all along, been carefully watching the receipts and expenditure of the national revenue by the Banks of England and Ireland, by means of accounts daily furnished by those institutions, and the action of the spending departments by means of local officials.

Parliamentary Audit

The 'appropriation accounts' are then laid before Parliament by The Treasury, and the accounts of the

Consolidated Fund Services by the Comptroller. They are all referred by the House of Commons to its Committee on Public Accounts, an important body which has existed since 1786, and which makes an annual report to the House of Commons. It is obvious, however, that, in time of war, the publication of national expenditure, even to the House of Commons, can only be allowed within strict limits; and it is one of the pressing problems of administration to devise a plan, by which strict Parliamentary control over national expenditure can be reconciled with the necessary secrecy.

The Treasury as a Spending Department

Before leaving The Treasury, reference ought, perhaps, to be made to a recent developement which has given rise to a good deal of criticism, as being contrary to the proper duties of that institution. As we have seen, the payments sanctioned by The Treasury are not usually expended directly by it, but handed over to the Paymaster-General for distribution to other departments, who subsequently render accounts of them to the Comptroller. At least this is true of the great 'spending' departments, such as the Admiralty, the War Office, and the Education Department; though a certain number of minor spending departments, such as the National Gallery, the British Museum, and the Civil Service Commission (which conducts the examinations for the 'permanent' civil service), have no Minister to represent them in Parliament, and so are more directly 'under The Treasury.' Recently, however, the establishment of a vast and costly scheme of National Health Insurance, guaranteed by the State, has been set up; and, though the working of this scheme involves the annual expenditure of many millions, and an enormous amount of minute investigation, its administration was, for a short time, in the hands of a Minister who was

also Financial Secretary to The Treasury. The details of this scheme can hardly be said to form part of the government of the British Empire; but, briefly, it may be said that all employees of sixteen years of age and upwards are, with certain exceptions, compulsorily insured against destitution arising from sickness, and guaranteed medical treatment when necessary, and men and women employed in most trades are compulsorily insured against unemployment, by means of contributions levied from themselves and their employers, supplemented by substantial grants from moneys provided by Parliament. The Unemployment Fund is under the control of the Ministry of Labour; but the National Health Insurance Fund is now under the administration of the recently created Ministry of Health (p. 267), though its actual distribution is entrusted to Local Insurance Committees, aided by Medical Committees, and to 'approved societies,' *i.e.* to various Provident and Benefit Societies, mainly formed by the employees themselves, which were in existence at the passing of the Act, and whose stability has stood certain investigations. The Insurance Commissioners, an incorporated body, are now, however, transferred to the new Ministry of Health (p. 267), and represented in Parliament by the Minister; and the accounts of the Insurance Fund are audited by the Comptroller and Auditor General (p. 223), though in manner directed by The Treasury. It will thus be seen, that the former agitation on the subject of Insurance Finance, which was not uncoloured by personal and party feeling, has now lost its chief force.

The Treasury as an Imperial Organ

Finally, it should be noticed that The Treasury of the United Kingdom is hardly entitled to rank as an Imperial institution in the full sense of the word,

inasmuch as each of the dependencies ('self-governing' and 'Crown') has its own independent Treasury, the funds whereof are collected in, and expended for, the benefit of that dependency alone (p. 77); while the same is true, as has also been explained (p. 93), of the Treasury of British India. It is only when loans or grants out of the Imperial Exchequer—*i.e.* out of moneys paid or guaranteed by the taxpayers of the United Kingdom—are made by the Imperial Parliament for the assistance of any of the dependencies on the proposal of the Chancellor of the Exchequer, that The Treasury at Whitehall can be said to be acting in a strictly Imperial capacity.

The Secretaries of State

Next in point of antiquity and importance to The Treasury is the office of Secretary of State. It can be traced as far back as the reign of Henry III, when a 'King's Secretary' is found relieving the Lord Chancellor of some of the clerical duties of the Chancery which did not involve the use of the Great Seal. A second official of this name, possibly to conduct the foreign correspondence of the King, was appointed in 1433; and, in the troublous reign of Henry VI, the Secretaries came to be looked upon as the regular mouthpieces of the Privy Council, which was then the chief seat of Government. Their growing importance was marked by the appearance of the title 'Principal Secretary' in the latter half of the fifteenth century; and the holders of the office, whose special symbol of authority was the 'signet,' were placed by the Statute of Precedence of 1539 above other persons of their own degree or rank, while a royal warrant of the same year, by a curious anticipation of modern practice, directed them to attend Parliament continuously. In the reign of Elizabeth, the office of

Secretary of State, which had been held by Thomas Cromwell under Henry VIII, grew still further in importance, and was filled by such statesmen as the Cecils, Sir Thomas Smith, and Sir Francis Walsingham; while its increased dignity was marked by the adoption of the title of 'Queen's Majesty's Secretaries of State.' After the Restoration, it was part of the policy of Clarendon that the Secretaries of State should be 'of all Committees of the Council'; and, when that body lost its real power (p. 102), much of it seems to have passed to the Secretaries. At any rate, in the arguments in the famous 'General Warrant' cases (p. 38) some rather extravagant claims were put forward on behalf of the holders of the office, which could hardly have been justified on any other ground.

Division of Business

Meanwhile, at the Revolution of 1688, the duties of the office had been definitely divided between a 'Northern' Secretary, who corresponded with France, Germany, and the Scandinavian Powers, and a 'Southern,' who transacted business with the countries of the south of Europe, and managed Home and Irish affairs. But this obviously inconvenient arrangement was altered in the year 1782, when the recently created third Secretaryship of State for the Colonies was abolished (p. 76), and the present division between 'Home' and 'Foreign' affairs was established. It should be carefully remembered, however, that though, for purposes of despatch of business, the various Secretaries of State have each his appropriate sphere of work, yet, in strict theory, all, or almost all, of the powers of a Secretary of State can be exercised by any of the Secretaries; for it is very rare that these duties are expressly conferred more precisely than on 'one of His Majesty's Principal Secretaries of State.' Moreover, until its abolition in 1851, they all used the

Signet Office, in which the Clerks of the Signet performed their duties.

Leaving aside the newer Secretaries of State for War, the Colonies, India, and the Air, of whom we have already spoken, we proceed now to consider the duties of the Secretaries of State for Home and Foreign Affairs.

The 'Home' Secretary

The Home Secretary stands in a relation of peculiar closeness to the Crown. Though other Ministers can, and do, act as 'Minister in attendance,' yet it is the Home Secretary on whom the King chiefly relies to keep him in touch with details of internal administration. Thus the Home Secretary prepares and countersigns the numerous 'warrants,' or orders, to which the King affixes his 'sign manual' or personal signature; except in the cases in which the preparation and countersignature of other officials are expressly required. He communicates the King's pleasure to bodies having official or quasi-official authority, such as the Convocations of the Established Church (Chapter XII), and the 'States' or Courts' of the Channel Islands and the Isle of Man (p. 60), which are not within the sphere of the Colonial, but of the Home Office. He also recommends for appointments to ordinary ecclesiastical benefices in the gift of the Crown, as distinct from that of the Lord Chancellor. He places the 'fiat,' or permission to proceed, on those 'petitions of right' which are the direct legal means of obtaining redress for an error by which the Crown has caused a private citizen to suffer.[1]

[1] Inasmuch as every ordinary criminal prosecution or civil action begins with a document in the King's name, it is naturally impossible to direct such a proceeding against the King himself. But actions for the recovery of property or the enforcement of a contract can be brought, in effect, against the Crown, by the form known as a 'petition of right,' which will be tried as an ordinary action; the Law Officers and the Treasury Solicitor defending the Crown's interests. But no allegation of 'crime,' or even of 'tort' (*i.e.* civil wrong not being a breach of contract) can be made against the Crown in such a proceeding; because 'the King can do no wrong.'

Home Secretary and the Police

The Home Secretary also exercises a good many of the powers of the Crown in relation to one of the oldest of the King's duties, viz. the maintenance of internal order (p. 9). It is true that, as has been pointed out before (p. 10), the police forces of Great Britain (those of Ireland are on a different footing) are not, with the important exception of the Metropolitan Police, under the direct control of the central government. But the Home Secretary, through his subordinates, inspects and criticizes the police forces maintained by the county and borough authorities (p. 363); and it is only upon his certificate as to its satisfactory character, that a grant is made from the Exchequer in aid of the cost of the maintenance of any such force.

Judicial Arrangements

Likewise in this capacity the Home Secretary approves the arrangements for the 'assizes' or circuits of the judges (p. 279), maintains and manages prisons, and recommends for the appointment of stipendiary or police magistrates, and recorders or judges of borough quarter sessions (p. 279). It is, probably, also in this capacity, though the arrangement appears to be a little awkward, that the Home Secretary exercises the important and difficult duties arising under the Extradition Acts, based on treaties made with foreign States for the mutual delivery up of their criminals, or alleged criminals, who have fled to British territory.

Extradition Proceedings

Inasmuch as England has long cherished the 'right of asylum' for political refugees, great care is taken not to yield up to a foreign Government, as a criminal,

a person who may be merely unpopular with that Government on account of his political opinions. But the necessary examination of the facts is not conducted by the Home Secretary, who need not be (though he very frequently is) a trained lawyer, but by a (stipendiary) magistrate (p. 271), who examines the case, much as if the refugee were a British subject accused of a criminal offence in this country. If the magistrate comes to the conclusion that there is a *primâ facie* case of real crime (according to the law of the refugee's country) against the refugee, the latter is handed over to the diplomatic representative of that country, on whose application he was originally arrested. But the formal order for his delivery must be under the hand and seal of the Secretary of State.

Deportation of Aliens

Very like his duties in connection with extradition, but even more anxious and responsible, are the duties of the Home Secretary with regard to the internment and deportation of aliens under the Aliens Restriction Acts of 1914 and 1919, and the various Defence of the Realm Acts. The latter are, no doubt, 'temporary' or 'war' measures only. But the former are not; and it may confidently be predicted that, at any rate for several years to come, a closer and more careful surveillance than has hitherto existed will be exercised over the subjects of foreign States who are resident within the Empire.

Prerogative of Pardon

Passing by the somewhat doubtful power claimed by a Secretary of State, and favoured by high legal authority, of committing a person charged with high treason for trial, without the usual preliminary examination before a magistrate, we may mention what is, perhaps, one of the most painful of all duties

imposed upon the Home Secretary, viz. the duty of advising the King as to the exercise of his royal prerogative of pardoning a criminal condemned to suffer death or other penalty. In the exercise of this duty, the Home Secretary is, no doubt, influenced by any recommendation to mercy which the jury may have made at the trial, by any circumstances which may have come to light since the trial, by the number and weight of petitions for a pardon addressed to the Crown, and, above all, by the confidential report on the case made by the judge who tried it. But, after all, the direct responsibility for the decision rests with the Home Secretary; though it is possible that, in this matter, the personal wishes of the King count for a good deal. It should be carefully noted, that a pardon granted by the Crown *before* conviction would be grossly unconstitutional, as an attempt to stay the course of justice; though it would seem to be legally effective, except in the case of an impeachment (p. 178), where it is expressly made void by the Act of Settlement of 1700. Moreover, two indirect forms of enabling persons to commit offences with impunity by guaranteeing them pardon in advance, viz. the 'suspending' of the operation of a statute for a limited time, and the 'dispensing' with the obligation to obey it in the case of particular persons, were declared illegal by the Bill of Rights of 1689, though in a way which leaves it just open to say, that the practice of 'dispensing' with a rule of the 'common' or non-statutory law (p. 15) is not entirely excluded. Moreover, though, in strict law, the Crown can be compelled to lend its name to any prosecution, yet its officers can, if they think that any prosecution is frivolous or unwarranted, throw the whole burden of it on the person instigating it, under the Vexatious Indictments Acts, or, if the prosecution is really by the Crown, the Attorney-General can enter a *nolle prosequi*, or refusal to proceed, which, as the Director

of Public Prosecutions is a subordinate of the Home Secretary, must be regarded as the latter's act.

Welfare Legislation

Finally, before the recent developement of newer departments, such as the Local Government Board and the Ministry of Agriculture and Fisheries, a good deal of the 'welfare' legislation which sprang into such prominence after the passing of the first Reform Act, was entrusted to the enforcement of the Home Secretary. Much of this has now been transferred to, or, in the modern examples, originally conferred on, other departments; but the important powers still exercised by the Home Secretary in the matter of coal and other mines, and factories, serve to bring out the miscellaneous character of his duties.

The Foreign Secretary and Diplomatic Work

The Secretary of State for Foreign Affairs, as his title implies, is concerned with the intercourse between the British Empire and foreign countries. This is of two kinds: diplomatic, and commercial or civil. The former is directly connected with foreign Governments, and concerns such matters as the protection of British political interests, the safety of British subjects abroad, the negotiation and carrying out of treaties, the maintenance of friendly relations between Governments, and, generally, the guarding and shaping of British interests in the world outside the Empire.

Ambassadors

It is carried on either directly by means of correspondence issued in the name of the King, and, in most cases, actually submitted for his approval, or through agents, known as Ambassadors, or Ministers, appointed by the King, on the recommendation of the

Foreign Secretary, to act as his representative at foreign Courts. These persons, though they are sometimes called 'Ministers,' are not part of the 'Ministry of the day,' *i.e.* they do not resign when the Government is defeated; and they are supposed to keep a watchful eye upon all that goes on in the countries in which they reside, which can at all affect British interests. In former days, when the means of communication were slow, these persons were of great importance; but, with the development of rapid communication by train and telegraph, their importance has dwindled, and they are even sometimes accused of causing more mischief than they prevent. This is probably untrue, at least as regards the more distinguished diplomatic representatives of the Empire; but, doubtless, a great deal of malicious gossip goes on in the somewhat artificial atmosphere of 'diplomatic circles,' and is fostered by the less scrupulous of the foreign correspondents of newspapers, who find in it good material for sensational despatches.

'Secret Diplomacy'

A more serious question arises in connection with 'secret diplomacy' generally, that is, the conduct of foreign negotiations unknown to Parliament or people, which may involve the Empire in the gravest responsibilities. It is, of course, true, that no such negotiations which involve any alteration in the law can be effective until they have been sanctioned by Act of Parliament; such, for example, as the Foreign Copyright Acts, which gave effect to the various 'conventions' with foreign countries on that subject. It is true, also, that, by refusing to vote the money necessary to carry out obligations thus incurred, Parliament can, in effect, render them inoperative. But the Crown is, by the law of the Constitution, the sole representative of the Empire to the outside world;

and to repudiate negotiations entered into in its name would deal a severe blow at British reputation and credit abroad, while, even in such vital matters as the cession of territory and the declaration of war and conclusion of peace, the Crown claims the legal right of acting without the consent of Parliament.

In practice, no doubt, the position is not so dangerous as it seems. For Foreign Secretaries have a wholesome dread of Parliamentary condemnation; while the necessity for the formal approval of a treaty by Parliament, as in the case of the Senate of the United States, is attended by some serious drawbacks. The same objection applies to all open negotiations. Crises which, if handled confidentially, can be discreetly averted, are apt to become distinctly more unmanageable when they are discussed in public with the aid of an excited Press, bent on arousing the passions of its readers. The sanest proposition for dealing with what is, admittedly, a difficult problem in statesmanship, appears to be the appointment, at the commencement of each Parliament, of a Joint Committee on Foreign Relations, composed of representatives of all parties, to which the Foreign Secretary should continually report in confidence the progress of international negotiations. A seat on such a committee would naturally be an object of ambition with the ablest members of both Houses. It need not contain members of the Government; for the Cabinet, at least, would be even more intimately in touch with the working of the Foreign Office. It might have power, which would, naturally, only be exercised in grave matters, of addressing the Crown directly upon any tendencies in international affairs which appeared to it to be dangerous. In the last resort, it might have power to report to either House, which, in joint or separate session, open or secret, as might be determined, would be able to consider and act upon the report. Such a committee, if wisely selected, would

combine the wisdom and authority of a Council of Elder Statesmen with the popular mandate of a representative body.

Passports

It is, of course, as the Minister in charge of international affairs that the Foreign Secretary issues 'passports' to British subjects, bespeaking for them a favourable reception in foreign countries, and, in a sense, guaranteeing their respectability. The value of such documents varies greatly according to the country in which the traveller journeys. In some countries, at least in normal times, they are almost unnecessary. In others, they are of distinct value, and, for some purposes, essential. In others again, they are absolutely necessary, if the traveller wishes to avoid being shot as a spy, or at least cast into prison as a suspicious person. In such countries, the simple passport is not, as a rule, enough; it must be 'visé,' *i.e.* examined and approved, by a representative of the country in which the holder proposes to travel. It is probable that, at any rate for some years, the passport regulations of Europe will be much severer than during the last half century.

Commercial Work of the Foreign Office

Of the commercial duties of the Foreign Office, important as they are, little need be said in a book like the present. They consist in looking after the material welfare of British subjects abroad, and the fostering of commercial intercourse between the subjects of the British Empire and those of other States.

Consuls

They are carried out by 'consular' representatives of various grades, some of whom are professional

officials, devoting their whole time to their official duties, and paid substantial salaries; while others are merchants, often not British subjects, who render assistance in many ways to British subjects in need of various kinds, such as means of information, identity, introductions, and the like. The Foreign Office shares with the Board of Trade the responsibility for the important joint sub-department of Overseas Trade, established during the war. It is represented in Parliament by a special Under-Secretary acting for both departments.

Protectorates

Finally, we may mention again the powers and duties of the Foreign Secretary in the matter of Protectorates (pp. 95-101), *i.e.* those countries in which, though they are not actually parts of the British Empire, the British Crown exercises great and even predominant influence. Not all of them are in charge of the Foreign Secretary; some are within the sphere of operations of the India Office, others of that of the Colonial Office. But the Foreign Secretary is, normally, the official who, by virtue of the Foreign Jurisdiction Acts, upholds the authority of the Crown in respect to British residents in such countries, and deals, through his officials on the spot, with the native rulers.

CHAPTER X

THE INDIVIDUAL OFFICES AND THE NEWER DEPARTMENTS

THIS will, it is feared, be a somewhat miscellaneous chapter; and its connection with the government of the Empire may not at first seem to be clear. But the fact is, that it is impossible, in dealing with an historic growth like the British Empire, which has developed, to a great extent, out of the institutions of the British Islands, to draw a sharp line of distinction between Imperial and Island institutions. The former are slowly detaching themselves from the latter, and assuming a truly Imperial character; but there is still a border-land of which it is difficult to say whether it may be regarded as imperial, or purely local. In any case, the institutions of the Island State have an interest in, and a bearing on, imperial affairs; and a brief account of them may be forgiven.

THE GREAT OFFICES OF STATE

We begin with a few words about certain State offices which may be called 'individual,' because they are exercised chiefly by their holders in person, and do not involve the administration of large establishments or offices. Most of them are of old standing; some of them are sinecures, *i.e.* have no really arduous duties directly attached to them, but are preserved for indirect purposes; some are of very great practical importance, and involve the exercise of the highest

skill; some are hereditary, some change with each successive Ministry; one, at least, may be regarded as intermittent. There seems to be no possibility of classification.

Lord High Chancellor

One of the oldest, and, perhaps, the most important, is the office of Lord High Chancellor, or Keeper of the Great Seal of England. It seems to have been the first of the purely 'business' offices, as distinct from the military and household offices about the King's Court; at any rate if we except the still older office of the Great Justitiar, which became extinct in the thirteenth century, soon after the English Kings lost their Norman possessions. The name 'Chancellor' is said to be derived from the *cancelli*, or screen in the King's chapel, behind which the King's scribes worked. At any rate it is clear that, until the sixteenth century, the office was always held by a cleric (the great Sir Thomas More was the first lay Chancellor); and this probably accounts for the fact that it, unlike most of the other ancient State offices, did not become hereditary, and, consequently, merely ceremonial.

Keeper of the Great Seal

The Lord High Chancellor was, in fact, at first merely the King's chief scribe, to whom was entrusted the holding of the royal seal, which, in the days when the arts of reading and writing were rare accomplishments, was necessary to authenticate each royal document. As the King's business grew in volume, the importance of the 'Chancery' and its occupant increased. From being a mere scribe, the latter became a trusted adviser of the King, especially in matters of discretion or 'conscience.' He appointed to livings in the King's gift. He advised the King as to the exercise of his prerogative of 'grace,' *i.e.* the redress of grievances for which the ordinary or 'common'

law (p. 15) made no provision; and in that capacity he rapidly built up for himself, in the fourteenth and fifteenth centuries, a great judicial position as the dispenser of 'equity' in the Court of Chancery.

The Court of Chancery

The distinction between 'common law' and 'equity' is too technical to be the subject of discussion in a book on the government of the British Empire; but it has left its mark on the judicial systems, not only of England and Ireland (Scotland seems to have ignored it), but of the colonies and even of British India. It may be said that, while the 'common law,' *i.e.* the law founded on immemorial custom supplemented by Act of Parliament, was a rigid system, dealing out precise remedies as a matter of right and refusing to recognize any grievance which did not fall within its precise terms, 'equity,' the system administered by the Chancellor in the Court of Chancery, occupied itself with devising remedies for substantial hardships unredressed, or imperfectly redressed, by the common law, and with mitigating the harsh application of certain rules of the strict common law. Inasmuch as the jury system never made its way into the Court of Chancery, the power of the Chancellors to mould the rules of equity was very great; until the practice of 'reporting,' or publishing, their decisions grew up, and created in the Court of Chancery, as well as in the Common Law Courts, that deep respect for precedent which has been both the strength and the weakness of English Law, and which gradually made the distinction between 'common law' and 'equity' cumbersome and unworkable.

The Office of the Chancery

Meanwhile, the work of the Chancery, not as a court of justice, but as an administrative office, had con-

tinued and grown; though the appearance of new departments of State, such as The Treasury or Exchequer and the Secretaryships of State (Chapter IX), tended to destroy its character as the sole business office of the government of the Kingdom. For example, every 'writ,' or executive order of the King, whether for beginning a common law action, or for summoning members of Parliament, required the affixing of the great seal; so also did the issue of Letters Patent, or formal expressions of the royal will announced to all the world; so also did the conclusion of a treaty with a foreign State. As time went on, the use of the great seal became subject to various safeguards, such as the interposition between it and the original signification of the royal pleasure of additional checks, *e.g.* the signet and the privy seal, each by a keeper or custodian who was responsible for its proper use; and we have seen (pp. 31–32) how this elaborate process was regulated by statute in the year 1535.

Judicial Patronage

But it was, probably, his position as the chief, if not the sole, judge in the Court of Chancery, which secured for the Lord High Chancellor his commanding position as dispenser of judicial patronage and a leading member of the Ministry. The growth of the Court of Chancery in the eighteenth century, after its narrow escape from destruction in the Civil War, was enormous; it developed an elaborate machinery of Masters, Clerks of various ranks, Registrars, and other officials; and all these were, virtually, subordinates of the Lord Chancellor. In the nineteenth century, various Vice-Chancellors were appointed to assist him in the judicial duties of his office; and though these, like the other judges, held their offices directly from the Crown, the advice of the Chancellor was, naturally, of great weight in the selection of them. And when, by the great

judicial reforms of the years 1873–1876, hereafter to be alluded to (pp. 286–287), the organization both of the 'common law' and the 'equity' courts was combined, substantially the whole of the patronage attached to the superior courts passed into the hands of the Lord Chancellor, who had previously been entrusted, by statute, with the appointment of the County Court judges (p. 284), whilst, by virtue of his custody of the great seal, the final recommendation for the appointments of nearly all Justices of the Peace (p. 271) throughout England is in his hands. Thus the Lord Chancellor is, in effect, though not in name, a Minister of Justice, as well as the presiding member of the highest courts of Appeal.

Chairman of House of Lords

Add to these dignities his position as Speaker or President of the House of Lords; and it will be seen to what dimensions has grown the once humble office of the scribe who sat behind the screen in the King's chapel in the eleventh century. Finally it may be remarked, as one of the numerous oddities of the British Constitution, that the Lord High Chancellor of England is also Lord High Chancellor of Great Britain; though the custody of the Great Seal of Scotland is with the recently created Secretary for Scotland (p. 52). There was a separate Lord Chancellor for Ireland; but none of the colonies nor British India has, it is believed, any official closely corresponding to the Lord High Chancellor,[1] though many of the former have Ministers of Justice, and in India there is, as has been said (p. 86), a Legal Member of the Viceroy's Executive Council.

Lord Privy Seal

The office of Lord Privy Seal need not detain us;

[1] There is a titular 'Chancellor' in the Province of Ontario; but he appears not to occupy the highest judicial rank.

for its duties, important as they once were, have disappeared; and the office itself serves only as a convenient means of giving rank to a person whose presence in the Ministry 'without portfolio' (p. 115) is, for any reason, desired. The King's privy seal seems to have been interposed between the sign-manual warrant (p. 31) and the great seal far back in history, as a check upon improvident or fraudulent issue of funds out of the Exchequer; and its original importance is attested by the care with which Parliament, in its earliest days, insisted that it should be entrusted only to a worthy person. It figures largely in the Seals Act of 1535, before alluded to; but its importance disappeared with the establishment of the Exchequer and Audit Office (p. 223), and the general reforms in financial machinery in the early part of the nineteenth century.

Lord President of the Council

Of a similar character is the office of Lord President of the Council, who is always a member of the Ministry, and who presides at the formal meetings of the Privy Council when the King is not present, and takes precedence in that body next after His Majesty. One of the peculiarities of the office is, that it is filled by a simple personal declaration made in the Council by the King. The Lord President would, naturally, take the chair of any committee of the Council of which he was a member; and he can answer questions in Parliament as to the action of any such committee. But his real business is to act as a 'Minister without portfolio' (p. 115).

The 'Chancellor of the Duchy'

Very much on the same footing stands the Chancellor of the Duchy of Lancaster, the great Palatine fief (p. 137) which, at the accession of Henry IV, became united to the Crown, but, for reasons of prudence

which have long ceased to exist, has always been maintained as a separate dignity, with its own revenues belonging to the King 'in right of his Duchy,' and not included in the 'Civil List' (p. 224), its own law courts, its own officials, and its own administrative offices. The Chancellor of the Duchy exercises some little patronage, such as the recommendations for the appointments of Justices of the Peace for the Duchy of Lancaster, and the appointment of the County Court judges (p. 284) acting therein. But, again, the chief business of the office is to supply a 'Minister without portfolio,' frequently on his way to higher office.

The Law Officers

On the other hand, the duties of the Law Officers and the Postmaster-General are onerous; and, though these officials are always included in the Ministry of the day, they are by no means always members of the Cabinet—in fact, the inclusion of the Attorney-General, the senior Law Officer, in the Cabinet a few years ago, was looked upon as an exceptional, and, perhaps, not wholly desirable step. For the Attorney-General, in conjunction with his colleague, the Solicitor-General, both of them being barristers of great experience, represents the Crown in all legal proceedings (including, nominally, the institution of all criminal prosecutions, and all revenue and other prerogative claims of the Crown), as well as in the defence of the Crown in such claims as can be brought against it, by petition of right or otherwise (p. 230 n.). In this capacity, he acts in a quasi-judicial manner, not straining the Crown's rights as a private barrister might well do those of his client, but merely endeavouring to see that even-handed justice is done. Particularly anxious and responsible is his duty in those important criminal and political trials in which he appears in person; though his duties in such cases have been lightened by

the recent creation of a Director of Public Prosecutions, a non-party and 'permanent' official, who prepares the cases for trial. The Law Officers act in a still more judicial capacity on appeals from the Comptroller of Patents, when there is a dispute as to the lawfulness of granting a particular 'patent' or monopoly. Their more political duties consist in advising the various departments of State on legal matters, though these have now often their own official 'legal advisers,' and in defending the legality of Government measures, and explaining legal technicalities, in the House of Commons. They also exercise a limited amount of minor official patronage. By a wholesome rule of recent adoption, they are not allowed to supplement their handsome official incomes by taking briefs for private clients.

The Postmaster-General

The Postmaster-General, as his title implies, is concerned with the management of the vast business of the Post Office, which includes, now, not merely its original duty of carrying and delivering letters, but those of transmitting telegrams, both by land and sea, receiving and safeguarding the savings of people of moderate means, facilitating the transfer of money in small amounts, carrying and delivery of parcels, payment of 'Old Age Pensions' (p. 252) and other Government allowances, and the instalment and upkeep of telephones. The Government monopoly of carrying letters dates from the seventeenth century; but the other duties of the Post Office were imposed at various times during the nineteenth and present centuries. It may well be questioned, whether such a purely 'business' affair as the Post Office ought to be made a political department; but two facts seem to justify the practice. One is, that a substantial part of the national revenue is received from the Post

Office; and it is, therefore, desirable that the House of Commons should be able to exercise direct control over it. The other is, that persistent questions in Parliament are one of the best means of bringing about reforms in a department which, by the very nature of its business, tends towards routine.

Household Offices

A still briefer notice will suffice of the Household, or purely ceremonial offices of the King's Court. Some of these, such as the Earl Marshal and the Lord High Chamberlain,[1] date back to remote antiquity; and, as has been before pointed out (p. 240), they long ago became hereditary, and, therefore, purely ceremonial. They are exercised chiefly on such solemn occasions as a coronation or a royal funeral. They have, of course, no connection with politics. They have, however, been supplemented by slightly more practical offices, such as those of the Lord Chamberlain and Lord Steward of the Household, who are members of the Ministry in permanent attendance on the King, who make up a 'quorum' or necessary number, at the formal meetings of the Privy Council (p. 114), and who appear also at Court ceremonies, and are supposed to keep the King in touch with the working members of the Ministry. The Lord High Steward, on the other hand, though not a purely ceremonial officer, is not a Minister; being only appointed, as occasion may require, to preside at the trial of a peer by his peers for treason or felony (p. 178), when Parliament is not sitting.

Administrative Offices

We now pass to the more practically important subject of the modern departments of State, called,

[1] The ancient office of Lord High Constable is in abeyance. It may, of course, be revived by the Crown

by a well-known writer,[1] 'regulative' offices, to distinguish them from the 'executive' departments essential to the maintenance of State existence. Perhaps the distinction is a little arbitrary; and we may suggest that the title 'administrative' is equally appropriate to these modern departments, whose duties are especially concerned with the developement of the resources, mental and physical, of the nation.

The Board of Trade

The oldest, and, in some ways, the most important of these is the Board of Trade, which, as has been before pointed out (p. 75), was one of the many far-sighted schemes of the Commonwealth government which followed on the Civil War. It suffered many vicissitudes in its early years, being mixed up with the fortunes of the colonies, or 'plantations'; but in 1782 it was constituted an independent committee of the Privy Council, and definitely organized by Order in Council in 1786. This Order is important, because it set the precedent of creating a President and Vice-President of the Committee, who were really expected to perform the duties of a miscellaneous body whose other members soon became merely formal. This practice survived the conversion of the committee into a statutory 'Board' in the year 1862; though the solemn farce of appointing important personages, such as the Archbishop of Canterbury and the Secretaries of State, as members of the Board, was continued. In the year 1867, the exclusive control of the President, who had by that time become an important member of the Ministry, and, frequently, of the Cabinet, was emphasized by the abolition of the Vice-Presidency, and the substitution for it of a Parliamentary Secretary, who is clearly a subordinate, as

[1] Sir William Anson, in his *Law and Custom of the Constitution*, vol. ii. p. 142.

he is not even a member of the Board. The Board has also, now, a very numerous staff, not only of clerical but of expert officials, grouped according to the various duties entrusted to it.

For, from the middle of the nineteenth century, up to which time the duties of the Board had been mainly confined to the collection of trade statistics and the giving of advice on trade subjects to other departments, the Board of Trade began more and more to assume an active or administrative character, being charged with the care of one after another of the national industries, as well as of those general instruments and facilities without which no industry can flourish.

Railways

Thus, for example, the Board was concerned with proposals for the extension of railways. No new line could be opened until it had been inspected and proved by the Board's officials. The Board issued regulations intended to provide for the safety of passengers and railwaymen, and held enquiries as to the causes of accidents. But its duties under this head have recently been transferred to the new Ministry of Transport (p. 267).

Shipping

The Board has many important duties in connection with the interests of merchant shipping. It maintains a register containing the particulars of every British ship; and no transfer of any share in such a ship is legally valid until entered on this register. The Board likewise makes regulations for the safety of merchant ships, both as to their build and loading, and sees that they are carried out. It has control of harbours, and, indirectly, through the ancient and interesting gild of the Trinity House, and the Commissioners of Northern and Irish Lighthouses, of the provision and maintenance of lighthouses, beacons, and other means for ensuring safety at sea. It is in this capacity that it

has exercised powers in connection with emigration; though the encouragement of assisted emigration is left to the new Ministry of Health, while information on the subject of openings for emigrants is published by the Colonial Office, in conjunction with the High Commissioners and Agents-General of the Dominions.

Public Utilities

The Board of Trade has also a good deal to do with the supervision of what may be called 'public utilities,' such as electricity, gas, and water supply. It supervises the working of the Patent Office, from which carefully limited grants of monopolies for the manufacture and sale of 'inventions new within the realm' are issued 'to the true and first inventors thereof.' It has a good deal to do with the Register of Joint Stock Companies, containing particulars of those artificial but useful bodies by which so much of modern commerce is carried on. It maintains, through local agencies, the proper standards of weights and measures. Its former duties in connection with Labour Exchanges have been transferred to the recently created Ministry of Labour (p. 267). It has much to do with the working of the Bankruptcy laws, whereby the property of insolvent persons is made available for proportionate distribution among their creditors. But the new Ministry of Labour has relieved it of its former responsibility for the carrying out of legislation intended to secure conciliation and ultimate settlement of industrial disputes.

The Board of Works

A small but interesting department is that of the Board of Works, separated in 1851 from the Commissioners of Woods and Forests (p. 219), and, nominally, like the Board of Trade, a body of several members, but really a 'one-man' department under the

First Commissioner, who is a member of the Ministry, departmentally charged with looking after State buildings, palaces, and parks.

The Local Government Board

Far wider were the duties of the Local Government Board. Though nominally the creation of Act of Parliament in 1871, and, in reality, a 'one-man' department under a President, who was a member of the Ministry, and, with the assistance of a Parliamentary and other secretaries and numerous officials, conducted the business of the Board, the department was really an amalgamation of three much older institutions, viz. the Poor Law Commissioners or Board, the Board of Public Health, and the Local Government sub-department of the Home Office. This origin will give us the key to the distribution of its duties.

Poor Law

Of the great subject of poor relief, which dates, as a public liability, from the sixteenth century, something must be said when we come to deal with local government in England (p. 341), of which it is, historically, the basis, and of which it still forms a substantial part. It is sufficient to say here, that, while the actual distribution and provision for the relief of destitution, apart from the provisions of the National Insurance Act (pp. 226–227), is left to elected Boards of Guardians and their officials (p. 336), it has been found by experience necessary that these authorities shall be constantly advised, watched, and, to a certain extent, controlled, by a central department, charged with preventing neglect of duty on the one hand, and injudicious extravagance on the other. Accordingly, the Poor Law sub-department of the Local Government Board issued, under the seal of the Board, Orders

regulating, within legal limits, the conduct of poor relief, sent its inspectors to examine 'workhouses,' asylums, and other Poor Law institutions, and its auditors to examine the accounts of the Boards of Guardians and their officials. It also exercised a wholesome check on the appointment of these officials, and protected them against arbitrary dismissal by their immediate employers. This last protection is vitally necessary, to secure the faithful and independent discharge of their duties by the officials of the local authorities.

Old Age Pensions

As was said of National Insurance, so it may be said of the scheme of Old Age Pensions which has now been in force in the United Kingdom for the last eleven years, that it is no part of the government of the British Empire. But it certainly has its imperial side; for if the proposal and thinking out of the scheme were due to the energy and perseverance of English economists, the earliest experiments on the lines ultimately adopted were made in the Dominions under the Southern Cross, and the Dominion of New Zealand claims the credit of being the first member of the Empire to put it into practical force, in the year 1898. It may therefore just be stated that, by virtue of the Old Age Pensions Acts, every British subject who has attained the age of seventy, resident, for twelve years [1] out of the last twenty, within the United Kingdom, who can prove that, by no default of his own, his income does not exceed £49 17*s.* 6*d.* a year, is entitled to a pension, payable out of moneys provided by Parliament, of one to ten shillings a week according to his means, until his or her death. These pensions are actually paid through the Post Office; and the claims of the applicants are tested by local committees. But the composition of these

[1] For a naturalized person the period is twenty years.

committees had to be approved by the Local Government Board, which heard appeals from their decisions, and made Regulations governing their proceedings.

Public Health

Another great branch of the work of the Board was the supervision of the working of the sanitary laws which, since the passing of the great Public Health Act of 1848, have developed at a rapid rate. The great amending and codifying Act of 1875, the basis of the present law, is a volume of minute regulations; and it has itself been frequently amended. A glance at that statute will show that, as in the case of the Poor Law, it is intended to be mainly administered by local authorities, now known as 'district councils,' or by still more highly developed borough councils, of which something must be said in later chapters (XIII, XIV). But the general enforcement of the scheme, the demarcation of the districts, the settlement of disputes between rival authorities, the bringing of pressure to bear on slack or recalcitrant councils, the approval of the qualifications of local sanitary officials, and, above all, the sanctioning of the important schemes for the clearing of unhealthy areas, and the provision of dwellings suitable for the working classes, fell to the lot of the Local Government Board, which also exercised direct powers of inspection in such important matters as the escape of dangerous fumes from alkali works, the conditions of canal boats, and the enforcement of rules of segregation in the case of infectious diseases, and of the provisions of the Vaccination Acts.

Local Government Generally

Finally, in its capacity of general supervisor of local government, which it had inherited from the Home Office, the Local Government Board was concerned with the delimitation of the boundaries of all

local authorities, the sanctioning of loans for various local undertakings, the conferring upon rural areas of powers usually exerciseable only by urban authorities, the audit of the accounts of local government bodies, and the approval of by-laws, or local statutes, issued by such bodies under their various powers. Only, by a curious survival, the by-laws of a municipal borough (p. 364) required the approval of the Home Secretary (p. 230), not of the Local Government Board, which did, however, pass the borough accounts, after they had been audited by the local borough auditors.[1]

The Ministry of Agriculture and Fisheries

The Board of Agriculture was formed by statute in 1889, to take over the miscellaneous duties of the Privy Council on the subject of noxious insects and the contagious diseases of animals, as well as the duties of the Land Commissioners, a sub-department which had itself absorbed the duties of no less than five older bodies, viz. the Copyhold Commissioners, the Tithe Commissioners, the Drainage Commissioners, the University and College Estates Commissioners, and the Inclosure Commissioners.

Copyhold Commission

The Copyhold Commissioners were formed to approve of and carry out local or individual schemes for the conversion of that peculiar form of land tenure known as 'copyhold,' into the simpler and more adaptable tenure of 'socage' or freehold; the former being regulated by unalterable local customs, often very onerous in their character, while the latter is governed by the simpler and uniform rules of the common law.

[1] It may have been observed that the above statement of the powers of the Local Government Board is expressed in the past tense. That is because the functions of the Board have just (1920) been transferred to the new Ministry of Health (p. 267).

Tithe Commission

The Tithe Commissioners were originally appointed to supervise the conversion of the old inconvenient liability to the payment of tithes, or Church dues, in kind, into a fixed annual 'rent charge,' or payment charged on land, varying only with the price of corn. Their duties are now almost completed.

Drainage Commissioners

The Drainage Commissioners were appointed to approve of schemes for undertaking the drainage and other permanent improvement of land, by life or other limited owners, who desired to charge the capital of their lands with the cost of the schemes.

University Estates Commissioners

The University and College Estates Commissioners were appointed to approve the sale of, or other dealings with, land belonging to universities and colleges, the alienation of which is subject to stringent restrictions.

Inclosure Commissioners

The Inclosure Commissioners were created at a time when it was considered desirable to inclose and divide up into private hands the waste lands belonging to manors, which were the subject of common enjoyment and user; but a strong revulsion of popular feeling on the subject has produced legislation which has practically extinguished the powers, formerly conferred on the Commissioners, of facilitating inclosure schemes.

To these original duties of the Board of Agriculture were added, in the year 1903, the duties previously exercised by the Board of Trade in the matter of the control and developement of sea and river fisheries; and the Board then became the Board of Agriculture and Fisheries. The energy of its successive Presidents and officials has since made of it a general stimulator

of agricultural interests; and its rise in importance was marked by the elevation last year (1919) of its official head to the dignity of a 'Minister,' and by the creation of an extensive machinery for bringing it into touch with local interests. By the Act of 1919, every county council (except London) must appoint an 'agricultural committee,' to which all the functions of the council in respect of agriculture are primarily entrusted. These committees send representatives to central Agricultural Councils for England and Wales respectively, which comprise also representatives of the Agricultural Wages Board, and of all classes interested in agriculture; whilst the two Councils are provided with a common organ in the Agricultural Advisory Committee, which advises the Board on all matters except fisheries.

The Board of Education

In spite of its intrinsic importance, the Board of Education can hardly be said to be at present of an imperial character; for the self-governing Dominions at least, had put into force admirable systems of State elementary education long before England (though the case of Scotland was far better) had made anything like a systematic provision for the education of the children of the nation. Much had been done by the piety of former ages to found grammar schools; but many of these had been allowed to fall into decay, while others, more wealthy or better looked after, such as Eton, Harrow, Winchester, and Rugby, had become appropriated to the use of the wealthier classes, and assumed for themselves, without complete justification, the exclusive title of 'Public Schools.' The two ancient universities of Oxford and Cambridge were independent and self-governing bodies, whose great wealth was locked up in a curious collegiate system, which, though it was to prove capable of great value when properly stimulated, by the end of the

eighteenth century had fallen into a state of decay and misappropriation; thus rendering the ancient universities, like the great 'Public Schools,' practically the preserve of the rich, though a certain number of 'sizarships' and close scholarships enabled poor students of resolution or toughness of sensibility to obtain the benefits (such as they then were) of a university education. Technical education, which, in earlier times, had been cared for by a system of apprenticeship, regulated by statute, and by a network of gilds, or industrial associations, which, despite the plundering which they underwent at the Reformation, still retained a good deal of wealth, had fallen almost entirely into decay. Such provision as there was for the education of the masses, was maintained mainly by the efforts of the parochial clergy of the Established Church, by private charity, and by private enterprise of a very unskilled kind.

Reform of the Universities

Much was done during the nineteenth century, to remedy this disgraceful state of affairs. The older universities were reformed by Acts of Parliament, based on the Reports of Royal Commissions, and have undergone a revival, great and even startling, in view of their conditions a hundred years ago. New universities, at London, Durham, Manchester, Liverpool, Leeds, Sheffield, Bristol, and in Wales, have been founded, and liberally endowed both by private generosity and State subvention. The newer universities make substantial provision for the higher branches of technical education; but other institutions, some established by means of the wealth of the ancient gilds, others provided by local authorities chiefly by means of grants from the Imperial Exchequer, a few directly created and managed by the State, have been founded for this special purpose.

The Endowed Schools Commission

The Endowed Schools Commission has remedied many of the worst abuses of the nine great Public Schools, and has approved and put into force schemes for reviving and extending the smaller ancient grammar schools, which had been allowed to fall into decay. New schools for the sons and daughters of the professional classes, such as Haileybury, Cheltenham, Clifton, and Marlborough, have been founded from various sources. But the most important of all the changes which have taken place, from the national point of view and that of the prospects of the Empire, is the gradual establishment of State responsibility for, and control over, elementary, and, to a certain extent, secondary and technical education generally.

Elementary Education and Voluntary Societies

The movement has proceeded with characteristic English caution. It began with the foundation of two voluntary societies; one concerned with starting and improving Church of England schools, the other, though by no means anti-religious, endeavouring to make education an independent pursuit, not merely an appendage of religious teaching. Unfortunately, the existence of these different, and, in a sense, rival (not to say irreconcilable) attitudes, has proved a terrible stumbling-block in the way of educational progress; and a reconciliation between them has not yet been completely effected. Nevertheless, the State has proceeded cautiously, in its character of impartial responsibility for the welfare of all its subjects, to assist so far as possible all sound independent enterprise; while reserving to itself the right to step in and supplement deficiencies by a system of its own.

Grants administered by the Privy Council

At first it confined itself entirely to the former rôle. From the early years of the nineteenth century, The Treasury began to make grants in aid of elementary schools. The grants were, at first, small and irregular; and were distributed somewhat at hap-hazard. In the year 1839, a Committee of the Privy Council was created for the purpose of supervising the distribution of them. This step naturally led to a system of inspection and audit of accounts of the schools aided by the grants; and thus the nucleus of an Education Office was created.

Education Department

In the year 1856, this was formed into an Education Department, under the headship of a Vice-President of the Council, who acted, virtually, as Minister of Education; and, fourteen years later, the country formally resolved, by Act of Parliament, to undertake to enforce elementary education throughout the land.

Act of 1870

Still, the Education Act of 1870 did not attempt to set up a universal system of State schools, much less of schools worked from a central office. It merely laid down the general rules: (i) that, the parents or guardians of every child must be prepared to show that it was receiving elementary education up to at least a modest standard, and (ii) that, where it was clear that in any locality there existed a lack of such education, it must be provided by the locality, either by the levy of attendance fees on the parents of the scholars, or out of rates levied by the rating authorities, supplemented by Government grants based on the efficiency of the schools.

School Boards

Under the system thus established, the country was mapped out into school districts, under Boards directly elected by the rate-payers (whence the name 'Board Schools'); and these Boards set to work to provide elementary schools which, working alongside the older or 'voluntary' schools, and, often, it is to be feared, in not very friendly rivalry with them, did, undoubtedly, do an enormous amount to make up lee-way in elementary education. As the proportionate amount of the Parliamentary grants increased, and the contributions of the parents diminished until they were finally abolished in 1891, the Education Department, by means of its inspectors and regulations, obtained more and more control over the Board Schools, which became increasingly efficient. Moreover, they produced, in spite of somewhat adverse conditions, an admirable type of teacher, male and female, to whose devoted services the country has never really done justice. These teachers, working in harmony with small local committees of Managers, appointed by the School Boards to maintain constant touch between them and the schools, made of the latter centres of brightness and friendly social intercourse, often in the midst of very dark and depressing conditions; and any unprejudiced observer who had taken the trouble to make a tour of the Board Schools in any big industrial town, or even in East London, after the scheme of 1870 had got into full swing, would have realized that the old tradition of a school as a place of torture or, at best, a place of dull routine, had, so far at least as the children of labour were concerned, passed away. Such opposition to attendance at elementary schools as existed almost invariably came, not from the children themselves, but from indifferent or selfish parents, who were either too lazy to prepare the children for school, or desired to employ their services to supplement the family income.

Defects of the System

Nevertheless, the Board School system had its defects; two of the most conspicuous of which were the smallness of the school districts, and the methods of finance. Broadly speaking, the unit of school government was the parish; though, where the parish was in a municipal borough, it ranked with the other parishes of the borough as a single unit. In spite of this provision, there were in England upwards of 3,000 school districts, many of which were far too small to be efficient. Then too, as it was impossible to allow all these small Boards to levy rates on their own authority, they were required to send 'precepts,' or demands, to the ordinary rating authorities of their district, to supply their needs; and, as there was no statutory limit to the amount of these demands, and no real compulsion on the school authorities to give any explanation as to their necessity, the rating authorities, who were the ordinary local government authorities for the district, treated it as their duty to cut down the demands of the School Boards by all means in their power, regardless of the efficiency of the schools, in which they took little interest. Even where the local government area and the school districts were identical, as in the case of a borough, there were two distinct authorities, elected in different ways, who regarded one another with jealousy, if not with suspicion. These defects were, obviously, of a purely political, or administrative character. The old Board School system was guilty of the vital error of divorcing responsibility from power.

The Board of Education

This error was largely due to the fact that the central organization, the old Education Department, had not the prestige or the authority sufficient to enable

it to meet on equal terms of direct intercourse the great local government bodies, the borough and county councils (Chapter XIV); still less to handle firmly the old and deep-seated rivalry between the 'voluntary' or clerical, and the 'Board' or secular, schools. But this weakness was removed in the year 1899, when the Education Department was raised to the status of a political Board, nominally composed, like the Board of Trade and the Local Government Board, of a number of great State officials, but really under the control of a President, who is a member of the Ministry, and is assisted by Parliamentary and permanent secretaries, and a professional and clerical staff.

Act of 1902

Thus fortified, the advocates of improved elementary education took a bold plunge, and, in the year 1902, succeeded in carrying through Parliament the great Education Act of that year, which is the basis of the present system of public elementary education. It was felt, on the one hand, to be a public danger that the voluntary schools, though liberally supported by private efforts, should continue in a state of inferior efficiency owing to lack of funds; while, on the other, the supporters of voluntary education steadfastly refused, either to allow their organization to be extinguished, or to submit to the control of local secular authorities as the price of maintenance out of the rates. They already received large grants from Parliamentary funds; but these were, of course, administered by the Board of Education, not by the local authorities, and, moreover, did not involve interference, save on small and clearly defined points, with the independent action of the voluntary associations.

Present Scheme

The Act of 1902 boldly grappled with the problems before it, by transferring the whole responsibility for

elementary education to the ordinary local government authorities, viz. the county, borough, and larger urban district councils, to be described in subsequent chapters (XIII and XIV), and requiring them to raise funds by local rates to supplement any deficiency in the supply of such education, after the exhaustion of other sources. Thus, at a stroke, the vicious principle, before alluded to, of separation between power and responsibility, was abolished; while the multiplicity of administrative bodies, and the consequent smallness of many of them, which had marked the older system, disappeared. But the independence which was the precious possession of the old voluntary (now the 'non-provided') schools, was preserved by an ingenious arrangement which is of the essence of the new system.

Education Committees

Every local authority responsible for elementary education *must* now appoint an Education Committee or Committees in manner approved by the Board of Education; and such Committees, though they must usually contain a majority of members chosen from the local authority itself (*i.e.* the county, borough, or urban council), must also contain outside persons having educational experience, women as well as men, of whom some may even be nominated by independent bodies, such as universities and associations of 'non-provided' schools. To these Committees stands referred, as of course, every educational matter which comes before the local authority, except purely financial questions; and the local authority cannot come to any decision on educational matters without a report from its Education Committee. Thus the principle of expert handling is guaranteed.

Managers

But this, in itself, would not have met the demands of the supporters of the voluntary system. Their

demand for self-government is met through the institution of Managers before referred to (p. 260), which had already established itself as a feature of the 'Board School' system, and, under another name, was really in force in the voluntary system, where each school, or small group of schools, was under the direct management of persons known as 'trustees,' appointed under the provisions of the deed of foundation of, or the regulations of the voluntary society supporting, the school. All these persons are now called 'Managers'; and the appointment of a group of Managers for every school coming under the Act of 1902 is compulsory.

'Provided' and 'Non-provided' Schools

But whereas, in the case of 'provided' (*i.e.* purely State) schools, the whole of the Managers are appointed, either by the local education authority, acting through its Education Committee, or by the 'immediate' local authority (usually, in the rural districts, the council of the parish (p. 338) in which the school is situated); in the case of voluntary or 'non-provided' schools, the local educational authority (or 'immediate' local authority) only appoints one-third of the Managers, whilst the remaining two-thirds (known as 'Foundation Managers') are appointed by the old 'trustees' of the school, who may appoint themselves. Thus it is evident that whereas, in the case of schools entirely supported by public funds, the local authorities can, by the choice of Managers, entirely control, to the smallest detail, the management of the school, yet in the case of 'non-provided' schools, where only the maintenance of the school, as distinct from its buildings, is provided for out of public funds, the actual management of the school is in the hands of the local trustees, who have a two-thirds majority of the Managers. It must be carefully observed, however, that, in matters relating only to the secular part of education, the

Managers, even of a 'non-provided' school, must carry out the lawful instructions of the local Education Committee; though the important matter of the immediate appointment and dismissal of the teaching staff, is, in all cases, in the hands of the Managers, except that the local Education Committee may object to any improper exercise of it, on any other than merely religious grounds, and that dismissals require its confirmation.[1] Finally, the burning question of religious instruction is temporarily settled by the rule that, in the 'provided' schools, nothing but 'undenominational,' or simple Bible instruction shall be given; while, in the 'non-provided' schools, religious instruction of a doctrinal type, in accordance with the provisions of the trust-deeds, may be given. In both cases, however, the rule is subject to a 'conscience clause,' *i.e.* a stipulation that parents who object to the form of religious instruction given may withdraw their children during the hours fixed for giving it, which must be conveniently arranged for that purpose.

Higher Education

The Education Act of 1902, moreover, went far beyond the compulsory provision of elementary education, by enacting that the county education authority might, either independently or in conjunction with other bodies, foster and promote, either by subsidies or the establishment of its own institutions, any kind of 'higher' education, *i.e.* any kind (general or 'technical') not 'elementary,' within its area. But its powers in this direction, though they have been considerably acted upon, in the provision of facilities both for technical and 'secondary' education ('county' or 'municipal' schools), are optional only; whereas its powers to provide elementary education are also duties which can be enforced by courts of justice. However,

[1] This is not a right of the teacher, but a condition of support from public funds.

the former severe restrictions on the powers of local authorities to levy rates for the purposes of higher education, have been removed by the recent Act of 1918; and their powers in this direction are now equally unlimited, so far as law is concerned, both for elementary and higher education. Moreover, the duties thrown upon them by the same Act in respect of 'continuation schools' have done much to obliterate, for administrative purposes, the distinction between elementary and secondary education. With rare exceptions, attendance at elementary schools is now compulsory up to fourteen years; and compulsory attendance up to fifteen may be prescribed by a local authority. With regard to finance, the Board of Education may, of course, supplement local provision by any sum which it can induce Parliament to vote for the purpose.

Inspection of Secondary Schools

Finally, the Act of 1902 also makes provision for the inspection of secondary schools which are quite independent of local control or support, *i.e.* the so-called 'Public Schools' coming under the Endowed School Acts, as well as the more modern secondary schools set up by private enterprise (p. 257), and privately-owned schools. The attractions of this inspection (which has made considerable progress) are not based on the expectation of Parliamentary grants, but on the opportunities which it affords to improve the education given at such schools, and, perhaps, on the securing of an official approval which may have indirect commercial value.

Non-political Departments

It is not possible, in a work of the present dimensions, to deal with what are known as the 'non-political' departments, *i.e.* those bodies established for special purposes, and subject to government control, which are no real part of the government. They are either, like the Charity Commissioners, the Ecclesiastical Commissioners, the Registry of Friendly Societies, and the

Public Record Office, institutions formed and maintained for the purpose of conserving and rendering accessible valuable assets which, though they do not always actually belong to the State, have a definite public interest; or, like the National Debt Office, the Public Works Loans Department, and the Patent Office, are merely formed to assist the political departments in doing their work. One or two of the former class are directly represented in Parliament, usually by unpaid minor members of the Ministry; but most of them are sub-departments of the political departments, manned entirely by permanent officials, whose actions are accounted for in Parliament by the representatives of The Treasury, as general supervisor of the public services.

War Departments

Very little, too, can be said about the group of new Ministries which the war has produced. We have already alluded to the Ministry of Transport, whose activities extend to Scotland and Ireland, as well as England, and which has already taken over most of the powers and duties of the Board of Trade concerning railways, roads, canals, bridges, and harbours; and to the new Ministry of Health, which has absorbed the old Local Government Board and the National Insurance Commissioners for England and Wales. The Ministry of Labour, set up in 1916, administers not only the Labour Exchanges, but the very important provisions for the regulation of wages and the settlement of industrial disputes contained in recent statutes. The Ministry of Pensions, whose name explains its functions, will, probably, also be permanent. The Ministry of Munitions, the Ministry of Shipping, and the Food Controllership have now ceased to exist, as well as the brief Ministry of Reconstruction. All these new Ministries are strictly of the 'one man' type, without even nominal 'Boards.'

CHAPTER XI

THE KING'S COURTS OF JUSTICE

NOTHING has contributed more to the stability of the British Empire, or the respect in which it is held, than the even-handed dispensing of justice which has distinguished its tribunals, from the highest to the lowest, for the last two hundred years. And though the variety of the institutions of the different parts of the Empire, which is the great proof of the principle of liberty which animates British policy, is manifest no less in judicial than in other spheres of government, yet it will be found that the same great qualities of independence, purity, fairness, and patience, which distinguish the judges of the United Kingdom, are equally conspicuous in the judges of the Dominions, the Crown colonies, and British India.

ENGLISH JUDICIAL INSTITUTIONS

Moreover, though it is quite true, as has been said, that each part of the Empire has its own judicial system, with its own peculiar features, yet it can hardly be doubted that, in matters of arrangement and procedure, the courts of the Dominions and British India have, to a very large extent, followed English models, even where the common law of England does not prevail—the prevalence of the jury system, an unmistakeably English feature, is a striking example. Finally, the fact that there lies, in almost all important cases, a last appeal from all courts of justice in the British

Empire, except, curiously enough, the courts of the United Kingdom itself, to the Judicial Committee of the Privy Council, renders a fairly complete description of English judicial methods desirable.

Criminal Justice

For practical purposes, all cases which come before English courts of justice may be classed as either criminal or civil; and the arrangement of the English courts, and their procedure, are largely based on this distinction. We understand by criminal cases those in which the King, acting in his double capacity of accuser and judge, 'prosecutes' a person who is alleged to have committed an offence, such as murder, theft, serious assault, forgery, and the like, in order that the offender may be punished. The difficulty which would naturally arise from the double capacity of the King in such cases, if he acted in person, is got over by the fact that he has long ceased so to act (pp. 12–13), and that his duties in each capacity are now performed by totally distinct officials. Thus, the duties of the King as accuser, or prosecutor, are performed by the Law Officers of the Crown, or the Director of Public Prosecutions working under their supervision (pp. 245-246), or even, in a considerable number of cases, by a 'private prosecutor,' *i.e.* a citizen specially interested in bringing the alleged offender to justice; while the King's duties as judge are, as has been explained (p. 12), and have for long been, entrusted to another body of persons of high rank and skill, known as 'His Majesty's Judges,' who hold the scales of justice with a firm hand between the prosecutor and the accused, even when the former is actually a Crown official. Nevertheless, there are serious differences between every proceeding of this kind, and all 'civil' proceedings; one being that whereas, in civil proceedings, the parties may at any time agree to compromise, and end

the proceedings, this cannot be done in criminal cases, even when they are really conducted by a 'private prosecutor,' without leave of the judge or magistrate, acting in the King's name. In the early days, this peculiarity was due to the fact, that the compromise of a criminal case might have deprived the Crown of property which, on the conviction of the accused, would have been forfeited to it. Now that forfeiture for crime has been abolished, it is maintained for the purpose of preventing the escape of criminals from punishment. In the case of the more serious crimes, indeed, it is in itself a crime to compromise, or 'compound' a felony, or even to attempt to dissuade a witness from giving evidence on the trial.

Civil Justice

A civil action, on the other hand, is a proceeding brought by a private citizen, or by an official in his private character, to obtain redress against another person, official or private, for a wrong alleged to have been committed against the bringer of the action, or 'plaintiff,' by the person against whom the action is brought, or 'defendant.' In such matters, the office of the King, performed through his officials, is solely that of judge, or decider of the truth of the dispute. He has no other interest in the decision of the case than the desire to do justice. The legal advisers of the plaintiff are not his servants, or, if they are, are not acting in that capacity.[1] Consequently, there is nothing to prevent such a proceeding being compromised at any time without the leave of the Court, if the parties can agree upon terms; though, if it is sought to embody these terms in a judgment of the court, the judge must, naturally, be consulted, and

[1] A King's Counsel, or 'K.C.,' is, technically, a Crown official; but he receives no salary, and his title merely gives him a certain rank in his profession.

'a juror by leave withdrawn.' Ordinary examples of civil cases are actions for breach of contract (A agrees to sell a motor car to B and fails to deliver it), or for minor offences, known as 'torts,' such as trespass to land or goods, slander, infringement of patent rights, and so on. But it should be noted that a good many offences which are 'torts' are also 'crimes,' *e.g.* assault, libel, and theft; and it is not quite clear what are the respective priorities of the Crown and the private person injured, in pursuing them.

Anomalous Proceedings

There are a few kinds of legal proceedings which will not readily fall completely under either of the two divisions above explained, *e.g.* it is not quite clear whether divorce proceedings and proceedings for breaches of railway by-laws, are strictly criminal or strictly civil. But the division is useful as a basis; and we will proceed to deal first with the machinery for punishing crimes, and the courts in which they are prosecuted.

Enquiry by Magistrates

When a man is accused of having committed a crime, the first step is to bring him before the 'magistrates,' *i.e.* one or more of the Justices of the Peace. These magistrates date from the thirteenth century, and are appointed by the King, on the recommendation of the Lord Chancellor (p. 243), by what is called the 'Commission of the Peace' for a county or borough. Formerly they received wages, but have long since ceased, in most cases, to do so; though in London and a few other populous cities a special class of 'stipendiary magistrates,' with professional qualifications and special powers, are appointed, on the recommendation of the Home Secretary, at substantial salaries, to give their whole time to their magisterial

duties. There is now no special qualification required for county or borough Justices; though at one time the county Justices were appointed exclusively from the land-owning class. The appointment is not, like that of the judges, 'during good behaviour' (p. 13), but at the pleasure of the Crown; and a Justice of the Peace can be removed by the simple process of striking his name out of the Commission. In the counties, the Lord Lieutenant (p. 7) is the permanent head of the Commission, and has a good deal to do with recommendation to the Lord Chancellor for choice of his colleagues, who have somewhat greater powers than borough Justices. A few persons, such as the Chairmen of County and District Councils (pp. 351, 366), are *ex officio* Justices during their holding of the qualifying office; but it is a feature of all Justices of the Peace, that they can only act in and for the county or borough for which they are appointed, though they may be appointed for more than one county. The judges of the High Court (p. 287), and one or two other great officials, are appointed as Justices for every county.

Summons or Arrest

An accused person is brought before the magistrates either by summons, *i.e.* formal notice ordering him to appear on a certain day, or by arrest, that is physical compulsion. As a rule, no private person can arrest another, and not even a police officer can do so, without a 'warrant,' or precise order from a magistrate, which is only issued on sworn testimony as to the probability of guilt; but in a good many cases a police officer can arrest without warrant, and in a few, a private person can do so, especially when he has been actually present at the commission of a felony.[1] Moreover,

[1] A 'felony' is one of a somewhat arbitrarily chosen list of crimes which formerly entailed forfeiture of land and goods, and, even now, have peculiar consequences. The list includes all the graver offences, except perjury

even a private person can take any steps that may be necessary, even to the shedding of blood, to prevent a felony being committed in his presence; though the greatest care must be taken not to exercise more force than is absolutely necessary for the purpose. Still more clearly, of course, a private person has the right to use any force which may be necessary to prevent the commission of a crime of violence against himself, his wife, child, or servant, and even against his property, by another private person. This is the essential right of 'self-defence'; but it does not include (except in rare cases) the right of reprisal or punishment, still less resistance to lawful authority, even where the authority is mistakenly exercised.

Committal for Trial

When an accused person is brought before a magistrate, the business of the latter is, in the first place, merely to see whether there is a *primâ facie* case against him. For this purpose, the magistrate hears the evidence, usually sworn oral testimony, of the prosecutor and his witnesses. There is here no jury; and the prisoner is not in the least bound to make any statement, or offer any counter-evidence, (though he may do so if he likes), because it is a fundamental principle of British justice, only departed from in rare cases, that an accused person will not even be put upon his trial, unless there is a *primâ facie* case made out against him by others. Needless to say, no pressure can be put upon the accused to make him explain his conduct; and, even if he confesses his guilt, his confession will not be received unless it is entirely spontaneous, that is, not produced by any exercise of authority, legal or moral.

If the magistrate, after one or more hearings, thinks that no *primâ facie* case has been made out, *i.e.* that no jury would convict even if the prosecutor's evidence

were uncontradicted, he dismisses the charge, and the accused goes free, though he may be charged again on fresh evidence appearing. Usually, moreover, there is no limit of time from the alleged commission of the offence, after which no charge may be brought; though, in the case of the gravest of all offences, viz. high treason, there is a limit of three years (except for treason committed abroad or a personal attack on the life of the King), and in the case of a good many minor offences there is a time limit. As a matter of fact, prosecutions for ordinary crime frequently take place many years after the offence has been committed.

If the magistrate decides that there is a *primâ facie* case against the accused, he 'commits him for trial.' But now comes a question which depends upon the nature of the offence charged, the accused's age and character, or even his own choice. For he may be dealt with 'summarily,' *i.e.* without the intervention of a jury, or he may be committed for trial at the Assizes, or to Quarter Sessions; and a word about each of these methods will be necessary.

Bail

But, in the meantime, the magistrate will have to decide (and also if there have been 'remands' or adjournments on the hearing of the charge), whether the accused shall be held in prison to await further proceedings, or 'let out on bail,' *i.e.* given his liberty on the undertaking of responsible persons, under pecuniary penalties, for his reappearance, when wanted. The law of bail is, of course, very important, because it is concerned with personal liberty; but it is impossible to go fully into it here. Briefly speaking, there are some charges, *e.g.* of treason, upon which a magistrate *cannot* grant bail, except upon an order of the High Court or a Secretary of State; others (including all other felonies and the graver 'misdemeanours,' *i.e.*

offences less than felony) in which he *may*, at his discretion, grant bail; others, usually the less grave, in which he *must* grant bail if reasonable sureties are forthcoming. And it is a provision of the Bill of Rights of 1689, which probably covers both the last two classes, 'that excessive bail ought not to be required.' The surety or sureties (who may be or include the accused himself) enter into a formal contract with the Crown, called a 'recognizance,' to the effect that, if the accused is not forthcoming when he ought to be, they will forfeit a fixed sum; and a surety may arrest the accused if he tries to leave the country whilst under bail. If the magistrate refuses to let the accused out on bail, and remands him to prison, the accused may apply, by writ of Habeas Corpus (pp. 36–37), to a judge of the High Court to be let out on bail; and, if there is any doubt about his right, it will be argued solemnly in court. It need hardly be mentioned, that the recent Defence of the Realm Acts considerably restricted, for the time being, the rights of accused persons in this and other respects.

'Binding over to keep the Peace'

But it may not be so well known, that the ancient and still useful procedure known as 'swearing the peace' against a person who, though not, perhaps, guilty of any definite crime, has caused alarm by his threats or other behaviour, is effected by making him enter into sureties for his good behaviour.

Summary Trial

A large and increasing number of offences are 'punishable on summary conviction,' *i.e.* may be tried without a jury by the magistrates. They include nearly all the minor misdemeanours, such as petty assaults and thefts, and small breaches of public order, especi-

ally disobedience to by-laws and other local legislation (p. 351); but even some of the graver offences may be so tried, if the accused wishes, or if it is a first charge, or if he is below a certain age. The advantages of such a proceeding to an accused person are, that the sentences which a 'court of summary jurisdiction' can impose, are lighter than those open to a higher authority, and that the proceedings are speedier, though in all cases there are stringent rules to prevent an accused person being kept long in prison, or even on bail, with a charge hanging over him.

Courts of Summary Jurisdiction

A court of summary jurisdiction is, like the preliminary court of enquiry, composed of Justices of the Peace; but, unlike the court which hears the charge and commits for trial, it must comprise at least two Justices, unless the trial is by a stipendiary magistrate (p. 271). Moreover, while the preliminary hearing is not, in theory, an open enquiry, and may be held anywhere, a summary trial must be held in a regular court house, open to the public. The tribunal is known as 'Petty Sessions,' a sitting of Justices resident in the near neighbourhood, which also has a great deal of miscellaneous business of other kinds to do (p. 357). It hears again the witnesses for the prosecution, and, if the accusation is denied, of the accused, and the speeches of advocates on both sides; and ultimately decides, by a majority of votes, whether the accused is guilty, and either discharges him or imposes a fine or a limited term of imprisonment. Thus, it will be seen, that not even a minor offence can be punished without a double hearing of the accusation, supported by oath, and a hearing of the accused, in open court. Moreover the accused can, in most cases, if he is dissatisfied with the decision, appeal to the Quarter Sessions (p. 279) of all the Justices for the

county or the Recorder (p. 279) of a borough, which will hear the case all over again, and either confirm or quash the sentence. But the prosecutor has no right of appeal.

Trial on Indictment

In all the graver cases, however, there is much more solemnity. The accused is proceeded against by formal indictment, or written statement accusing him precisely of a definite crime committed in a particular way; and he is entitled to a copy of this indictment before his trial. Formerly, this document was highly technical; and an accused person represented by an acute legal adviser could often find a flaw in it which would compel the court to 'quash' it or set it aside. Now it is much simpler; but still, if it fails to show a real crime against the law, it is quashed, and the proceedings are at an end, though, of course, the accused can be prosecuted again on a proper indictment.

The Grand Jury

Moreover, until quite recently, there was yet another protection guaranteed to a person accused of an 'indictable' offence, before he could actually be brought to trial. This was the laying of the indictment before a body of substantial persons of local knowledge and repute, known as the 'Grand Jury' of the county or borough, without whose approval the charge could not be proceeded with, unless it were put forward, not by indictment, but by 'information' filed by the Attorney-General (p. 245), or by the Master of the Crown Office with leave of the Court, in the case of a notorious and open 'misdemeanour' (not felony). These 'informations,' however, are not encouraged; and, until the passing of the Act of Parliament soon to be alluded to, the indictment could not proceed to trial unless twelve, at least, of the Grand Jury found a 'true bill,'

i.e. that, after hearing once more the witnesses for the prosecution, they thought there was a *primâ facie* case against the accused. This additional precaution against a miscarriage of justice has, however, long ceased to be really necessary, on account of the improvement in the character of the preliminary hearing before the magistrates, just described; and, during the continuance of the European War, it was suspended on account of the other claims on the time of the Grand Jury-men. Likewise it should be mentioned that, in theory, the Grand Jury, which is an institution going back at least to the twelfth century, has a right to 'present' offences of its own knowledge. But this right has long ceased, in practice, to be exercised.

Coroner's Inquest

It ought, however, to be stated that, in certain cases, to the committal for trial by a magistrate may be added the finding of a coroner's jury (p. 356), empanelled to discover the cause of a death or fire which has occurred. If, at such inquest, the jury returns a verdict of murder, manslaughter, or arson, against a definite person, that person may be committed for trial on the verdict, upon which an indictment will be drawn up and submitted to the Grand Jury, or, now, to a jury of trial. But there is nothing to prevent a simultaneous or subsequent investigation before a magistrate.

Trial on Indictment

An indictment or information is tried, either before Quarter Sessions, or before a judge of the High Court at Assizes, in open court, usually in the county in which the offence is alleged to have been committed; though, if the state of public opinion would be likely to prevent a fair trial, it may be removed for trial, by a special process, to the Central Criminal Court in London

(the 'Old Bailey'), which is primarily the court for the trial of 'indictable' offences committed within the Metropolitan area and at sea, and which sits twelve times a year.

Assize Courts

The Assize Courts are held three times a year in all counties, and four times in certain important and populous cities (Manchester, Liverpool, Leeds). Both these latter tribunals are, in substance, presided over by a judge of the High Court, or a Commissioner of experience specially appointed for the occasion; though, nominally, the Central Criminal Court consists of a considerable number of persons.

Quarter Sessions

Quarter Sessions are, as their name implies, held four times a year. In the counties, they comprise all the Justices of the Peace for the county who choose to sit; all of whom are entitled to vote on the decisions. But the Chairman, who is elected by his fellow Justices, is the president and mouthpiece of the court, and, in effect, acts as judge, sometimes receiving a salary for his work. In the boroughs which have separate Quarter Sessions, the trial of 'indictable' offences is held before the Recorder, a professional lawyer appointed by the Crown on the recommendation of the Home Secretary (p. 230). Generally speaking, the question whether a particular case is tried at Assizes or at Quarter Sessions, is simply a question of which court will sit first; but a certain number of the more serious offences, such as treason, murder, felonies (other than burglary) which are punishable on a first conviction with penal servitude for life, perjury, and bigamy, can only be tried at Assizes. In cases of rare importance, the trial is 'at bar' of a court of the King's Bench Division (p. 286), consisting of at least three judges.

The Jury of Trial

Wherever the accused is tried, whether at Quarter Sessions, Assizes, the Central Criminal Court, or 'at bar,' he is entitled to have his fate decided by a jury of twelve of his fellow countrymen,[1] chosen at random by the sheriff (p. 355) from a list of householders compiled by the local authorities; in fact, it is probably not lawful to try him in any other way. Moreover, the accused has a right to 'challenge,' *i.e.* object to any of the jury-men. He may, in most cases of treason, exercise thirty-five 'peremptory' challenges, *i.e.* without giving any reasons, and, in the other cases of treason and all felonies, twenty; in all cases he may challenge 'for cause,' *i.e.* on good grounds, such as relationship to the prosecutor, known hostility to himself (the accused), or the like. And this challenge may be either 'to the array,' *i.e.* that the sheriff, through partiality or mistake, has presented a wrong 'panel' or list of jurors, or 'to the polls,' *i.e.* on grounds of objection to individual jury-men or women.

Oral Evidence

All the evidence necessary for proving the accused's guilt (with certain rare exceptions) is given by word of mouth at the trial, and of course on oath; and the accused's counsel is entitled to 'cross-examine,' or test by questioning, all the witnesses for the prosecution. Then the witnesses for the accused are put forward by his counsel; and the counsel for the prosecution may cross-examine them. Until recently, the accused was not allowed to give evidence himself, for fear lest he should 'give himself away'; though he was allowed to make a statement not on oath. But, in the year 1898, by a hotly-contested change in the law, he was

[1] Temporary exception ought to be made in the case of offences under the Defence of the Realm Acts; but, even here, mainly, if not entirely, for aliens only

allowed to do so if he pleased; and, if he does, he may be cross-examined by the prosecuting counsel. But the latter may not, except in a few cases, ask the accused any question tending to show that the accused person is of bad character. And in no circumstances can the accused be compelled to give evidence; nor is the prosecuting counsel allowed to draw the attention of the jury to the fact that he has not done so, though the judge is.

Duties of the Judge

For it is the business of the presiding judge, all through the trial, to see that the rules of procedure and evidence are obeyed; though, so strong is the sense of justice in the legal profession, that an advocate who attempted to violate them would hardly have many more chances of doing so. Moreover, after counsel for both sides have addressed the jury, the judge 'sums up' the case, *i.e.* recalls the important parts of the evidence to the minds of the jury-men, and gives them any directions about the law which may be necessary to enable them to arrive at their verdict of, 'guilty' or 'not guilty,' on the facts. If the jury 'find' the accused 'not guilty,' he is discharged at once; and he can never again be tried on the same accusation. If they 'convict' him, *i.e.* find him 'guilty,' the judge (either at once or at the end of the session) pronounces the sentence of death, penal servitude, imprisonment, or fine, as the case may be, provided by law; though, except in 'capital' cases, he has considerable discretion within certain fixed limits. But the verdict of the jury must be unanimous; though, if they fail to agree, the accused may be tried again. Moreover, by certain recent and beneficial changes in the law, what may be called 'preventive' or 'remedial' sentences, such as 'police supervision' or 'probation' (*i.e.* release under supervision), may be added to, or substituted for, ordinary punishments. But this book is not a treatise on criminal law.

Appeals in Criminal Cases

Until recently, there was no appeal from the verdict of a jury in a criminal trial; though there was a possible appeal on a point of law appearing on the record of the proceedings (*e.g.* if the judge gave a sentence which the law did not authorize), to the House of Lords (p. 292). And the Judge or Chairman at the trial might 'reserve' a point of law for consideration of the Court for Crown Cases Reserved, a solemn tribunal consisting of at least five judges of the High Court; sentence being 'respited' or put off until its decision. But, in the year 1907, was instituted the Court of Criminal Appeal, consisting of an uneven number (not less than three) of judges of the King's Bench Division (p. 286); and a convicted person may now, as a matter of right, appeal to this court on any question of law, and, with the permission of the judge at the trial, or the Court of Criminal Appeal itself, on any question of fact, *e.g.* that the verdict of the jury was not justified by the evidence, and also, with the permission of the Court of Criminal Appeal, appeal against his sentence, except where that is absolutely fixed by law. On any such appeal, the Court of Criminal Appeal has large powers, if (but only if) it thinks there has been a substantial miscarriage of justice, to quash the conviction altogether, or modify the sentence, if the appeal is against that only; but, unhappily, it has no power to order a new trial. In no case can the prosecutor appeal; though, if the accused appeals against his sentence, he runs the risk of having it increased. And there can be no further appeal from the Court of Criminal Appeal; except to the House of Lords upon a point of law which the Attorney-General certifies to be of public importance. The Court for Crown Cases Reserved has disappeared in consequence of the new Act.

From this brief sketch of English criminal procedure

it may be gathered that the following are the chief characteristics of that procedure:—

(1) That an accused person can never (except in minor offences) even be put upon his trial until the charge against him has been investigated and found probable by two (sometimes three) official enquiries.
(2) That the whole burden of proving the accused's guilt (at any rate up to a point raising a presumption of guilt) is upon the accuser. The accused cannot be compelled to incriminate himself; and even his voluntary confession is received with great caution.
(3) That the accused is tried by a jury of citizens, whose fairness he is entitled to challenge before the trial.
(4) That the evidence against the accused is (with slight exceptions) oral testimony on oath; the witnesses being subject to cross-examination by the accused's legal adviser.
(5) That the trial, even of the minor offences alluded to in (1), is in open court, to which the public has access.
(6) That the verdict of the jury is final, so far as the accuser is concerned; though the accused has a modified right of appeal.
(7) That the limits of every sentence are fixed by law; though the judge has a good deal of discretion within such limits.

We turn now to examine the nature of the civil[1] courts.

Civil Proceedings: County Courts

If the English citizen has to bring an action for breach of contract, or for trespass or other 'tort' (p. 271), the court before which he will bring it will depend, in the first instance, upon the amount of his claim. If it is below £100, or if, in certain cases, the value of the property about which the question in dispute arises is not more than £500, he will probably sue in the County Court, one of a large number of

[1] There is a slight ambiguity in the use of the word 'civil' in this connection. Here it is used in distinction from 'criminal'; but it is also sometimes used to distinguish military from non-military tribunals (p. 194). For the latter purpose it is better to use the word 'civilian.'

tribunals scattered all over the country, founded under a system introduced in the year 1846, and since largely extended,[1] to supersede a number of old independent 'Courts of Requests,' themselves founded to take the place of the ancient courts of the hundred and county (pp. 332–333), which had long fallen into decay. It is to this fact that they owe their name; for they have no official connection with county institutions, being arranged in 'districts,' each with its own court house, and grouped into 'circuits,' each with its own judge, or, occasionally, judges. These judges are not paid out of county funds, but are, as has been mentioned, appointed by the Lord Chancellor, hold their offices under the Crown 'during good behaviour,' cannot sit in the House of Commons, and are paid by fixed salary out of the Exchequer. They are chosen from barristers of experience.

County Court Procedure

The procedure in the County Court is of the utmost simplicity; and great care is taken to keep down legal expenses, the chief item on this account being the fees demanded by the court itself for the various steps in the proceedings. There is practically no 'pleading' or exchange of written statements of their case between the parties; and the judge, in hearing the case, which is often conducted by the parties in person, exercises a good deal of discretion in reducing formalities. Where the amount in dispute is over £5, either party may, in some cases, demand a jury (which will consist only of eight persons); but this is rarely done.

Jurisdiction of County Court

The County Court has no criminal jurisdiction; and there are certain classes of civil cases, such as libel,

[1] The modern statutes are the County Courts Acts of 1888, 1903, and 1919.

slander, and breach of promise of marriage, which it cannot hear, however small be the amount in dispute. But, in addition to ordinary civil actions in contract and tort, it can exercise (where the property dealt with is below the value of £500) much of the 'equity' jurisdiction of the old Court of Chancery (p. 27), such as the distribution of the property of deceased persons, the enforcement of mortgages and trusts, and the 'specific performance' of certain classes of contracts, *i.e.* compelling the defaulting party to carry out his promise instead of merely paying damages. The County Court has also a certain small jurisdiction in the case of disputed wills; and its officials are required to assist the widows and children of poor persons who die 'intestate'—*i.e.* leaving no valid will, in obtaining the necessary authority from the Probate Registry (p. 288) to deal with the deceased's property. Also certain specially chosen county courts have jurisdiction in Admiralty cases, such as claims for salvage, towage, or seamen's wages; and certain also have jurisdiction (to an unlimited extent) in bankruptcy, *i.e.* the distribution of the property of insolvent persons (alive or dead) proportionately amongst their creditors. Finally, there has been a tendency in recent years for Parliament to throw a great deal of miscellaneous business on to the County Court judges; a conspicuous example being the duty of assessing the compensation for death or injury by accident due to a workman or his representatives under the Workmen's Compensation Act.

Appeals from the County Courts

An appeal on a point of law lies from a county court (under certain restrictions) to a 'Divisional' sitting of the High Court, *i.e.* a sitting at which at least two judges are present. There can be no direct appeal on a question of fact; but an unsuccessful party may appeal on the ground that the judge 'misdirected'

himself or the jury on a point of law, and obtain an order for a new trial. In ordinary matters, there can be no further appeal without leave; but in some cases, *e.g.* of workmen's compensation, appeals on matters of law may, and frequently do, go to the Court of Appeal, and, ultimately, to the House of Lords.

The High Court of Justice

Where the plaintiff's claim exceeds the jurisdiction of the County Court, he must, and, even if it does not, he may, bring his action in the High Court. But, in the latter event, if he recovers less than a small sum (£20 in a case of contract, £10 in a case of tort), he will get no costs; while if he recovers more, but still not a large sum (£100 in contract, £20 in tort), he will only get costs on the low county court scale. Moreover, actions brought on contract in the High Court for less than £100, or in tort for any sum where the defendant can show that the plaintiff is a person who cannot pay costs if defeated, may be remitted at once by the High Court to a county court for trial. On the other hand, certain cases originally brought in a county court may, if the defendant can show that there is an important question of law or fact to be tried, and will give security for costs, be transferred to the High Court.

The High Court of Justice, the lower chamber of the Supreme Court of Judicature established in the vear 1875, though in form a modern institution, is a body which has taken over the duties of several ancient, or at least, older, tribunals, some of which we have had occasion to mention before. First there were the three 'superior courts of common law at Westminster,' viz. the King's (or Queen's) Bench, the Common Bench or Pleas, and the Court of Exchequer, the three ancient tribunals whose judges, as before described (p. 13), gradually, in the thirteenth and following centuries,

built up and administered the 'common law' of England. When the High Court was founded in 1875, the identity of these three tribunals was preserved in the 'Divisions' of the High Court named after them; but they are now all absorbed in the King's Bench Division of the High Court, whose judges are specially chosen for their knowledge of the common law. Then there were the Court of Chancery, the great old court of equity[1] (p. 27) presided over by the Lord Chancellor, which became the Chancery Division; and the Courts of Probate, Divorce, and Admiralty, which became the Probate, Divorce, and Admiralty Division. The Court of Admiralty, as its name implies, was the ancient Court of the Lord High Admiral (p. 184), which had long been presided over by an expert judge, and dealt with maritime matters. The Courts of Probate and Divorce had been formed as separate royal tribunals in the year 1857, to take over the work of granting 'probates' of wills and 'letters of administration' of the estates of deceased intestate persons, and of dealing with matrimonial cases, respectively; both of which classes of cases had formerly been dealt with by the courts of the Established Church (p. 312).

Jurisdiction of the High Court

At the present day, in theory, any kind of civil action can be begun in any Division of the High Court; and there is, of course, no limit to the importance of actions which may be tried there. But, in substance, the three Divisions retain the classes of business which they inherited from their respective predecessors; and criminal business and certain classes of 'prerogative' writs can only be dealt with, or ordered to issue, by the King's Bench Division, whose judges

[1] A certain amount of Equity work was done also by the Court of Exchequer. This likewise passed to the Chancery Division.

go circuit and hold the 'Assize Courts' previously mentioned (p. 279). This is important for the arrangement of business; because, for example, though the citizen's right to have his case decided by a jury in civil, as well as in criminal cases, is theoretically preserved, in practice 'equity' cases (p. 285) are still tried without a jury, and the Chancery Division has no jury accommodation, while the peculiar nature of the business in the Probate, Divorce, and Admiralty Division, which is governed, broadly speaking, by Roman and Canon Law, not by pure English law, renders a separation of its business eminently desirable. Thus, not only are the judges of each Division a distinct body of men; but each Division and, within the Probate, Divorce, and Admiralty Division, almost each class of business, has its separate body of practitioners who attend its sittings; while a great deal of 'probate' work is not done in court at all, but in the Probate Registry at Somerset House, which has branches in the principal cities of England. The same remark applies to the 'out of court' business of the King's Bench Division and the Chancery Division, an important class of preliminary and supplementary work conducted by 'Masters,' who act as the judges' deputies. But, in strict theory, any kind of action can be commenced in any Division of the High Court, subject to liability to be transferred (at the cost of the person choosing the inappropriate division) to the more suitable Division; and the curious practice, of one of the King's Courts virtually stopping proceedings commenced in another of equal authority, deriving that authority, too, from the same source, after lasting for two centuries and a half, is now, happily, at an end. There still remains, however, the power, usually exercised in the King's Bench Division, of restraining proceedings in courts of inferior or limited jurisdiction (such as the Courts of the Justices of the Peace and the County Courts) by writs of Pro-

hibition, of ordering such tribunals to do their duty by writs of Mandamus, and of removing proceedings from them for trial in the High Court, by writs of Certiorari.

Superior Courts of Local Jurisdiction

A very few courts of superior but local jurisdiction still survive; such as the Chancery Court of Lancaster (with branches at Manchester and Liverpool), and the Chancery of Durham, which are courts of equity, the Salford Hundred Court at Manchester, the Liverpool Court of Passage, and the Tolzey Court at Bristol, which are common law courts, and the Mayor's Court of London,[1] which is both. These are distinguishable from the County Courts, in that the value of the cases which may be tried by them is unlimited, and from the High Court, in that they only exercise jurisdiction within a limited area. In procedure, they resemble the High Court, having pleadings and other institutions of a somewhat formal character.

Civil Procedure in the High Court

It would be out of place to attempt here any detailed description of the proceedings in an ordinary civil action. It is sufficient to say that, subject to the important differences mentioned at the beginning of this chapter (p. 270), they closely resemble the proceedings in a criminal prosecution; except that the pleadings, instead of being, as in criminal cases, oral, are written documents, sometimes of considerable length and complexity, exchanged between the parties. The rules of evidence, too, though fundamentally similar, are marked by important differences, *e.g.* the plaintiff can be compelled to give evidence, though neither he, nor any other witness, can be compelled to answer any question tending to show that he has

[1] Now amalgamated with the City of London Court.

been guilty of a crime for which he could be punished. Where there is a jury, it finds a verdict on the facts proved, under the direction of the judge; where there is none, the judge decides both on the facts and on the law, and, in either case, gives a judgment for the plaintiff or defendant, which is enforced by seizure of the property of the party who fails to obey it, and, in cases of real obstinacy, by imprisonment of his person for a brief period. But the object of civil proceedings is compensation, not punishment; and the barbarous practice of keeping insolvent debtors in perpetual imprisonment was abolished, largely owing to the efforts of the celebrated novelist, Charles Dickens, in 1869.

Appeals from the High Court

There is no appeal on a question of fact from the verdict of a jury, or a judge sitting as a jury; but the aggrieved party may apply for a new trial, on the ground that the verdict was against the weight of the evidence, or that the judge 'misdirected' himself or the jury, or that certain evidence was improperly admitted, or, on the other hand, rejected, or even that the damages awarded were excessive. But the Court of Appeal, to which such applications are made, is very loath to grant them, except, perhaps, on a question of misdirection or reception of evidence (which are really questions of law); because it does not hear the actual witnesses, as the High Court does.

The Court of Appeal

On the other hand, appeals from a judgment or order of the High Court on a point of law are numerous, and freely admitted. They go, in the first place, to the Court of Appeal, the upper chamber of the Supreme Court of Judicature (p. 286), which has taken over the duties of the old Court of Exchequer Chamber, the

old Court of Appeal in Chancery, and the old 'Full Court' of Probate and Divorce. Though in theory one tribunal, consisting of the Lord Chancellor and the Lord Chief Justice (the Presidents respectively of the Chancery Division and the King's Bench Division), the President of the Probate, Divorce, and Admiralty Division, the Master of the Rolls (formerly a high Chancery official and judge), and six specially appointed 'Lords Justices of Appeal'[1] with the usual judicial tenure (p. 13), it usually sits in two sections—one for hearing appeals from the King's Bench Division, the other for appeals from the Chancery Division of the High Court. As before remarked, no witnesses are heard by the Court of Appeal; and there is, of course, no jury there. But legal arguments on the case are heard and disposed of—in final appeals by at least three judges, in appeals on intermediate questions arising in the course of the action, by two judges. The judgment or order of the Court below is affirmed, or reversed or altered, as the case may require, and is put into force in accordance with the decision of the Court of Appeal.

The House of Lords

But the dissatisfied litigant has still one more appeal, if he can stand the delay and expense, viz. to the House of Lords. At the time of the great judicial reforms of 1875, before alluded to (pp. 286–287), it was proposed to abolish this right; and an Act of Parliament to that effect was actually passed. But it was altered by another Act before the new scheme came into operation, though with the understanding that there should be an alteration in the composition of the House of Lords when sitting to hear appeals. This understanding was carried out by a third Act of Parliament, passed

[1] These are sometimes appointed directly from the ranks of barristers; more often judges of the High Court who have rendered good service in that capacity are promoted to the office.

in 1876, which provided that no appeal should be decided by the House of Lords unless at least three 'Law Lords' have been present at the hearing of the arguments, and taken part in the decision.[1] The 'Law Lords' include (*a*) all the hereditary peers who hold, or have held, high judicial office (*e.g.* Lord Chancellors and ex-Lord Chancellors, the Lord Chief Justice, the Master of the Rolls, and any other judges of the Supreme Court who may happen to be peers),[2] and (*b*) the 'Lords of Appeal in Ordinary,' who are highly qualified lawyers appointed peers for life for the express purpose of hearing appeals (pp. 135–136). These Law Lords likewise hear arguments, often at great length, in the case; but they do not hear witnesses, all the evidence and other proceedings in the courts below being before them in printed form. As in the Court of Appeal, any number of them may deliver separate judgments; and the decision of the majority binds. If the Lords are equally divided, the appeal fails.

The Judges as Advisers of the House of Lords

One of the most interesting, though rare, features of the House of Lords sitting as an appeal tribunal, is the occasional attendance thereat of the judges of the High Court, as advisers of the House. The right of the House of Lords to the benefit of the assistance of the King's judges is very ancient, and is kept alive in the writs which are sent to each of such judges at the summoning of each Parliament. As has been said, it is very rarely exercised; and it is a little doubtful which of the judges of the High Court are now bound

[1] It will thus be seen that no member of the House of Lords is prevented from being present at the hearing of an appeal, *and voting*, if he thinks fit. Practically speaking, no members except the Law Lords ever do so.

[2] As a matter of fact, ordinary judges of the Court of Appeal and the High Court, who happen to be peers, do not consider it desirable to attend the hearing of appeals as members of the House of Lords.

to attend. But, occasionally, if an appeal of exceptional difficulty or importance is to be heard, the judges are summoned, and, after hearing the arguments, deliver, either separately or through the mouths of one or more of them, speeches of advice, which are, substantially, judgments on the points involved; though the House is not bound to follow them. After the judges have delivered their opinions, they receive the thanks of the House, and withdraw; and then the Law Lords present 'move' the House in accordance with their own individual views, formed, of course, after hearing the advice of the judges.

The Judicial Committee

The last tribunal sitting in London which it is necessary to describe in this chapter, is not an English tribunal at all; for it does not, practically speaking, hear appeals from English courts. It is, however, a tribunal of great and growing importance, and of a distinctly imperial character. This is the Judicial Committee of the Privy Council, formed in the year 1833, to take over the jurisdiction which had long been exercised in the hearing of appeals from the colonial and Indian Courts, by the Privy Council, in its character of general adviser of the Crown in matters of policy. Till 1833, this jurisdiction was exercised in a somewhat casual manner; but, in that year, an attempt was made to give it a judicial character, by providing that all appeals to the Privy Council should be referred to a committee consisting of the Lord President of the Council (p. 244), the Lord Chancellor, such of the other members of the Privy Council as held, or had held, high judicial office, and two other specially appointed members. To these were added, in 1871, four specially appointed paid members. But these latter were superseded in 1876 by the four (now six) Lords of Appeal in Ordinary (p. 292); and not more than seven judges or ex-judges of the superior colonial courts,

and two of the superior Indian courts, may, if members of the Privy Council, be added. Thus the Judicial Committee is assuming, more and more, an imperial character; and, as a matter of fact, the cases which come before it are of the most varied kind, and involve an intimate knowledge of the most varied systems of law. Any number of 'Boards' or divisions of it may sit; but at least three members must be present at the hearing of each appeal. A peculiarity of the decisions is that, being in the form of advice tendered to His Majesty, no differences of opinion among the members of the Board are allowed to transpire; the advice taking the form of a written discourse (in effect a judgment) read by a single member of the Board, after all have consulted together. The weak point of the tribunal is, that its decisions may be largely determined by the selection of members to sit on a particular occasion. Nominally, this selection rests with the Lord President of the Council (p. 244); in practice, it is believed to be exercised by the Lord Chancellor of the day. One of the very few anti-imperial symptoms which have manifested themselves in recent years has been, the unwillingness of some of the self-governing Dominions to submit cases to the decision of the Judicial Committee; but the growing strength and imperial character of that body will probably correct this tendency. It should, perhaps, be mentioned that, owing to the rule previously alluded to (p. 282), appeals on criminal matters rarely come before the Judicial Committee; but, occasionally, 'special leave to appeal' in a criminal case, to prevent a miscarriage of justice, is given by the Committee itself.

Judicial Privilege

Before leaving the subject of English administration of justice, we should mention one of its characteristics which, though it may not be peculiar to the British

Empire, is of first-rate importance, and has spread throughout that Empire. This is the principle of judicial immunity in respect of all acts done and words said in the exercise of judicial office. We have seen how the independence of judges towards the King and his Ministers was secured by the provision of the Act of Settlement which enacted that the judges' tenure should be 'during good behaviour, and their salaries ascertained and established' (p. 13). It is equally important, that a judge should not stand in constant fear of malicious prosecutions or actions instigated by private persons who fancy themselves to have been injured by something said or done by him in the exercise of his office—it would be impossible for him fearlessly to do his difficult duty if he did. Accordingly, no such prosecution or action will lie against any judge, superior or subordinate (including a magistrate acting as a judge, *e.g.* at Quarter Sessions), however real the grievance of the complainant. A judge is, of course, liable, like any private person, to prosecution or action for any acts done or words spoken outside his judicial duty; and, if he is convicted of crime, he will be deprived of his office. Moreover, there is a doctrine, that if a subordinate judge meddles with matters obviously outside his jurisdiction, he loses his peculiar judicial privilege, which, it must again be observed, extends to judicial acts only—*e.g.* even a High Court judge is liable to a fine for refusing to grant an opportunity for the issue of a writ of Habeas Corpus (p. 37). But the remedy for judicial misbehaviour is an Address by Parliament to the Crown for removal of the offender, as provided by the Act of Settlement. It is, perhaps, needless to say that no such Address has been presented since the passing of the Act of Settlement; but it may be pointed out that the very few judges who have taken advantage of their privilege to utter irrelevant words, whether political or merely facetious, on the Bench, have been

condemned by the universal disapproval of enlightened public opinion.

Scottish Courts

As has been remarked in a previous chapter (p. 51), the Act of Union with Scotland, which created the Kingdom of Great Britain, expressly guaranteed to Scotland her separate and different system of private law and law courts. The great courts of law in Scotland are the Court of Session, founded in 1532, a universal College of Justice, whose Senators, or Judges, have civil jurisdiction to any extent, and the High Court of Justiciary, founded in 1672, which exercises supreme criminal jurisdiction.

The Court of Session

The Court of Session is arranged in two 'Houses,' an Outer House, of five 'Lords Ordinary,' in which cases are first tried by single judges, with or without juries, and an Inner House, or Court of Appeal, consisting of eight judges, viz. the Lord President (the head of the whole College), the Lord Justice Clerk, and six 'Lords Ordinary,' sitting in two divisions of four judges each. The Court of Session has taken over the duties of the former Jury Court (which, on the introduction of the jury in civil cases in Scotland, was established to try questions of fact remitted by the Court of Session), the former Court of Exchequer, established at the Union to deal with revenue matters, the former Court of Admiralty, and the Commissioners of Teinds (tithes).

The High Court of Justiciary

The judges of the Court of Session are also the Lords Commissioners of Justiciary, and exercise their jurisdiction under the supervision of the Lord Justice General, whose office is now united with that of the Lord President. Cases are tried before them by juries of fifteen, who may bring in a verdict by a

majority. In addition to the ordinary verdicts of 'Guilty' or 'Not Guilty' (p. 281), they may find the charge against the 'panel' (or accused) 'Not Proven,' in which case he is entitled to be 'assoilzied,' just as though he had been found 'Not Guilty.' Like the Court of Session, the High Court sits in Edinburgh; but circuit courts are held in various other towns, as occasion requires.

Appeals from Scotland

There lies an appeal in all civil cases from the judgment of the Inner House, or Court of Appeal in Scotland, to the House of Lords of the United Kingdom, whose proceedings have already been described (pp. 291–293). Of course Lords of Session who happen to be peers may sit, if they choose, on the hearing of such appeals; and, as a matter of practice, one at least, if not more, of the Lords of Appeal in Ordinary (pp. 135–136) is usually chosen from the ranks of Scottish judges. There is no appeal from the Lords Commissioners of Justiciary in criminal cases.

Sheriffs' Courts

Contrary to the English practice, the same local courts in Scotland exercise both criminal and civil jurisdiction. These are the Sheriffs' Courts, which, on the abolition of the hereditary jurisdictions of the clan chiefs in 1746, became the regular tribunals for local jurisdiction, civil and criminal, throughout Scotland. They are more important than the English Quarter Sessions and county courts; because their jurisdiction is, in theory, not limited in amount, though their power to award criminal sentences is. The Sheriff, a county official, is appointed by the Crown, on the advice of the Secretary for Scotland (p. 52), on a 'good behaviour' tenure; but much of his judicial work is done by a Sheriff-Substitute, who may be removed from office by the Secretary for Scot-

land on a report by the Lord President and the Lord Justice Clerk.

The Sheriff's Court sits without a jury in civil cases, except in claims by employees for injuries arising out of employment. But where the claim, in any other case, is for more than fifty pounds, either party may require the case to be remitted to the Court of Session, for trial with a jury.

The interests of the Crown in criminal cases are enforced by a 'procurator-fiscal' for the county, appointed by the Lord Advocate (the chief Scottish Law Officer); and appeals in civil cases lie from Sheriff-Substitute to Sheriff, and, where the value of the cause exceeds fifty pounds, either directly or *viâ* the Sheriff, to the Court of Session. Justices of the Peace for the county are appointed, as in England; but their position is less important, especially in judicial matters, than that of their English brethren, owing to the greater importance of the Scottish sheriffs. They have, however, a small debts jurisdiction up to twenty pounds, and a summary jurisdiction (pp. 275–277) in petty criminal cases. The Justices of the Peace are the licensing authority in the burghs; but in the counties they share this duty with the County Councils.

Irish Courts: The High Court

The Irish system of courts of justice, like the Irish law, was much closer to the English system than is the Scottish. There were a Lord Chancellor and a Lord Chief Justice, at the head respectively of the Chancery and King's Bench Divisions of the High Court of Justice in Ireland, which was the lower chamber of the Irish Supreme Court of Judicature. But the Probate and Matrimonial and the Admiralty Courts were separate Divisions; and so was the Court of Bankruptcy, which, in England, is now merged in the Chancery Division. There is no Divorce Court in

Ireland; because Irish law does not recognize divorce;[1] though decrees of nullity (*i.e.* that there never has been any lawful marriage), or of judicial separation, can be obtained from the Probate and Matrimonial Division in appropriate cases. The judicial system, even of Northern Ireland, has been much modified by recent changes; and it is impossible to foresee at present what form that of the Irish Free State will assume.

The Court of Appeal

The upper chamber of the Supreme Court in Ireland, as in England, was the Court of Appeal, consisting of the Lord Chancellor and the Lord Chief Justice, with the Master of the Rolls and two specially appointed Lords Justices of Appeal, who heard cases in sessions of not less than three judges, unless the appeal was on a merely incidental matter. From the Court of Appeal lay appeals on questions of law to the House of Lords, which, as in the instance of Scotland, includes amongst its 'Law Lords' at least one Irish lawyer specially appointed for the purpose. But appeals from the highest Free State Courts will now go to the Judicial Committee of the Privy Council (pp. 293–4).

Inferior Courts

Inferior jurisdiction in Ireland is exercised by County Courts, which have a greater authority and area than the County Courts in England, being really connected with the county, and fewer in number. The limit of their compulsory jurisdiction in civil cases is fifty pounds, in ordinary cases; but they exercise criminal jurisdiction, being in fact combined courts of Quarter Sessions and county courts in the English sense, with the Chairmen of the Justices acting as Civil

[1] The only way of obtaining a divorce between persons domiciled in Ireland is by securing the passage through the Imperial Parliament of a Private Act, usually based on a verdict of *crim. con.* in the Irish King's Bench Division. In the examination in select committee (p. 162) the case is usually reheard as an ordinary trial.

Bill Court judges. Criminal jurisdiction in heavy cases is, of course, also exercised by the judges of the High Court on circuit, in much the same manner as in England; and in Dublin, Belfast, Cork, Londonderry, and Galway, there are Recorders with considerable criminal jurisdiction, which, in normal times, is exercised with the aid of a jury. There are also Petty Sessional Courts with jurisdiction over minor offences, as in England; but a special feature of Irish criminal jurisdiction is (or was until recently) the local sessions of the Resident Magistrates, of whom there were about sixty, scattered throughout the country, who corresponded to the Stipendiary Magistrates in England (p. 271), but had certain special powers and duties not belonging to their English colleagues.

Courts of Justice in the Colonies and British India, and Power of the Crown to create

Though justice is administered in the King's name throughout the Empire, with the possible exception of the Channel Islands (where judicial institutions are primitive), a somewhat startling difficulty meets us on the threshold of a brief description of the judicial systems of the colonies and British India, owing to the existence of an old-established principle of constitutional law, acted upon within comparatively recent times, to the effect that the Crown cannot create new jurisdictions or new courts, without the authority of Parliament. Inasmuch as many British colonies have been acquired since this doctrine was laid down, the position of their courts seems to demand a word of explanation.

In 'Settled' Colonies

Apparently, in colonies acquired by settlement (p. 62), the rule that the settlers take with them so much of the English common law as is suitable to their

conditions, seemsto have been considered as authorizing the Crown to establish by Letters Patent in such colonies courts on the English model, to administer such law; though not to establish courts of 'equity' or ecclesiastical jurisdiction.

'Ceded' Colonies

In the case of conquered or ceded colonies, apparently, the admitted right of the Crown to legislate for these by Order in Council until the grant of representative institutions (p. 78), was held to include the right to set up new courts, or recognize old. At any rate, in both cases, the Crown did create such courts by Orders in Council. Then came the developement of colonial legislatures in the first half of the nineteenth century (pp. 39–40); and these new legislatures freely assumed the power of creating or managing the judicial systems of their colonies.

Colonial Laws Validity Act

This power was questioned in the middle of the nineteenth century; but all doubts as to its existence were set aside by an Act of the Imperial Parliament in 1865, before alluded to (p. 72), which declares that every colonial legislature has, and shall be deemed always to have had, full power to establish courts of judicature for its colony, and to abolish and re-constitute them, and, generally, to make provision for the administration of justice. The greater tribunals of the Dominions and British India have been directly created by Acts of the Imperial Parliament; their validity is, therefore, beyond question.

British Settlements Act

Finally, by the British Settlements Act of 1887, previously alluded to (p. 100), the Crown is empowered

to establish, by Order in Council, in any colony not acquired by cession or conquest, and not within the jurisdiction of any legislature (other than a legislature created under the Act itself), such courts of justice and officers thereof as it may deem necessary. The wording of this statute, however, practically restricts its operation in this respect to a very few cases.

Vice-Admiralty Courts

The Vice-Admiralty Courts of the colonies, which seem to have been originally derived from the ancient jurisdiction of the Lord High Admiral (p. 182), were regulated by Acts of the Imperial Parliament in 1863 and 1867; but their jurisdictions were, in the year 1890, transferred by another Act to the ordinary colonial courts.

Variations of System

It is natural, therefore, to find that considerable differences of arrangement exist in the judicial systems of the different parts of the Empire. The essential features of British justice are found, not only in judicial arrangements, but in the principles upon which those arrangements are worked (p. 283). And it will be found that, with rare exceptions, these principles are adopted throughout the Dominions and British India, as in the United Kingdom. Thus, for example, the fixity of tenure and freedom from private liability of the judges, their payment by fixed and substantial salaries, their appointment by the Crown on the recommendation of its responsible advisers, their exclusive employment in their judicial duties, and their selection from the ranks of skilled lawyers; the right of an accused person to trial by jury in all serious cases; the refusal to compel an accused person to incriminate himself, and the unwillingness to accept even his voluntary confession of guilt; the insistence upon

oral and first-hand evidence; the holding of open court; the limitation of sentences by law—all these are features of the administration of British justice throughout the Empire, even where English law does not prevail.

Tendency towards Uniformity

And, further, it may be observed that, while, as has been said, great variety prevails in the judicial institutions of the Empire, recent events have substantially tended towards uniformity. This is especially marked in the three great Dominion federations (p. 63), the appearance of which has been such a striking feature of the last half century.

Federal Courts

In Canada, Australia, and South Africa, there are Federal Courts, composed of judges of the highest eminence, which act in the dual capacity of courts of first instance for cases of federal importance (such as disputes affecting more than one member of the federation, and breaches of federal laws), and courts of appeal from the superior courts of the respective 'states' or 'provinces.' In Canada and Australia, the federal judges are federal judges only; in South Africa, the Federal Court is strengthened by the inclusion within its ranks of two 'additional judges,' who are also Presidents of Provincial Divisional Courts.

State and Provincial Superior Courts

But in the Provinces of Canada and the States of Australia, as well as in the Dominion of New Zealand, there is also a double system of courts of superior and unlimited jurisdiction, one of 'first instance,' *i.e.* before which cases come for first hearing, and another of appeal; though, for historical reasons, the arrange-

ments are not the same in all these communities. Thus, in the older provinces of Canada, there are two distinct superior tribunals, one of first instance and one of appeal. Ontario has a Supreme Court, with Appellate and High Court Divisions, and a different staff for each; the President of the High Court Division retaining the old-world title of 'Chancellor.' In Quebec, the appellate tribunal is the King's Bench, with a Chief Justice and five colleagues; while the 'Supreme Court,' with a Chief and no less than thirty-three 'Puisné' or junior judges, is a court of first instance. In New Brunswick, Manitoba, and British Columbia, there are distinct Courts of Appeal, with courts of first instance under different titles. In the other Canadian provinces, in Newfoundland, in the states of Australia, and in the Dominion of New Zealand, there is but one superior court and staff; but arrangements are made whereby an appeal can be brought from a single judge to a 'Full Court' of his colleagues (usually three in number), sitting as a court of appeal. In Queensland and New Zealand, owing to difficulties of travel, the superior judges are distributed among different areas of the colony; though all take equal rank, and sit on the hearing of appeals from the decisions of their colleagues. Appeals from the Divisional Courts of South Africa, however, which are attached to the various provinces and districts of the Union, go direct to the Supreme Court of the Union. Even in the Northern Territory of Australia, which is under the direct government of the federal authorities, exercised through an Administrator, there is a Supreme Court; and there are judicial officers, with various titles, for the North-West and Yukon Territories of Canada, and for Papua, which are under the control of the Dominion Governments of Canada and Australia respectively. Also, in the maritime colonies of Canada, there are distinct Courts of Admiralty and Vice-Admiralty, which are

usually presided over by judges of the superior courts. In Victoria, South Australia, and Queensland, there are local courts (known as 'county' or 'district' courts) of civil jurisdiction; and in most of the provinces or states of the older self-governing Dominions there is a system of magistrates, with Quarter or General, and lesser Sessions, as in England, for disposing of smaller criminal cases.

Industrial Tribunals

Finally, we must not omit to notice the very important recent developement, especially marked in Australia and New Zealand, of 'Industrial' or Arbitration Courts, for the decision of industrial and labour disputes. In experimenting in this direction, the self-governing Dominions are rendering the highest service to the Empire; for the peaceful settlement of industrial difficulties will be one of the greatest, if not the greatest, of the problems of public policy in the near future. The example of the Dominions has already been followed to a limited extent, in Great Britain; but the striking difference between English and Dominion industrial tribunals is that, whilst the former are purely administrative in character, and have (apart from 'war' legislation) no coercive power, the Dominion Industrial Courts are much more judicial in character, and have considerable power to enforce their awards. It would, indeed, be a great step gained, if the settlement of industrial disputes could be determined by an application of those principles of justice which have been successfully applied to other quarrels, instead of being left to the arbitrament of what is, in many cases, little better than industrial war.

The Crown Colonies

In the Crown colonies, where the judges are directly appointed by the Colonial Office, usually from the

ranks of English barristers, there is even more variety of arrangements. Only the larger or more wealthy colonies have Supreme Courts, with Chief and Puisné (or junior) Justices; and very few have Courts of Appeal. But from all their courts, at any rate in important cases, there lies a final appeal to the Judicial Committee of the Privy Council (pp. 293–294), to which appeals from the highest courts of the self-governing Dominions also lie, except where the right has been expressly abolished by Act of the Imperial Parliament. For reasons previously explained (p. 282), substantially all these appeals are in civil cases; though a considerable proportion of them affect the rights of the Crown.

Liability of State Departments

Finally, it may be noticed, as a strong mark of independence, that in some of the self-governing Dominions, the maxim that 'the King can do no wrong,' has been impaired by colonial statutes, to an extent which enables actions of 'tort' (p. 271) to be brought against Government departments.

Courts of British India

The present judicial arrangements in British India depend largely upon the scheme of an Act of the Imperial Parliament of the year 1861, the provisions of which have been incorporated into the Government of India Act of 1915; but they have also been affected by Indian legislation.

High Courts

There are High Courts, with, substantially, all the powers of the High Court in England, but expressly defined by the Letters Patent creating them, and the statutes authorizing the issue of such Letters Patent, in the provinces of Bengal, Madras, Bombay, Agra, and in Bihar and Orissa; and His Majesty is empowered

to extend the system to other provinces, as occasion may require. These High Courts are presided over by Chief Justices and 'Puisné's,' of high legal skill and experience, appointed directly by the Crown on the advice of the Secretary of State, and chosen from eminent advocates or officials of the United Kingdom or India itself (p. 90). The law which these Courts administer is partly the general law of British India, as contained in the various Codes which have been issued from time to time by the Vice-regal Government, and the Acts of that body and the provincial legislatures, as interpreted by the High Courts themselves or the Judicial Committee of the Privy Council, to which appeals from all the Indian High Courts lie, and partly native law and custom, which is applicable to certain classes of the population in certain cases.

Less Advanced Courts

Courts of superior jurisdiction, of a less advanced type, presided over by 'Chief' and other 'Judges,' or 'Judicial Commissioners,' have been established in the other provinces. In the Panjab and Lower Burma, these courts are known as 'Chief Courts'; in Oudh, Upper Burma, Sindh, the North-West Frontier Province, British Biluchistan, Coorg, and the Central Provinces, as 'Judicial Commissioners' Courts.' The prerogative of pardon is exercised by the Viceroy.

Sessional Courts and District Courts

In each province, too, there are 'Sessional Courts,' having criminal jurisdiction, each in its own division of the province, which is usually co-terminous with a 'district,' but subject to appeal to the High or other superior courts; and civil jurisdiction is exercised by 'District Courts,' below which, again, are subordinate judges and *munsifs*. The District Magistrate

has also certain controlling and administrative powers in judicial proceedings; and it must be frankly admitted, that these powers violate the cardinal rule of British constitutional law, which forbids the union in the same hands of judicial and administrative duties. But the line between the judicial and the administrative branches of the Indian Civil Service is gradually becoming clearer; and it will probably not be long before this rule is carried out in India, at any rate in the more advanced provinces. It must also be admitted, that, strictly speaking, even the judges of the High Courts in India hold their offices 'during pleasure of the Crown.' But there is an express provision of the Government of India Act, to the effect that no alteration may be made in the salaries of such judges during their tenure of office; and, in fact, the Indian High Court judges are as secure in their seats, and, therefore, as independent, as their colleagues in the United Kingdom.

CHAPTER XII

THE ESTABLISHED CHURCHES

THE official connection between Church and State is now so slight, even in the United Kingdom and India, while in other parts of the British Empire it is practically non-existent, that it might well be objected that ecclesiastical institutions form no part of the government of the Empire. But, while it is impossible to maintain this objection to its full extent, it is even less formidable than it appears at first sight. For, if the connection between Church and State is now slight, the very contrary was once the rule ; and the struggle which led to the present state of things has left deep marks on the Constitution and growth of the Empire.

THE BRITISH CHURCH

While it is probably true, that there existed some kind of ecclesiastical arrangements in Britain before the arrival of the English, the latter were at that time pure heathens, and were not converted to Christianity until more than two centuries afterwards. In the meanwhile, their attitude towards the British Church had been one of hostility ; and it is, therefore, unlikely that, even after their conversion, they would co-operate with, or adopt, British ecclesiastical institutions.

THE SCHEME OF ARCHBISHOP THEODORE

As a matter of fact, though the evangelization of England was commenced by St. Augustine in Kent, through the influence of the Kentish Court, the general

scheme of English Church arrangements was laid down by a later Archbishop of Canterbury, Theodore of Tarsus in Cilicia, in the second half of the seventh century A.D. He, like a wise statesman, having the support of the various Kings, followed the lines of the ancient local arrangements, planting (or recognizing) a bishop at the head of each kingdom, a rural dean in each hundred, and a priest in each township, or, as he called it, being a Greek, a 'parish.' Of course this process took some time; and it must not be assumed that the lay townships and the ecclesiastical parishes were absolutely identical. For example, the ancient townships of the north, where the population was scanty, were often grouped into parishes; while, on the other hand, in the south, where population was thicker, a single township might be divided into two or more parishes.

Tithes

Moreover, the systematic arrangement by which now, for many centuries, the tithes, or ecclesiastical dues from the produce of the soil of each parish, have been allotted primarily to the spiritual needs of that parish, was not at first observed, even after the payment of tithes had been recognized as a moral and even a legal duty. Still, the foundations of the historic settlement were early laid, and have persisted with great tenacity; the most fundamental changes being the early establishment of archdeaconries, as the larger kingdoms of the Heptarchy became subdivided into shires or counties (p. 333), and the gradual increase in the number of the bishoprics, first in the eleventh and twelfth centuries, later at the Reformation, finally in the nineteenth century.

The Roman 'Obedience'

As might have been expected from the fact that the spread of Christianity in England was largely due to

royal influence, the higher clergy, whose talents and education made them conspicuous, took a great share in the government, not merely of the Church, if that could be said to exist apart from the State, but of the country as a whole. This was especially the case after the famous Council of Whitby in A.D. 664, when it was definitely decided to adhere to the Roman 'obedience,' or scheme of worship and ecclesiastical arrangements, in opposition to the ancient tribal scheme of the British Church; for this decision naturally involved a close connection with, and even deference to, the occupants of the Papal See, who took care to send a succession of able prelates to complete the establishment of the infant Church.

Identity of Church and State

Thus we find that, in each lay institution the Church official formed a part—the bishop or bishops in the Witan (p. 2), the bishop or archdeacon in the shire court, the rural dean in the hundred court, and the parish priest in the township moot; while lay and religious matters were alike discussed in all, though, undoubtedly, even before the Norman Conquest, synods or councils were held for purely ecclesiastical purposes.

Beginnings of Separation

It is a fact not so widely known as it might be, that the first steps in the severance of this intimate union between Church and State came from the Church itself. A series of vigorous and ambitious Popes in the tenth and eleventh centuries disliked the mingling of clergy and laity, and desired to make of the former a caste apart, devoted exclusively to the interests of the Church, and indifferent to national interests as such.

Celibacy of the Clergy

One of the most striking marks of this policy was the enforcement of celibacy, or abstention from marri-

age, on the parochial clergy, who, as distinct from the 'regular' or monastic clergy (who lived in abbeys, priories, convents, and other religious houses), had not previously been subject to it. The enforcement of this rule naturally led to the appearance of a marked distinction between the life of the ordinary parish priest and that of his flock. Previously, the former had been a member of the agricultural community (p. 334), taking his tithe 'as the plough traverseth the tenth acre.' Afterwards, he became a member of a different caste, visiting the barns and byres of his parishioners to collect his tithes.

Another result of the new policy was, the withdrawal of ecclesiastical matters from discussion in assemblies at which laymen were present; and, when William of Normandy, whose expedition had been considerably assisted by the reigning Pope, had succeeded in his aim, he fulfilled his pledge by issuing a general ordinance, to the effect that no religious matters should henceforth be discussed in the hundred court (the most important unit of local government at the time), or be subjected to the authority of laymen.

Separation of Courts

The policy thus adopted was rapidly and effectively completed by the able Norman prelates of the eleventh and early twelfth centuries, who built up, alongside the lay institutions of the State, a set of corresponding ecclesiastical courts, of archdeacon, bishop, and archbishop; though the courts or moots of the hundred and township, which were falling into decay, appear to have had no ecclesiastical parallels, except that the latter may perhaps be traced in the meetings later held in the 'vestry' or robing room of the parish church.

It is not to be supposed, however, that a ruler of the Conqueror's ability was blind to the dangers which this policy produced.

William's Rules

Though he kept his bargain with the Pope, William laid down certain fundamental rules, to which his successors tenaciously clung, to avert the evils of divided authority. First of all, he reserved to himself the right formally to recognize in England the title of a newly elected Pope, a right which proved very useful in the case of disputed Papal elections. Secondly, he refused to permit a Papal legate, or special messenger wielding Papal authority, or any Papal Bull or sovereign enactment, to enter the country without his express leave—thus aiming to prevent interference with the internal affairs of the English Church. Thirdly, he forbade the excommunication, or exclusion from religious rites, of any of his 'tenants in chief,' or immediate vassals, without his consent. Finally, he refused to recognize the validity of any decree of an ecclesiastical council or synod of bishops, until formally confirmed by him.

Investitures

Another question, however, speedily arose for settlement, in the famous contest about 'investitures,' which agitated the whole of Western Europe in the twelfth century. It was part of the new Papal policy to keep the appointment of archbishops and bishops entirely in the hands of the Pope. But, as we have seen (p. 133), in England the bishops took part in the national councils, even before the Conquest; and the practice was afterwards continued in the Councils of the Magnates held by the Norman Kings (p. 27). Moreover, the ancient bishoprics had been endowed with vast grants of jurisdiction, and even of land, by the English and Norman Kings, which made their holders some of the greatest of the 'tenants in chief.' Thus the Papal claim to nominate prelates in England, and to invest them with their offices without royal approval,

was virtually a claim to thrust upon the King counsellors of whom he might not approve; whilst the further claim that the estates of the dioceses were held by 'frankalmoign,' *i.e.* ownership free of all military duties, cut at the root of the feudal system of military service. The contest was bitter and prolonged; but at last a compromise was effected, whereby a newly appointed prelate should first do homage to the King for his estates, thus admitting his liability to military service (not, of course, necessarily performed in person), and to 'suit of court,' *i.e.* attendance at the Council, and subsequently be consecrated by ecclesiastical hands, and receive the symbols of spiritual authority, the ring and pastoral staff, from the Pope.

Election of Prelates

But this compromise, which was effected in England at the beginning of the twelfth century, between Anselm and Henry I, left unsettled the thorny question: With whom did the real choice of a new prelate lie? As a matter of fact, in ancient England, the prelates had been elected or, at least, accepted, probably on the nomination of the King, in the Witans (p. 2) of which they formed part. The greater strength of the first Norman Kings probably enabled them to make their choice prevail. But the religious houses, or monasteries, which were rapidly growing in power and splendour, and some of whose abbots or heads sat in the Great Council (p. 27), elected their own chiefs; and the cathedral chapters, or resident clergy, claimed a similar right with regard to their bishops. Finally, the new Papal policy, as has been said, aimed at securing for the Popes the appointment of bishops, as well as other ecclesiastical patronage.

Henry II and Becket

The question came to a head in the famous quarrel between Henry II and Becket in 1164. Becket was

a very different person from Anselm; but he had to consent to a compromise which declared indeed the right of the cathedral chapter to elect a new prelate, but only in the King's Chapel, and, therefore, under royal influence. Moreover, the rule agreed to by Anselm, that the new prelate was to do homage to the King for his estates before consecration, was confirmed. Thus the choice of bishops, from that time till the Reformation, practically depended on the character of the King. If he were a strong man, the choice was virtually his. If, like John or Henry III, he was weak, the Pope probably nominated a candidate whom the chapter elected.

The Church Courts and the Clergy

But another very important question arose between Henry II and Becket. Despite the fact that he had been the King's Chancellor, Becket cordially disliked the new system of strong royal courts of justice which grew up in Henry's reign (p. 11); and particularly he disliked the claim of these courts to exercise criminal jurisdiction over the clergy. The clergy, he claimed, should be tried in the courts of the Church (p. 312), according to the rules of the Canon Law, which had been made by Church Councils and Popes for the government of the Church. And when Henry said that, whilst not denying the right of the Church to punish its own clergy, he should insist on punishing them also for offences against the law of the land, Becket made the specious reply, that no one ought to be tried twice for the same offence. Henry, however, who knew that some crimes at least could not be adequately punished by the Church courts (for instance capital crimes), and, moreover, shared the very common suspicion that clerical offenders were not likely to be strictly dealt with by the antiquated methods of procedure of the Church Courts, stood

firm; and the archbishop was compelled, by a famous document known as the 'Constitutions of Clarendon,' in 1164, to admit the responsibility of the clergy to the lay courts of the King.

'Benefit of Clergy'

But the shock caused by the murder of Becket, which soon followed, compelled the King's Courts to adopt a hollow compromise, which, while nominally admitting the liability of the 'clerk,' or person in Holy Orders, to be tried in the King's Court, by the new method of the jury (p. 12), enabled him to 'plead his clergy,' and claim to be handed over to the Church tribunal, which, in fact, hardly made a pretence of trying him. Thus, from the twelfth century, to the Reformation, when the 'benefit of clergy' was severely cut down, a 'clerk' was practically free to commit as many crimes as he liked; and not merely a clerk in Holy Orders strictly, but any of the petty officers of the Church, and, indeed, any one with sufficient ability to translate a short passage from the Psalter, which was always the same, and without a knowledge of which, therefore, no gentleman's education was complete.

Liability of Clergy to Taxation

One other first-class question between Church and State was settled before the end of the thirteenth century. As it became clear that a regular system of State taxation would be one of the unpleasant features of life, the clergy, who held a large proportion of the wealth of the kingdom, made strenuous efforts to escape it, which the Kings, very naturally, resisted as strenuously. The clergy had considerable excuse for their resistance; for they were taxed, not only by the King, but by the Pope, whose needs were, in the thirteenth century, particularly pressing, owing to the Continental wars in which the Papacy was involved.

'Convocations'

The struggle was acute during all the long and weak reign of Henry III; and it probably had a good deal to do with the growth of the Convocations, or Parliaments of the Church, which may have acted, in some degree, as models for the lay Parliament, and which comprised, not merely the bishops, sitting together as an 'Upper House,' but the priors or deans of the cathedral chapters, the archdeacons, and 'proctors,' or agents (*procuratores*) of the ordinary beneficed clergy, sitting as a 'Lower House.' The curious thing is, that there was not, and is not to this day, a single Convocation for the whole Church of England, but two Convocations, one for the province of Canterbury, and another, much smaller, for the province of York; each divided into two Houses.[1] In fact, though the primacy of Canterbury has long been marked in many ways, and recognized by statute, he is not the superior or overlord of his brother of York; for the latter is 'Primate of England,' though the former is 'Primate of All England.'

The Bull 'Clericis Laicos'

To return, however, to the great struggle between the State and the Church on the matter of taxation. Edward I, when he was framing his Great Parliament (p. 27), was quite aware that a crisis was impending, and took his measures accordingly, by virtually incorporating, as we have seen (pp. 129–130), the Church Convocations as a third House of Parliament. His foresight was justified; for, in the very next year after the Parliament of 1295, his vigorous opponent, Pope Boniface VIII, dropped a bombshell into the Courts of Christendom, by publishing his famous Bull *Clericis*

[1] In the Convocation of York, owing to the small number of the dioceses, each archdeaconry is represented by two proctors.

Laicos, so called from its opening words, by which he roundly forbade the clergy everywhere to pay taxes to the State. The struggle which followed was sharp, but decisive, at any rate in England. Edward I, wise and pious as he was, would stand no nonsense; and, on the refusal of the Archbishop, in the name of the Church, to vote taxes, he promptly outlawed the whole of the clergy, *i.e.* withdrew from them the protection of the law, both criminal and civil, thus leaving the vast wealth of the Church, and the persons of its clergy, open to attack by any plunderer. There was a grim irony in this procedure; for it was the exact counterpart of the clerical process of excommunication, by threat of which the Pope's predecessors had extorted submission from the vicious John, and the feeble Henry III. And it was equally effectual; for, after a brief attempt at a compromise, the Archbishop gave way, and the practice before described (p. 130) was arrived at, whereby the clerical representatives attended at the opening of each Parliament, under the 'Præmunientes' clause in the bishop's writs, but retired to their Convocations immediately, merely going through the formality of accepting the Commons' vote of taxes, and imposing it on their own body. Perhaps, in spite of a show of resistance, the clergy were not really very sorry to adopt an attitude which enabled them to allege the King's demands as an excuse for resisting the still more searching levies of Papal taxation. In the latter attempt, they had the secret or avowed sympathy of the King and Parliament; and it was probably that sympathy which had a good deal to do with the ease with which the constitutional changes of the Reformation were carried through.

Reformation Changes: Ecclesiastical Jurisdiction

These changes may be briefly summed up under six heads. (1) First in order came the question of

ecclesiastical jurisdiction, and especially of appeals to the Papal Curia, or Court at Rome. It must be carefully remembered that never, until the Reformation, had any English King, or other authority, seriously questioned the right of the Church courts to adjudicate, according to Canon Law and procedure, on many subjects, some of which, such as marriage law and defamation, we should consider more lay than clerical. There were disputes about the boundary line between State and Church courts; and in some subjects, *e.g.* title to land (including presentations to livings), the State courts kept a tight hand by writs of 'Prohibition' (p. 289) issued to the clerical judges. Still, the jurisdiction of the 'Courts Christian' was admitted, and even the ultimate right of appeal to Rome, after the due order of appeal, from archdeacon to bishop, and bishop to archbishop, had been observed in England. But, for a long time before the Reformation, Parliament had passed Acts (known as Statutes of 'Præmunire') against irregular interference with proceedings in the Church courts by the Papal officials, who encouraged 'evocation,' *i.e.* carrying off of cases at once to Rome, and 'delegation,' *i.e.* trial of cases in England by officials sent from Rome. At the Reformation, Parliament went much further, and, by the Acts of Appeals and Submission (in 1532 and 1533) entirely forbade all appeals to Rome, and substituted a final appeal from the archbishops' courts to the King in Chancery, who was empowered to appoint delegates to hear such appeals.

Canon Law

Parliament attempted to deal also with the vast body of Canon Law (p. 315) which the Church Courts followed; but its action was, in this respect, not very effective. It empowered the King to appoint a commission of thirty-two persons to examine the exist-

ing Canons, and recommend for abolition such as they should deem unworthy of observance in a reformed Church. Meanwhile, the existing Canons were to be observed, except so far as they were repugnant to the law of the land, or hurtful to the King's authority. The contemplated commission was never appointed; and there, to the present day, rests the authority of the Canon Law as it stood in 1533. It is binding alike on clergy and laity, in its proper sphere, subject to the alterations made in the law by Act of Parliament or judicial decision.

Dispensations

(2) The closely connected subject of the prerogative or special authority claimed by the Popes, of 'dispensing' with the ordinary Law of the Church, was also dealt with. It will be remembered, that this had played a very great part in the famous defiance by Luther of the Papal authority; and we have seen that a similar claim in secular matters was afterwards put forward by the Stuart Kings (p. 213). The Reformation statutes, of course, entirely abolished it, so far as the exercise by the Pope was concerned; but they allowed it so far that, by the Act of Dispensations of 1533, the Archbishop of Canterbury may grant, but only with the approval of the King in Council in new cases, such licences and dispensations as shall be 'lawful and necessary.' It is under this power that the Archbishop's 'special licence' to marry is granted.

Papal Taxation

(3) The Reformation definitely put a stop to the levy of Papal taxation, in any form, by the abolition of Peter's Pence, the ancient 'God's penny' or hearth-tax, which had been paid to Rome from the earliest days of the Church establishment, as well as of 'annates' or first-fruits (the first year's profits of

newly-filled benefices), and tenths (the annual tax on livings for which the irregular Papal taxation had been commuted). The special tribute promised by John in his disgraceful surrender of the Kingdom had long before been repudiated; but the first-fruits and tenths were not extinguished, but transferred to the Crown, by whom, in the later reign of Queen Anne, they were set aside, under the name of 'Queen Anne's Bounty,' as a provision for the augmentation of poor livings.

Powers of Convocation

(4) The position of the Convocations was definitely settled by the Act for the Submission of the Clergy in 1533, and has remained since unaltered.[1] The policy of the Conqueror was taken a good deal further; and the Convocations were forbidden to meet without the King's licence, and, even when licensed to meet, to discuss any proposed new Canons without the King's express approval. Thus, no Convocation can be called without the issue of the King's writ to the archbishop; and 'letters of business' are further required before any new Canon can even be discussed. It was, therefore, a simple matter for the Crown, on the outbreak of the 'Bangorian' controversy in 1717, to withhold the necessary writ, and thus virtually to suspend the existence of the Convocations until 1850, since when they have again regularly met. Moreover, it was laid down by Lord Hardwicke, in the eighteenth century, that Canons enacted by Convocation since the Act of Submission, even with the King's licence, though they bind the clergy by virtue of their oaths of canonical obedience, do not bind the laity, because they are not sanctioned by Parliament. There is, however, nothing to prevent Convocation addressing

[1] This statement, though still technically correct, will cease to be practically true when the powers conferred on the National Assembly of the Church by the Act of the year 1919 take effect.

the Crown, praying it to take into consideration any subject affecting the welfare of the Church, or to prevent Parliament enacting a new Canon by statute, as has been done on more than one occasion.

Crown's Authority in Ritual

But the influence of the Convocations, as well as of the Church courts, was also gravely affected by the Acts of Supremacy passed at the Reformation and afterwards, by virtue of which the supreme authority of the Crown over the Church, not only in matters of government but of ritual, was asserted. It was under these statutes that Henry VIII and Elizabeth, instituted the famous Courts of High Commission, which, though partly composed of bishops, completely put into the shade the ordinary Church courts, especially in all matters affecting discipline.

Appointment of Bishops and Deans

(5) Another important step taken at the Reformation also carried further the older policy of the State on the subject of the appointment of prelates and other great Church officers. This step was taken by the (second) Act of Annates in 1533; and it established also a permanent settlement, which remains in present force. On the occurrence of a vacancy in a bishopric, the Crown sends to the chapter of the cathedral a *congé d'élire*, or licence to elect a new bishop. But this apparent respect for freedom of election is but a thin disguise for a much more important document, viz. a 'letter missive,' which contains the name of the person selected by the King (now acting on the advice of the Cabinet) for election. It is true that a second name is added, to keep up the pretence of a free choice; but, less than a century ago, it was given as a solemn opinion by the Law Officers of the Crown

(pp. 245–246), that this was merely a form, and that any attempt to act upon it would bring down upon the chapter the penalties of a 'Præmunire' (p. 319). If the chapter does not elect, within twelve days, the person named in the 'letter missive,' the King appoints to the bishopric by Letters Patent, as he does also if there is no cathedral chapter (which sometimes happens in the case of new bishoprics), and as he does in the case of new deans. Suffragan and assistant or 'coadjutor' bishops are appointed by the Crown, usually on the request of their diocesan bishops; canons or members of the cathedral chapters are elected or appointed in various ways—sometimes by the Crown, sometimes by their bishop, sometimes by vote of the chapter. Archdeacons are usually appointed by their bishops. Each diocesan bishop does homage to the King for his 'temporalities,' *i.e.* his endowments and temporal powers (if any), and takes the oath of fealty. He may be 'confirmed' in his election by the archbishop, and is consecrated by him; but he can take no recognition of any kind from Rome.

Uniformity of Worship

(6) Finally, the Reformation brought into prominence the subject of 'uniformity of worship.' Though the King and Parliament were strikingly successful in maintaining the continuity of the Established Church (it seems to the writer simply unhistorical to speak of the present Establishment as 'created,' or even 'set up' by the Reformation), yet they could not prevent a vigorous outburst of Dissent in doctrine, and Nonconformity in worship, which refused to accept the official standards. An early attempt to discourage the former was the Act of the Six Articles, which imposed heavy penalties on any 'denial' of the fundamental doctrines of the Church; but the policy of the 'Acts of Uniformity' which began under Edward VI, and were re-issued and amended under Elizabeth and

Charles II, while definitely Protestant in doctrine, aim chiefly at securing, by means of authoritative 'liturgies,' or forms of worship (the Book of Common Prayer), a uniform and comprehensive observance of public worship conducted by the Established Church. This policy, vigorously upheld by the Courts of High Commission (p. 322), and intensified by the bigotry of the first Stuart kings of England, who made a firm alliance with the bishops, had much to do with precipitating the Civil War (which, for a time, completely 'disestablished' the Anglican Church), and contributed greatly, by its harshness, to drive out of the country the early Puritan settlers, such as the pilgrims of the *Mayflower*, who founded the New England States of America. Thus it may be said to have indirectly contributed to the building up of the Empire.

Toleration

This exclusive policy was revived, after the Restoration, in all its intensity; but the extreme policy of James II, who attempted to force Catholicism on an unwilling nation, caused a union between the Established Church and the Protestant Dissenters and Nonconformists, in pursuance of which, at the Revolution of 1688, a Toleration Act was passed, by virtue whereof obedience to the Acts of Uniformity was excused, and, gradually, the severe list of 'disabilities' which, in the seventeenth century, had been imposed on Protestant and Catholic Dissenters, was abolished.

Decay of the Church Courts

Meanwhile, the blow which the Church courts had suffered in the Civil War had deprived them of much of their remaining activity, which had passed to the King's Courts; and the latter ultimately adopted a

policy of refusing to allow the Church courts to deal with any cases for which a remedy lay in their own tribunals. By this means, such actions as those for breach of promise of marriage, slander, adultery, and the like, were taken away from the Church courts, which had always suffered from considerable difficulty in enforcing their decrees. Then came the Acts which, at the beginning of the nineteenth century, broke down the Church's monopoly in the matter of celebration of marriages, the Tithe Commutation Acts, the Church Discipline Acts, which gave the ultimate appeal to the Judicial Committee, the abolition of compulsory Church rates, and, finally, the Acts of the year 1857, which transferred the jurisdiction of the Church courts in probate and matrimonial cases (p. 287) to the new Courts of Probate and Divorce.

Recent Revival

A slight revival of the bishops' ('consistory') and the archbishops' ('provincial') courts has, however, been brought about by the Church Discipline and Public Worship Regulation Acts. Under the former, certain offences of the clergy against morals and discipline are triable by the bishop's chancellor, with 'assessors' if demanded, in the consistory court, with option of appeal either to the provincial court of the archbishop, or the Judicial Committee sitting with episcopal assessors. Under the latter statutes, questions of ritual may be tried by the bishop with the consent of the parties; if this is withheld, the case goes to the provincial court, with ultimate appeal to the Judicial Committee. But, although the Church courts have still a theoretical power to excommunicate, and even imprison, laity as well as clergy for certain ecclesiastical offences, this power is, in substance, never exercised; one of the chief reasons for its decay being the fact that the Church courts never adopted the institution of the jury.

The Modern Establishment

On the other hand, it would be a great mistake to suppose that the Church of England has ceased to receive public official support. Indeed the Tithe Commutation Acts, by making the payment of tithe (where it has not been 'redeemed') legally recoverable in the King's Courts in a convenient form, may be said to have strengthened a precarious form of income; whilst the majority of the English diocesan bishops, at any rate, still occupy seats in the House of Lords, and are present at all State ceremonies, such as coronations and openings of Parliament. Moreover, the legal right of private patronage, or presentation to livings in the Established Church, still exists; though its exercise has recently been severely restricted.

Established Church of Scotland

The State Church of Scotland was, until the Reformation, very similar to, though, of course, absolutely independent of, the Church of England. But whereas the English Reformation left the episcopal government of the English Church remaining, though (as has been seen) restricted, the Scots adopted the form of government known as Presbyterianism, by means of which, through a successive grouping of kirk sessions into presbyteries, presbyteries into synods, and synods into a General Assembly, complete self-government on democratic lines was secured, and continued until the Restoration of Charles II. The royal advisers then made a desperate attempt to restore episcopal institutions in Scotland. But this step, after provoking intense and violent reaction, was reversed at the Revolution; since which time, the only official connection of State and Church in Scotland has been the annual appointment of a royal High Commissioner to receive and welcome the General Assembly in Edinburgh, which is presided over by an elected Moderator, whose high importance is evidenced by

the fact that he ranks, in official precedence in Scotland, next after the Lord High Chancellor. The payment of 'teinds,' or tithes, however, is still enforceable by the lay courts (p. 296); but the right of private patronage was abolished by statute in 1874, and ministers are elected to their benefices, which they hold during good behaviour, by the votes of the members and adherents of their congregations. There is, in fact, a voluntary Episcopalian Church in Scotland, in communion with the Church of England, though entirely self-governing; but this body has no more connection with the State than has any other Nonconformist body.

The Irish Church

As has before been pointed out, the Church in Ireland was a branch of the Anglican Church which, until the year 1869, was administered in much the same way as the parent Church, and had much the same rights (including representation in the House of Lords), despite the fact that, by its adoption of Protestantism at the Reformation, and the influx of Presbyterian settlers in the seventeenth century, it had become the Church of a small minority of the Irish nation. In 1869, it was disestablished and partly disendowed; its bishops disappeared from the House of Lords, and all its coercive powers vanished. On the other hand, it became a great voluntary body with complete powers of self-government, including the right to appoint its own bishops and other officials.

The Anglican Church in the Isle of Man is a part of the Established Church of England, under its own bishop, and forms a diocese of the province of York. The Anglican Church in the Channel Islands is under the jurisdiction of the Bishops of Winchester.

The Church in British India

In British India, the Crown has power by statute to appoint three bishops whose incomes are charged on

the revenues of India, viz. the bishops of Calcutta, Madras, and Bombay, and to confer upon them such ecclesiastical jurisdiction over ministers of the Church of England in India as the Letters Patent appointing them may authorize. The Bishop of Calcutta is Metropolitan, and may admit persons to Holy Orders for service in his own diocese; and the other two bishops take the oath of obedience to him. Each of these dioceses has also an archdeacon appointed by the Crown. There are a number of chaplains in British India also appointed by the Crown, and paid out of Indian revenues; two at least of these in each diocese must be ordained ministers of the Church of Scotland, under the ecclesiastical jurisdiction of the Presbytery of Edinburgh (p. 326).

Creation of New Bishoprics

The power of the Crown to create bishoprics and appoint bishops outside these three dioceses and in the colonies, has been much disputed; and it is very doubtful whether the Crown can create dioceses with ecclesiastical jurisdiction, except by virtue of the provisions of an Act of Parliament. But there seems no reason to doubt, that the authorities of the Church may appoint and consecrate bishops to act in such places in a purely voluntary capacity, subject to the rule that no bishop can be consecrated in England without licence under the King's sign-manual warrant (p. 31), counter-signed by a Secretary of State. Many colonial and foreign bishops have, in fact, been thus consecrated; and, in some of the Crown colonies, their stipends are paid out of the colonial revenue, while in others a grant is made from public funds towards the support of the various religious bodies working in the colony. But in no case does the ecclesiastical establishment form part of the government of the colony; and the tendency is to diminish official recognition of ecclesiastical authorities as such.

Finally, it may be observed, there is nothing to prevent any person, not in Anglican orders, or any other orders, calling himself 'Reverend' or 'Bishop,' if it pleases him to do so; provided, of course, that he does not attempt to pass himself off as an ordained clergyman or bishop of the Church of England.

The New Church Assembly

Almost immediately after the first edition of this book was published, the organization of the Church of England received a powerful stimulus from the passing of the Church of England (Assembly) Powers Act, 1919. That statute, remarkable no less for its form than its substance, was the result of the vigorous mission of a voluntary association, known as the 'Life and Liberty Movement.' It provides for the setting up of a National Assembly on the lines proposed by identical Addresses presented to His Majesty by the Convocations of Canterbury and York respectively. These Addresses are not reprinted in the Act. But it is found in practice that the National Assembly consists of three Houses—Prelates, Clergy, and Laity; the first two being virtually the old Convocations combined, the third being elected, under an elaborate scheme of indirect election, by the laity in communion with the Established Church. The Assembly has power, with the concurrence of its three Houses, to enact any Measures 'concerning the Church of England'; and such measures, when approved by simple resolution of the two Houses of Parliament, may be presented for the royal assent, upon receiving which they have the force of Acts of Parliament, even to the extent of repealing or amending other Acts of Parliament. By a curious but interesting provision, there must be interposed (as a kind of sieve) between each Measure as it leaves the Assembly and its presentation to Parliament, two Committees, one (the Legislative) representing the Assembly, and one (the Ecclesiastical) representing the Houses of Parliament; and, unless these two Committees agree to let the measure through, it drops. Still, even with this safeguard, the powers conferred on the Assembly are startling, not to say revolutionary, and the exercise of them will be watched with interest.

CHAPTER XIII

LOCAL GOVERNMENT (THE SMALLER UNITS)

ALL government is, at the present day, in a sense, local; because the boundaries of each State, however large, are at least supposed to be fixed, and the State cannot exercise authority beyond them, except by toleration. And it is really very difficult, in writing of a large and composite State, to be quite strict in the use of the term 'local government'; for instance, many writers describe the government of a single colony, or even group of colonies, though they may be of vast extent, as 'local,' to distinguish it from the Imperial government in London.

MEANING OF 'LOCAL GOVERNMENT'

But what is specially meant by 'local' government is the government of small areas, such as counties, boroughs, and parishes, in which the inhabitants may at least be assumed to be in more or less daily contact with one another, and to realize clearly their common interests. This is the strength of local government. Its weakness is, that it is apt to have no concern with wider interests outside its local area. Formerly, local government was also distinguished from central government by the fact that its duties were concerned mainly with economic and sanitary matters; while the central government occupied itself mainly with military and judicial affairs. The great increase in

the activities of the central governments, all over the civilized world, which has taken place in recent years, has, however, tended to make this distinction meaningless; and, in consequence, the line between central and local government is now exceedingly difficult to draw.

Local Interests Strong in England

The United Kingdom, and especially England, was, at one time, emphatically a land of local institutions. Settled in the days when the means of intercourse over wide spaces were few and difficult, by a primitive people with no experience of civilized government, it naturally became a country of strong local interests, whose scattered little communities were absorbed in their own affairs, and knew little, if anything, beyond their own boundaries. Their isolation is attested by many unmistakeable signs; one of the most striking being the fact that, until so late as the eleventh or twelfth century, one village might be in the throes of a famine, whilst another, not forty miles away, had a surplus of corn. People living in the east of England could hardly understand the speech of those living in the west. An old English poem speaks of it as common practice to shoot at sight any stranger who came over the village boundary without blowing his horn. In the thirteenth century, a law provided that any stranger entering a town between sunset and sunrise should be arrested and detained till morning, and that any stranger lodging in the suburbs must be under the guarantee of his host. Much of the Englishman's aptitude for self-government is, doubtless, due to this long history of local isolation.

Not so the Colonies

The present colonies, at any rate the great self-governing Dominions, of the British Empire have, on the

other hand, been settled by people with a long tradition of civilized government, a certain familiarity with wide ideas, and enormously improved means of communication. Roads, railways, telegrams, and the daily newspapers, bring the settler in the Canadian backwoods or the Australian 'bush' into far closer intercourse with Europe than it was possible for the farmer of East Essex to maintain with London a thousand years ago. Consequently, though many of the Dominion settlements are remote from one another and the centre of government, the settlers look rather to Toronto, or Melbourne, or Johannesburg, for guidance and assistance, than to their nearer neighbours; and local institutions have made comparatively little progress in the British colonies. Nevertheless, as settlement becomes closer, these are likely to develope; and, in any case, a study of the government of the Empire would hardly be complete without some description of the local government system of England.

The Township or Parish

The unit, or smallest group, of local government in England is, and has been from the dawn of English history, the township, village, or parish. Whether the colonization of England at once took this form, or whether townships were formed by sub-settlement from larger groups, it is impossible to say. Above them stood, in ancient England, the hundred, comprising an uncertain number of townships, and, above the hundred again, the shire or county, comprising several hundreds. The origin of the hundred is even more mysterious than that of the township; for it is clear that the township was a community formed or developed for the purpose of carrying on agriculture, while the hundred had no such obvious object. About the origin of the shires or counties, something a little more definite is known. Some of them, undoubtedly,

such as Wiltshire, Somersetshire, and Sussex, were tribal settlements which early became absorbed into Heptarchic Kingdoms. Others, such as Cambridgeshire, Derbyshire, Bedfordshire, Nottinghamshire, and Huntingdonshire, were districts deliberately carved out of the old Kingdom of Mercia for military reasons; being, in effect, the areas formerly defended by their county towns. It will be found, in fact, that in these counties the county town, from which the shire takes its name, is usually situated near the centre, or in an important strategical position; while there is no such rule in the older or tribal shires, which sometimes seem to have no fixed capitals.

This primitive arrangement of parish, hundred, and shire or county, which came into greater prominence when the Heptarchic Kingdoms were consolidated into a single Kingdom (p. 1), is still the key to the scheme of local government in England; though the ancient institution of the hundred has ceased to be of practical importance, being replaced by the 'district,' while the growth of 'boroughs,' or urban areas of dense population, with advanced rights of self-government, has somewhat obscured it. Moreover, and as a result of the same growth of population, we have a cross-division between 'urban' and 'rural' areas, *e.g.* urban parish, urban district, and borough, as distinguished from rural parish, rural district, and county. But the distinction is not complete or systematic; and there is, as we shall see (pp. 340–341), one very puzzling kink in it. The system is, in fact, characteristically English.

The Village Group

The parish or, to be strictly correct, the 'civil parish' (as distinct from the purely ecclesiastical parish) is the ancient township, or agricultural settlement of small peasant farmers, self-supporting, co-operative,

and isolated in the midst of its open fields. Whether it was originally self-sown, or settled by a person in authority, is a much-disputed question; certainly from the eleventh century, or even earlier, the average township or 'village' (as the Normans called it) has been much under the control of a 'lord' or 'landlord,' whose powers have varied from time to time. But some historians believe that this person, ancient as is his character, was an interloper into the original independent township, whose presence has not been an unmixed benefit. Certain it is, that the township, or village, though originally a community of persons working on a common plan of intermixed strips in the great arable fields of the township, became first, about the eleventh century, a group of dependents or serfs 'holding of' a lord, according to feudal ideas, and finally, as the result of the 'enclosures' which went on from the sixteenth to the eighteenth, a mere body, first of owners ('yeomen'), then of tenants, each working his own block of land with hired labour in his own way, or, later, under the terms of an express bargain between himself and his landlord, from whom he has taken it on a 'tenancy,' long or short. But the still binding effect of the 'custom of the country' (p. 15) points strongly back to the older state of affairs.

The 'Manor'

It was natural that the spread of feudal ideas, above described, should exercise a depressing influence on the villages, which, whether they ever had a regular 'moot,' or meeting, or not, had undoubtedly some means of discussing their common affairs. These then passed, very largely, into the hands of the lord's court or courts, held in his hall, by himself or his steward, where the 'homage,' or body of tenants, 'presented' the various offences against the custom of the township or 'manor' (as it came generally to be

called), and where, as existing tenants died or transferred their holdings, their heirs or transferees were 'admitted' to succeed them. And, when feudalism itself received its death-blow from the Great Plague of the fourteenth century, which broke up the manorial system of serf-labour, and started the movement in favour of enclosures, what little common business remained to be discussed, seems to have been discussed in the 'vestry' or robing room of the church, probably under the influence of the parish priest.

The 'Vestry'

The influence of the vestry meeting seems to have grown with the Reformation; and when the great Elizabethan system of poor relief was founded in the sixteenth century, it was on the parish that the burden of carrying it out was cast. The overseers of the parish (probably nominated at the vestry meeting) levied a rate on all householders of the parish, for the double purpose of setting the able-bodied poor on work (whence the name 'workhouse'), and of relieving the indigent incapable, and expended the sum thus raised for the maintenance of the poor of the parish. The Justices of the Peace (pp. 271–277), whose duties in connection with wages and apprenticeship had been enormously increased by the Statutes of Labourers which followed on the Great Plague, or 'Black Death,' were entrusted with supervision of the system throughout their counties. But the main burden fell, as has been said, upon the parish officials; and an indelible mark of this fact is the legal definition of a civil parish at this day, as 'a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.'

Poor Law Reform

Poor relief is, therefore, really the historical basis of modern local government in England; for the

Elizabethan system was hardly in order when new tasks, such as the provision and repair of roads and ditches, were thrown upon it. Unfortunately, owing to its historical connection with a severe repression of 'vagabondage,' and to the irregular growth of population in the second half of the eighteenth century, the Poor Law system got into a bad state of waste and immorality; and one of the first cares of the Reformed Parliament of 1832 was, to make radical alterations in it. The parish still remained as the unit of liability, *i.e.* each parish was supposed to support its own 'settled poor,' and its overseers still 'struck' a rate. But, subject to a nominal control by the Justices of the Peace, the real management of poor relief was placed in the hands of Boards of Guardians of the Poor, elected for a group of contiguous parishes called a 'Union' (which name thus became equivalent, in popular language, to 'workhouse'), who jointly administered poor relief for all the parishes in the Union. For some time longer, the pretence of separate parish liability was kept up; but from the year 1865 the poor of the Union have been 'pooled,' *i.e.* maintained out of a fund levied by rates on each parish on a uniform plan, according to the value of its land and buildings, regardless of which parish of the Union they were settled in. Thus the parish remains a *rating*, but not a *managing* body, for Poor Law purposes.

Decay of the Rural Parish

In densely populated areas, which demanded much provision of water-supply, lighting, street-paving, and other public conveniences, this change in the Poor Law system made little difference—indeed in large towns the parish authorities remained overloaded with work. But in the rural areas, which do not require such elaborate provision, and in which a single parish could hardly be trusted to manage such important matters as sanitation and road-making, these

latter duties were usually entrusted to larger districts, under Local Improvement Boards or Turnpike Trusts; while the single parish fell much into the background, the annual vestry meeting becoming largely a mere form.

Parish Councils

In the year 1894, however, a great effort was made to revive rural life by the creation of 'parish councils' in all rural parishes having a population of 300, and in less populous parishes or groups of parishes which demand them. These councils are elected, once every three years, by the 'parochial electors,' *i.e.* persons on the Local Government Register, which contains *primâ facie*, at present, the names of all male owners of land worth five pounds a year in the parish, and all male[1] lodgers, occupying rooms worth ten pounds a year unfurnished, and all resident householders, and all occupiers of land worth ten pounds a year in the parish, male or female. The precise numbers of the councillors are fixed in each case by the County Council (p. 361); and their meetings, which must not be less than four in the year, are presided over by an elected Chairman or Chairwoman. But the parish council cannot proceed to business unless three members are present.

Their Powers

The powers of a parish council are, in theory, numerous. It is a 'corporation,' or legal person, and can therefore hold property, either in land or movables; subject to the rule that no corporation can acquire land without the authority of a statute or a licence from the Crown.[2] It has taken over, generally, the

[1] By the new Reform Act these complexities are abolished, and the local government franchise can be claimed by all occupants (male or female) of land or premises, and by the wives, being thirty years of age, of *resident* occupiers.

[2] This is the rule of 'mortmain,' which, originally devised to apply to the Church, was afterwards extended to all corporations.

position of the old 'vestry' (p. 335), except with regard to strictly ecclesiastical matters, as well as that of the old churchwardens, who, by virtue of various statutes of the nineteenth century, had a good many lay duties entrusted to them. It has succeeded to the power, nominally exercised by the Justices of the Peace, but really by the vestry, of appointing overseers of the poor, who are compellable to serve, but whose duties are mainly confined to the levying of rates to satisfy 'precepts' addressed to them by the Guardians of the Poor (p. 340), and the county authorities. The parish council also appoints school managers of a public elementary school within its parish in different proportions, according to whether it is a 'provided' or 'non-provided' school (p. 264); and it appoints and dismisses assistant overseers, *i.e.* paid assistants of the overseers, where these are necessary. It watches the use of the charity funds of the parish (other than those which are purely ecclesiastical), and is entitled to complain of any proposed diversion of them. It maintains and repairs footways in the parish, and views with a jealous eye any attempt to divert or stop them. It has a good deal to do with the provision and management of allotments—*i.e.* small patches of land cultivated as market gardens—and with recreation grounds. It may make representations about insanitary dwelling-houses, and compel a medical inspection and report; and it may complain to the County Council if the sanitary authority (pp. 346–353) neglects its duties in the matters of water-supply or repair of highways.

'Adoptive' Acts

These powers belong to all parish councils; but some rural parishes have more ambitious ideas, and adopt the permissive powers offered by certain Acts of Parliament on condition that there is an express demand for them. Formerly, such demands were

made by the 'inhabitants'; now they are made by the 'parish meeting,' which entrusts the execution of them to the parish council. Such schemes include the provision of public libraries, cemeteries, baths and washhouses, and road lamps.

Parish Meetings

The 'parish meeting,' just alluded to, is the primary assembly of the rural parish, and consists of the 'parochial electors' (p. 337), *i.e.* persons who elect the parish council, if there is one (p. 337). In parishes which have councils, the powers of the parish meeting (which must be held once a year, in March, after six p.m.) will be mainly confined to electing the council and criticizing its work, and resolving to adopt the 'adoptive Acts' above referred to, and the sanctioning of any proposed expenditure by the council involving a rate of more than threepence in the pound of the annual value of the land in the parish, as assessed for rating purposes. But where there is no parish council, the parish meeting must be held twice a year; and it then exercises the powers of a parish council above described in the matter of the duties formerly belonging to the vestry, the appointment of overseers, assistant overseers, school managers, and charity trustees, and the stopping-up of footpaths. But its power of incurring expenses (other than those under 'adoptive' Acts) is limited to a sixpenny rate; and it cannot raise any loan on the security of parish property without the approval of its county council and the Ministry of Health. Moreover, neither the parish council nor the parish meeting levies its own rates; it sends a precept to the overseers, who include the amount claimed in the county rates.

The Urban Parish

It seems, at first sight, not a little curious, that the same statute which erected the elaborate machinery

of parish councils in rural parishes, should have apparently ignored the existence of urban parishes, which are, presumably, still more in need of local government. But the mystery is explained by the fact, that the Local Government Act of 1894 was also concerned with setting up a great uniform system of sanitary districts, urban and rural, and that, in the majority of cases, the urban (sanitary) district outside a borough (p. 346) is really an old urban parish, which, having passed through an intermediate stage of a Local Improvement District, under a Board of Commissioners or Trustees, now blossoms out into a full-blown urban district, which, having large powers as such, does not also need parochial machinery or power. Leaving for the present these sanitary districts, let us look for a moment at the next step on the ladder of local government, viz. the Board of Guardians of the Poor, before alluded to (p. 336).

The Union

The Poor Law Union, as its name implies, is a union of parishes, not necessarily all rural or all urban. But whereas the rural parishes of a Union do not elect special Guardians on the Board (being represented thereon by the persons whom they elect to the rural district council of whose district the parish forms part (p. 346)), the urban parish, which usually has its own district council, has to elect special Guardians (the number fixed by the Ministry of Health) to the Board of the Union of which it forms a part. Thus, in a mixed Union, the Rural District Council will be the Board of Guardians *minus* the representatives of the urban parishes, who will be Guardians only, and not, as such, district councillors. Inasmuch as both district councillors and Guardians are elected by electors having precisely the same qualifications, being the 'parish electors' (p. 337) in each case, this difference,

though perhaps inevitable in the existing scheme of local government, may fairly be described as a 'kink.' Neither sex nor marriage disqualifies for being a Guardian; and, as a matter of fact, much excellent work is done on Boards of Guardians by married women. But no one can be elected as a Guardian unless he or she is qualified as an elector, or is resident within the Union.

Poor Relief

The work of Boards of Guardians is, as has been said (p. 336), the management and distribution of the very large sum annually expended in the relief of poverty by the State. The importance of their position lies in the fact, that every destitute person has a right to relief in the Union in a parish of which he has his 'settlement,' *i.e.* to which he is attached by birth, residence, or other qualification. Such a right naturally entails great responsibilities on the Poor Law authorities; and a careless compliance with it nearly brought the country to bankruptcy at the end of the eighteenth century. Still, even in 1834, the date of the passing of the great Poor Law Amendment Act, there was no widespread desire to deny the existence of the right; it was only determined (and, even that, in the face of strong opposition) to restrict very severely the conditions of its exercise.

'Outdoor Relief'

The great means chosen was, in addition to the substitution of Guardians of the Union for the parish overseers, the substantial suppression of 'out-door relief,' *i.e.* the payment of money or the supply of goods to paupers who continue to live in their own homes. The sentimental arguments in favour of such a practice are attractive; the administrative arguments appeal to the inherent laziness of human nature.

But it is a practice which lends itself to the grossest abuses; unless it is, as in the case of the Old Age Pensions system (which is not administered through the Guardians of the Poor), a deliberate and uniform scheme, not dependent for its working on the caprice or corruption of local bodies and officials. Outdoor relief may, however, still be granted in exceptional cases, such as those of widows, women deserted by their husbands, and sick persons; and a certain number of payments made by the Guardians to other bodies on behalf of persons in receipt of poor relief, though not usually classed under this head, properly speaking belong to it.

'Indoor Relief'

But the great bulk of the money expended by the Guardians goes in the maintenance of workhouses and similar institutions in which 'indoor relief' is administered. It is satisfactory to find that the working of the Old Age Pensions system, as well as the increased prosperity of the working classes brought about by the great war, has substantially diminished, during the past few years, the amount expended on poor relief; and it must not be forgotten, that a good deal of the legal liability for the maintenance of poor persons falls upon their relatives. If these persons satisfy their liabilities, the Guardians have, naturally, no say in the matter; but if they do not, and the expense of maintaining the poor persons falls on the Guardians, the latter take steps to recover this expense from the persons primarily liable.

Other Duties of Guardians: Vaccination

In addition to their primary duties as dispensers of poor relief, the Guardians of the Poor have one or two other spheres of activity. They are the authority for the enforcement of the Vaccination Acts; every

Poor Law Union being a 'vaccination area.' This somewhat unpopular duty they perform through specially qualified officials, subject to the numerous loopholes open to conscientious objectors.

Births, Deaths, and Marriages

The Poor Law Union is also the local area for the registration of births, deaths, and marriages, which has been compulsory since 1874; and the clerk to the Guardians is usually the Superintendent Registrar, while the Guardians appoint, for the various sub-districts, Registrars whose duties as marriage officers are responsible and important. The superintendence of the registration system is, however, not entrusted directly to the Ministry of Health, but to the Registrar-General's department in London, which is a non-political department under the Board.

Poor Law Officials

For the performance of its numerous duties, a Board of Guardians requires, in addition to those named above, a staff of clerical and professional officials, such as medical and relieving officers, and masters and matrons of workhouses. We have previously alluded (p. 252) to the compromise between self-government and central control which secures the efficiency and independence of such persons. The officials are appointed by the Guardians, subject to qualifications laid down by Parliament or the Ministry of Health; but they can only be dismissed with the consent of the Ministry of Health. The Registrar-General can, however, dismiss the registration officials.

Poor-rates

Finally, in order to raise the money required to discharge its heavy responsibilities, a Board of Guardians has substantial powers, in the matter of

levying rates. The 'poor-rate' is, as has been said (p. 335), really the centre point of modern local government in England; but the methods of raising it have varied from time to time. The process still begins with the overseers of the parish (p. 335); they have to draw up annually a list of the rateable properties within the parish, with the value at which each is assessed for the purposes of the Poor Law. This list is sent to a specially appointed Union Assessment Committee of the Guardians, annually elected by them; and this Committee proceeds to hear any objections which may be made to the valuation of a particular property, or the omission of a property from the list.[1] When the list is finally settled by the Committee, it becomes the Valuation List for the year; and the combined Valuation Lists of all the parishes in the Union becomes, subject to a right of appeal to the Justices of the Peace by any aggrieved objector, the basis of the assessment of the poor-rate for the Union. The Guardians, having estimated the amount of money which will be required to enable them to discharge their duties during the next year, after obtaining a formal allowance of the rate by the Justices in sessions, then serve a 'precept' or demand upon the overseers of each parish in the Union for a proportionate part of such amount; and the overseers proceed to assess the payment of the sum required upon the various properties in the parish Valuation List, and to collect the amount accordingly, usually in equal half-yearly instalments, from the occupiers, or, in some cases, the owners, of the respective properties.

Unpopularity of Poor-law System

It would hardly be fair to leave the subject of poor relief without alluding to the widespread prejudice against the administration of the system which has,

[1] It is obvious that if A's property is omitted from the list, B's will be more highly rated.

unfortunately, grown up, and which undoubtedly deprives it of much of its value. The original dislike of the system, due to its association with a harsh repression of vagabondage (p. 336) and the strict enforcement of the law of 'settlement' (p. 341), began to die away in the eighteenth century, and was almost removed by the famous 'Speenhamland Act,' or scale adopted by the local Justices of Berkshire in 1795, whereby any deficiency in the wages received by the labouring man was made good by a grant out of the rates, varying with the price of bread. Unfortunately, this crude attempt at State Socialism turned out in practice to be merely a device for enabling farmers to obtain cheap labour at the cost of the rate-payers; and, as has been said, it nearly brought financial ruin on the country. The necessary reforms of 1834 caused, however, great resentment among the working classes, as well as among those numerous people who put sentiment before common sense; and this resentment was strengthened, undoubtedly, by the harsh conduct of many of the smaller workhouse officials, who mistook oppression for economy. More than once the new reforms were in grave danger; and, though they have weathered the storm, and though much thoroughly beneficent work is done by the Boards of Guardians, the feeling alluded to has not only resulted in a large amount of spasmodic and ill-regulated 'charity' (so-called), but has also had the effect of depriving the Poor Law authorities of the administration of certain modern institutions which, on all grounds of reason, ought to have been entrusted to them, *e.g.* Old Age Pensions and provision for unemployment (pp. 252, 351). It may be said, of course, that in a happier social system, the need for a vast scheme for the relief of poverty would be non-existent; and the social reformer is entitled to regard the Poor Law system as a blot on the country, and to look forward with hope to its disappearance, now definitely threatened.

Sanitary Districts

Closely connected, as we have seen (p. 340), with the Poor Law Union, is the sanitary district. But the connection is arbitrary, and is now tending to disappear. The sanitary district is really the result of the great movement in favour of public health conditions which was produced, or, at least, stimulated, in the middle of the nineteenth century, by the visitations of the cholera, and which led to the passing of the great Public Health Act of 1848, now superseded by the Act of 1875 and its amendments. The urban and rural sanitary districts created under the provisions of these Acts have been systematized by the Local Government Act of 1894; and each has its elected council, chosen by the parochial electors and residents in the same manner as Boards of Guardians, and holding office for three years, but retiring by thirds in each year. Men and women are equally eligible.

Urban and Rural Districts

But, whereas the ordinary 'urban district' is simply and solely a sanitary unit, usually (as has been said) an old urban parish, the council of every ordinary municipal borough (p. 364) is the urban sanitary authority for all parishes within its boundaries, while the rural sanitary district is such part of a Poor Law Union as is not comprised in any urban parish or district, and the rural district councillors are also the Guardians for their respective parishes. Thus, as has also been pointed out (p. 340), where a Poor Law Union is entirely rural, its District Council and Board of Guardians are one and the same body, though performing different duties; where the Union contains both urban and rural parishes, the Board of Guardians comprises the rural district council *plus* specially elected Guardians for the urban parishes.

But the sanitary districts systematized by the Local Government Act of 1894 are not now merely 'sanitary' authorities in the ordinary sense of the term. They have taken over the duties of various former special bodies, such as Highway Boards, Burial Boards, Water and Lighting Boards, and, as we have seen (p. 263), in some cases, of the School Boards; the object being to reduce as far as possible the number of local authorities, and consolidate various powers in the hands of those which remain. Only it must be remembered, that there is still, for obvious reasons, a great difference between the limited powers of a rural authority, and the more extensive powers of an urban authority; whether the latter be a borough council or a specially elected urban council.[1] Still, the powers of the two classes are so closely parallel, that it will save time to deal with them together, merely pointing out important differences. The subjects with which they deal may conveniently be grouped under seven heads.

(1) *Highways.*—There has been a steady tendency, for upwards of a century, to transfer the control, repair, and making of roads, from the parish and the landowner (the original parties liable) to the larger units; and it may now be said, generally, that these duties rest, except so far as 'main roads' are concerned, on the sanitary district authorities. The distinction between a 'main road' under the jurisdiction of the county authorities, and a 'highway' under the jurisdiction of the district authorities, appears to be somewhat arbitrary[2]; but it should be remarked that a

[1] To complete our view of sanitary authorities, we should take account of the special 'Port' sanitary authorities, about sixty in number. But these require special constitution; and their powers are so varied, that they do not lend themselves to general description.

[2] Apparently all former 'turnpike roads' are main roads, and all roads declared to be such by the county authorities at the request of the sanitary authorities.

district council may, if it likes, insist on maintaining, with the assistance of a grant from the county rates, that portion of any main road which passes through its district. A curious legal difference between urban and rural district authorities is, however, to be found in the fact that, while the surface of the highways in an urban district is actually the property of the district council, the rural council has merely the control and management of the highways in its district. This difference, though apparently technical, is not without importance.

(2) *Sewers and Drains.*—Though the words 'sewer' and 'drain' are used indifferently by most people, the legal difference is that, whereas a 'drain' is merely a pipe used to carry off refuse from a single building or block of buildings, or a pipe under the control of a special road authority, a 'sewer' includes any channel for carrying off refuse except a drain. The sewer is, therefore, usually made (or, at least, taken over) and maintained by the sanitary authority; while the drain is made and maintained by the owner or tenant of the building, under the supervision and control of the sanitary authority. A sewer may, therefore, be an open ditch or cut, and, in rural districts, frequently is so. Every sanitary authority is also responsible for supervising the domestic sanitation of its district; and an urban sanitary authority may also provide urinals and similar accommodation at the public expense. Finally, every sanitary authority may, and, if required by the Ministry of Health, must, undertake, by its own servants or through contractors, the removal and proper disposal of refuse of a miscellaneous kind ('dustbin' rubbish) from houses.

(3) *Disease.*—The sanitary authority also enforces the Regulations from time to time made by the Ministry of Health to prevent the spread of infectious diseases among humans. The powers which it

thus exercises include the visitation and inspection of suspected houses, and the compulsion upon medical practitioners and heads of households to notify cases of infectious disease. The sanitary authority may also, if it sees fit, provide hospitals for any sickness, and undertake itself the disinfection of houses. It may inspect, and order the destruction of, any food exposed for sale which is unfit for human consumption; and it may inspect and condemn adulterated articles, even though they are not necessarily injurious to health.

(4) *Water-Supply.*—The actual supply of water for domestic and industrial purposes is still mainly in the hands of private enterprise; but, where no adequate supply is thus forthcoming, an urban sanitary authority may provide it, or contract for its provision, and charge the cost by a rate on the houses or buildings supplied. Moreover, every rural sanitary authority must see that there is a due supply of water to every dwelling-house in its district, and must, if there is not, provide and inspect periodically a supply to such house, if it can be done at a cost not exceeding two pence a week; and a duty to the same effect may be imposed by the Ministry of Health on an urban authority. Moreover, any sanitary authority may take steps to prevent the fouling of the water supply of its district by sewage, poisonous escapes, and other nuisances.

(5) *Housing of the Working Classes.*—One of the most important developements of State policy in recent years has been the increased attention paid to the improvement and supply of working-class dwellings; and the enforcement of this policy is left mainly to the sanitary authorities. Every sanitary authority must periodically inspect the houses in its district with a view to discovering those unfit for human habitation, may order the repair of defects, and, if this order is not complied with, may compel the demolition of the

building. Moreover, when buildings are being demolished, the sanitary authority may, with the sanction of the Ministry of Health, take up a scheme for the better re-arrangement of the area in question, and contribute part of the cost out of its funds. An urban sanitary authority may go further, and undertake the destruction of an unhealthy area, and, with the authority of the Ministry of Health, publish and carry out a scheme for that purpose; while any sanitary authority which adopts Part III of the Housing of the Working Classes Act, may provide and manage tenements or cottages for the housing of the working population, and a rural authority may be compelled to take steps in that direction. Finally, by the Housing and Town Planning Act of 1909, any borough or other sanitary authority may agree with the promoters of a scheme for securing the sanitary and artistic developement of a district against the vandalism of private enterprise; whether the district is a 'working-class' district, or not.[1]

(6) *Education.*—The council of every urban district having a population of 20,000, or (in the case of a municipal borough) 10,000, is the authority for providing, or ensuring the provision of, public elementary and other education under the Act of 1902, previously described (pp. 262–263). In this capacity, it appoints an Education Committee, school managers, and attendance officials—*i.e.* persons whose duty it is to see that children attend school in compliance with the requirements of the current Regulations. It also levies a rate for these purposes through the overseers.

(7) *Public Utilities and Amenities.*—Under this head may be classed a miscellaneous group of powers which belong to urban councils, such as the power to acquire pleasure grounds and public walks, provide baths and washhouses, and even (under certain conditions) market-buildings, public clocks and similar amenities.

[1] By the Housing Acts of the year 1919, 1921, and 1923, large additional powers and duties have been conferred on district councils.

An urban sanitary authority has also something to do with enforcing provisions for safety in places of public entertainment. Finally, the council of an urban district with a population of 50,000, automatically, and one with a population of 10,000 if it so desired it, had a 'distress committee' for securing employment of workmen under the Unemployed Workmen's Act of 1905 (p. 345). But the provisions of this Act have, largely, fallen into disuse; and it is not certain that they will be revived.

By-Laws

In order to enable it to fulfil its duties, every sanitary authority has, within strictly defined limits, the power to make *by-laws*, or local statutes, binding on all persons within its district, and *regulations*, usually on matters of temporary interest, which affect only a limited class of persons, such as the owners of land in, or abutting on, a particular road. By-laws, as befits their larger scope, require the sanction of the Ministry of Health, or other central authority; and they must be published in such a manner as to become generally known. They are enforced, by summary process, before the magistrates (p. 276); but no penalty above £5 can be imposed for a single offence against them, or forty shillings a day for continuing offences.

District Officials

Every sanitary authority has, also, in addition to its elected Chairman (who is, *ex officio*, a Justice of the Peace during his tenure of office), a clerk, and various other officials to carry out its duties; but there is a good deal of difference between urban and rural authorities in this respect. Thus, whilst both must have specially appointed Medical Officers and Inspectors of Nuisances (though the offices may be combined), only the urban authority need have a Surveyor;

and he may also be the Inspector of Nuisances. Moreover, the Clerk and Treasurer of a rural authority are the same persons as the Clerk and Treasurer respectively of the Guardians of the Poor for the district; while the Mayor, Town Clerk, and Treasurer of a municipal borough are Chairman, Clerk, and Treasurer respectively of the local sanitary authority.

Sanitary Finance

Finally, in respect of finance, there is likewise a good deal of difference between urban and sanitary authorities. All sanitary councils are corporations, and can acquire and hold, subject to the rule previously mentioned (p. 337, n. 2), all kinds of property, raise loans, and impose rates. But, whereas an urban authority directly assesses, levies, and collects its rates (either 'general district,' for general purposes, or 'private improvement' on persons specially benefited by some of its activities), a rural authority directs its precept to the overseers of its constituent parishes, ordering them to levy and collect, either a 'general' rate, out of the poor-rate, payable by all the parishes, proportionately in accordance with their assessment, or a 'special' rate from some particular parish or 'contributory place,' to cover expenses incurred for the special benefit of that parish or place. These rates, like the poor-rate (p. 344) are primarily payable by the occupiers of the various premises in the district, subject to a similar right of appeal (ultimately to Quarter Sessions) to that described in dealing with the poor-rate (p. 344). But the Public Health Act provides that sanitary rates shall be levied only upon the occupiers of agricultural, pastoral, or horticultural areas in the proportion of one quarter of those assessed on buildings; and this provision worked considerable hardship on the other rate-payers of the district, until, in the year 1896, The Treasury, under the terms of the

Agricultural Rates Act, which extended it to all local rates, began to make grants to the Exchequer Contributions Account (p. 362), to supplement the deficiency caused by it. All loans raised by sanitary authorities require the sanction of the Ministry of Health, which cannot sanction a total debt in any case of more than two years' assessable value of the district, nor, without a public enquiry, more than one year's. The loan, when sanctioned, may be raised by debentures or stock in the open market, or borrowed from the Public Works Loan Commissioners under the provisions of the Local Loans Acts. A policy has recently been developed to a considerable extent of granting, not loans, but subsidies from The Treasury in aid of the various activities of the sanitary authorities; but these subsidies are generally now paid through the County Councils (p. 362).

CHAPTER XIV

LOCAL GOVERNMENT (*continued*): THE COUNTIES AND BOROUGHS

IT has been before explained (p. 333), that the county, as an English institution, dates from before the Norman Conquest. It is equally true, that the foundations thus laid were greatly strengthened, and a firm political structure erected upon them, by the genius of the Anglo-Norman Kings, who converted the somewhat vague institution of the ancient shire court into a solid structure supporting the monarchy. So complete, indeed, was their work, that of the ancient self-governing body but little remained at the close of the twelfth century; and it was soon afterwards a matter of dispute who exactly were the persons entitled, or (as the contemporary speech put it) bound, to attend the shire court, whose ancient sessions, though they lingered on for centuries, sank ever lower in practical importance, while the assembly of landowners to receive the King's Justices on circuit (p. 279), or, later, the gatherings of freeholders to elect the Parliamentary 'Knights of the Shire' (p. 138), or, later still, the quarterly sessions of the Justices of the Peace (p. 279), grew more and more conspicuous. The importance also of the county as a militia centre, ever since the revival of that arm in Tudor times, has been already mentioned (p. 7). It is, indeed, only in quite recent times that the institution of County Councils has made the county once again a unit of real self-government.

Changes in County Government

But the great changes which took place in the twelfth and thirteenth centuries, did more than convert the county into a local branch of the central government. They destroyed the more ancient type of that government, which was exercised mainly through a single official.

Decline of the Sheriff

This official was the Sheriff ('shire-reeve'), the representative of royal claims long before the Norman Conquest, but greatly strengthened in power by the increase of those claims which the Conquest brought about. By the middle of the twelfth century, the Sheriff had become a great military, financial, judicial, and police potentate, whose office tended to become, in accordance with feudal ideas, hereditary. Fortunately for the unity of the kingdom, Henry II saw and boldly challenged the growing danger; and from his Inquest, or enquiry into the misdeeds of the sheriffs, in 1170, dates a change which has gradually rendered the office, despite its picturesque trappings, one of little real importance, though of considerable responsibility. Most of the Sheriff's financial duties were taken over by the Exchequer officials (p. 31), who directly collected the growing revenue from Parliamentary taxation. The Great Charter of 1215 forbade the Sheriff to act as a judge in his own county. The institution of the Grand Jury (p. 277) had previously deprived him of his most important duties as Crown prosecutor. It is true, that the institution of Parliamentary elections in the thirteenth century (p. 146) gave him a position as 'returning officer,' which he still partly holds; but this was more than counterbalanced, two centuries later, by the institution of Lord Lieutenants, permanent royal officials at the head of the militia or citizen forces of the county (p. 7),

which had hitherto been led by the Sheriff. To the Sheriff still remain only the execution of the judgments, criminal and civil, of the King's Courts of Justice, the summoning of juries, and the reception of and attendance on the King's Judges on circuit, and a few other miscellaneous duties. Most of these duties, except the purely ceremonial ones, are performed by deputy; but to the Sheriff attaches the unpleasant liability of being personally responsible, unlike an ordinary Government official, for every error of his subordinates. Moreover, the office is compulsory and unpaid; though it is, on the other hand, annual only.

The Coroner

The Coroner is also an ancient county official, though much less ancient than the Sheriff; being, apparently, one of the checks devised at the end of the twelfth century to counteract the power of that personage. As his name implies, he is a royal official; but, by a very curious anomaly, his office early became elective, though it was remunerated by substantial fees; and it is only quite recent legislation that has transferred the appointment of coroners to the County Councils (p. 359). Unlike the office of Sheriff, too, that of the Coroner is, in theory and practice, for life; though he may be removed by the Lord Chancellor or the Court, on conviction of an offence in the performance of his duties. These are, mainly, to hold inquests, or enquiries, by a jury of not less than twelve nor more than twenty-three 'good and lawful men,' in all cases of sudden or unexplained death, and on deaths in prison, a baby farm, or a lunatic asylum, unless certain medical certificates are forthcoming, as well as on 'treasure trove,' *i.e.* valuables believed to have been buried for security, of which the owner is unknown. In the latter case, the property, if the owner still cannot be found, goes to the Crown; while, as we have seen (p. 278), the verdict

of murder or manslaughter found by a coroner's jury against a named person may be made the basis of an indictment.

Justices of the Peace

But the most important of all the county authorities from the fourteenth century to the late nineteenth were the Justices of the Peace, or magistrates, who, as we have also seen (p. 271), were created, soon after the Barons' War, for the purpose of arresting malefactors and sending them before the King's Justices of Assize, and, somewhat later, of themselves hearing and determining felonies and breaches of the peace. Of their work in these capacities we have already spoken (p. 276); but it should be remembered that, very soon after their institution, a large number of administrative duties, such as the fixing of labourers' wages, the settling of disputes between masters and workmen, the enforcement of the apprenticeship laws, the supervision of the Poor Law system (p. 335), the enforcement of the repair of roads and bridges, the issuing of liquor and other licences, the inspection of gaols and lunatic asylums, the preparation of voters' lists, the administration of oaths, even some duties in respect of education, and, above all, the control and management of the county police, began to be imposed upon them. Some of these duties have now disappeared altogether; others have been transferred to the County Councils to be hereafter (p. 359) described. The control of the county police is now in the hands of a Standing Joint Committee, composed of Justices of the Peace and county councillors in equal numbers. Still, the Justices of the Peace have, in addition to their judicial and strictly magisterial duties in Quarter and Petty Sessions, and as examining magistrates, the very responsible duty of issuing and renewing licences, of which the most important are those for the making and sale of intoxicating liquors. New licences granted

for such sales require confirmation by a Licensing Committee annually appointed by Quarter Sessions; and the question of the renewal of any licence which appears to the Licensing Justices to be unnecessary, is referred by them to this Committee, which, if it refuses to renew the licence, has to assess the compensation payable to the parties interested. A striking consequence of the Sex Disqualification (Removal) Act of the year 1919 is, that women are now being appointed Justices of the Peace in large numbers.

Clerk of the Peace

The Clerk of the Peace, another ancient county officer, need not detain us long. He was originally appointed by the Lord Lieutenant, in the latter's capacity of *custos rotulorum*, or guardian of the county records, to take charge of all county documents, but rapidly became the mouthpiece and business man of the Justices of the Peace in their vast and miscellaneous business. At one time, the property of the county was deemed to be legally vested in him; for neither the county itself, nor the Justices of the Peace, were ever a 'corporation' or legal person. But the property of the county has now (with certain unimportant exceptions) been transferred to the County Council; while the appointment of the Clerk of the Peace is vested in the Standing Joint Committee above referred to (p. 357).

Justices' Clerks

Moreover, each Petty Sessional Division of the Justices (p. 276) has its own clerk, who acts as its mouthpiece and recorder for the Petty Sessional Division, and is appointed by them, but paid by the County Council. The Clerk of the Peace may not act as clerk to any Petty Sessional Division in his county; nor may any Justices' Clerk act as Clerk to the

Guardians of any Poor Law Union in which any part of his Petty Sessional Division is situated.

County Councils

So long as the bulk of the administrative business of the county was done by magistrates who held office from, and at the pleasure of, the Crown, the county could hardly be said to be a self-governing institution, in the strict sense. No doubt, in selecting Justices of the Peace for appointment, considerable attention was paid to local claims; and, as a matter of fact, in recent years, no Justice of the Peace has been removed from office, except on grounds of personal delinquency.

But there was a good deal of feeling on the subject of party appointments; and, for that and other reasons, it was determined by Parliament, in the year 1888, to set up a new system of representative county councils, for the administration of county, and especially financial, business. Accordingly there is, for each county in England and Wales,[1] a Council consisting of a number of members fixed by the Ministry of Health, and containing representatives, not only from the rural districts comprised within the county, but also from such of the boroughs as are not what are called 'county boroughs' (pp. 374–375). Owing to the intricacies of electoral law, the right to vote for the election of county councillors was, until recently, somewhat obscure on some points; but the new Reform Act, passed in 1918, has very greatly simplified matters, by giving to every occupant of land of full age within the county, irrespective of sex or marriage, a vote, as well as to the wives, being over thirty, of *resident* occupiers.

County Districts

The constituencies for the councils are either boroughs

[1] Again, as so often, this statement of a general rule must be qualified in detail. There are, as a matter of fact, 64 county councils in England and Wales, though there are only 52 historical counties.

(other than 'county boroughs'), or 'county divisions'; each of which must be subdivided into 'wards' or 'districts,' so as to give one member to each.

County Councillors

Any person who is qualified to be a borough councillor (pp. 367–368) within the county, or who is a peer owning land within the county, or who is registered as a parliamentary elector for the county by an ownership qualification,[1] is qualified to be elected a county councillor; neither marriage nor sex being a bar. County councillors are elected for three years; and all retire together.

County Aldermen

Besides ordinary councillors, however, a county council comprises 'aldermen,' one third in number of the ordinary councillors, and elected by them for a period of six years, but retiring by halves, so that there is an election of aldermen every three years. The council has also a Chairman, elected annually by the whole council. Both chairmen and aldermen may be chosen from inside or outside the council, from any persons qualified to be councillors; but if a councillor is elected an alderman, his seat as an ordinary councillor becomes vacant.

County Officials

The Clerk of the Peace for the county acts, as we have said, as Clerk of the Council; but the County Council has its own Treasurer, as well as its Medical Officers of Health, Public Analysts, and other officials, who are not only excluded from membership of the council (as in the case of other local government officials), but may not sit in Parliament.

[1] This qualification has disappeared since the passing of the new Reform Act, along with the ownership franchise.

Duties of County Councils

The duties of the county councils, like those of the Justices of the Peace whose place they have largely taken,[1] are of a miscellaneous character. They comprise the control and maintenance of the 'main' roads in the county, except so far as these have been handed over to the district councils (p. 347), the prevention of pollution of rivers, the conservancy of fish, the enforcement of the Acts relating to the contagious diseases of animals and the protection of wild birds, the provision of pauper lunatic asylums, court houses, and other official buildings of the county, the safe custody of the numerous records of the county, the preparation and maintenance of the parliamentary and local government electoral registers, and the enforcement of the statutes relating to weights and measures. Under the Education Act of 1902, the County Council is the education authority throughout its county; except for boroughs containing at least 10,000 inhabitants, and urban districts containing at least 20,000. In this capacity, it appoints an Education Committee, as well as enforces attendance and provides school buildings, in manner previously described (p. 263). The County Council has a good deal to do with supervising the work of, and settling disputes (such as boundary questions) between, the smaller local government divisions within its area. Finally, it has heavy and important duties with regard to local finance.

County Finance

For the County Council has not, like most local government authorities, merely to provide for its own financial needs. It has also to provide, to a large

[1] Of course it should not be forgotten that a Justice of the Peace may be, and frequently is, elected as a county councillor.

extent, for the wants of other official bodies. Thus, the education authorities (other than the boroughs and urban districts), the local judicial authorities, *i.e.* the Quarter and Petty Sessions (p. 276), and the police authorities (other than the boroughs having their own separate police forces), all look to the County Council for their expenses. Moreover, a very important branch of the County Council's financial duties consists in the receipt and distribution of the Exchequer Contribution Account, that is, the large sums of money granted by the Imperial Treasury for various specified purposes, such as education, road maintenance, small holdings, and sanatoria. Some of these, notably the large grants for education purposes, police purposes, and in relief of agricultural rates (pp. 352–353), are made by direct subvention; others, such as the proceeds from 'local taxation licences' (p. 220), are collected by the county authorities, and carried (subject to the claims of The Treasury) to their Exchequer Contribution Accounts, which are earmarked for specific purposes. The magnitude of these transactions may be gathered from the fact that, in the year 1912–13, the total sums thus received by the county authorities (including the 'county boroughs') was nearly £22,000,000.

To meet the requirements thus charged on the county councils, beyond the Exchequer grants and the income from the not very large amount of county property vested in the councils, and a small miscellaneous income from fines, fees, and similar casualties, the councils have power to raise money by two chief means, viz. loans for permanent expenditure, and rates for annual outgoings.

County Loans

County loans, which can only be raised with the consent of the Ministry of Health, and must not, without the consent of Parliament, except for small holdings, exceed one-tenth of the rateable value

of the land and buildings within the county, are raised by the issue of 'county stock,' or by debentures or annuities under the Local Loans Acts, or by mortgage; and they must be made repayable by instalments extending over a period of not more than thirty years, though the instalments may be paid into an accumulating or 'sinking' fund.

County Rates

For the purpose of levying rates, the County Council has its own Assessment Committee, which may or may not accept the valuation of the Union Assessment Committee (p. 344); in fact, it usually does not, to avoid jealousies between the different Unions in the county. Having ascertained its probable requirements for the ensuing half-year, the Council directs a 'fair and equal' rate to be assessed on each parish in the county (other than those within 'county boroughs'), and sends a precept to the Guardians of the Union in which such parish is situated, who direct the overseers to levy it along with, and in the same manner as, the poor-rate (p. 344). But considerable complication is caused by the fact that, quite apart from the 'county boroughs' (which are outside the sphere of the county councils' jurisdiction), there are other privileged boroughs, some of which have their own Quarter Sessions and separate police forces, whilst others have separate police forces only; for the parishes in these do not contribute to the Quarter Sessions or police expenses of the county, as the case may be. It is not surprising, therefore, to find that every county council must, at the beginning and in the middle of each financial year, make a systematic survey of its financial resources, prepared by its Finance Committee, and that no payment (except under an Act of Parliament or order of a competent Court) can be made without an order of the council signed by three members of this committee, nor can any liability exceeding

£50 be incurred without an estimate submitted by the committee.

Boroughs

Last, but, from the point of view of self-government, highest in the scheme of English local institutions, comes the borough. We have already seen (p. 27) that, by ways the origin of which is obscure, many towns or 'townships,'[1] or groups of towns or townships, in ancient England had, even before the Norman Conquest, acquired, under the title of 'boroughs,' peculiar franchises or privileges, especially in the matter of self-government, which made them a class apart. The name 'borough,' which means a strong, or fortified place, appears to give us a hint as to the original character of these places[2]; but very early they lost any special military character they may once have had, and became noted chiefly as industrial centres. As such, they (or some of them) were, as we have seen, given special representation in the Parliament of the thirteenth century; and this peculiarity they continued to retain, with disastrous results, as we have also seen (p. 139), both to their parliamentary and their civic character, down to the Reform Act of 1832. Since that date, parliamentary and civic (or municipal) boroughs have become more and more distinct; until they now share little more than the name. The parliamentary borough is regulated by the Representation of the People Acts, and means little more than an urban area sending its own member to Parliament. The municipal borough

[1] It is only a modern fashion which confines the name 'town' to a large centre of population, and contrasts it with a 'village.' For many centuries, 'town' and 'village' were the same thing; and a 'township' was not a little town, but the area of a town or village, or, in legal documents, the inhabitants of a town or village.

[2] Even this derivation does not really help us to distinguish a borough from an ordinary town; because a 'town' or 'tun' was, originally, a stockaded or enclosed space.

is a special area of local self-government, regulated by the Municipal Corporations Acts, and having an elaborate scheme of special local institutions, which we must now briefly describe. It is mostly to be found in the Municipal Corporations Act of 1882, which re-enacted, with considerable amendments, the great Municipal Reform Act of 1835.

The Borough a 'Corporation'

The first great distinction between a borough and a county or other area of local government is, that it is, and has for centuries been, a 'corporation,' or legal person, capable of owning property, bringing actions, being sued, and otherwise acting more or less as an individual; whilst a county and a parish were and are not.[1] This difference, dry and pedantic as it sounds to the layman, is of immense interest, both historical and practical, to the lawyer; for he knows how difficult it was to reach, and how important it was in the growth of independent self-government. For instance, one great reason why a considerable number of boroughs have, notwithstanding the bad period of corruption, contrived to acquire and retain very valuable property for civic purposes, is just because, being 'persons,' they could do so; while the 'men' of the county or parish were a vague, uncertain body, with no rights (though they had liabilities), which could not. Again, county and parish councils can claim no powers except those expressly conferred on them by statute; because they are the creation of modern statutes which define their powers. But many boroughs are very ancient; and it has been decided, that the modern statutes and charters affecting them, though they confer new powers, do not necessarily take away the older ones, acquired by old charters or long usage

[1] County and parish *councils* are corporations; but they are very modern institutions.

('prescription'). Thus, although a county council, like a borough, has by statute power to make by-laws 'for the good rule and government' of its county, it does not by any means follow, that any claim it may put forward to exercise this power, will be judged by the same standard as that applied to a similar claim by an ancient borough. For, though all newly created boroughs have for centuries been created by royal charters, which define their powers, some very ancient boroughs exercise, by custom or 'prescription,' rights for which no express authority can be shown.

The corporation of a borough consists of mayor, aldermen, and burgesses; the last being represented, for almost all purposes of local government, by a council elected by them. In common speech, the mayor, aldermen, and council are spoken of as 'the corporation'; in strict law, they are only the governing body of the corporation.

The Mayor

The mayor is elected annually by the members of the council, not necessarily (though usually) from among themselves, but from persons qualified to be councillors (p. 367). He is not only chairman of the council at all its meetings, but is entitled to precedence in the borough on all occasions of municipal business; except that, although he is, *ex officio*, a Justice of the Peace for the borough during his year of office and the next, he does not take precedence of the stipendiary magistrate (p. 373), if there is one. He may be, and often is, allowed a sum of money out of the borough funds, for the expenses of his office. There is a good deal of ceremony about the office of Mayor, including robes, mace, and other ancient symbols of authority.

Aldermen

The aldermen, one third in number of the ordinary councillors, are elected by them and their fellow alder-

men, for a period of six years; one-half of them retiring every three years. They are members of the council, and require the same qualifications as ordinary councillors; but they do not sit for any particular 'ward,' or electoral division of the borough, though, in some boroughs, it is customary to allot each alderman to a particular ward. Their only special duty appears to be that of acting as 'returning officers' (p. 146) at ward elections; but they take precedence over ordinary councillors, and are sometimes distinguished by a special costume. Like almost all other municipal office-holders, they are re-eligible; but they cannot, as the Mayor can, be compelled to serve. Women are eligible as 'aldermen.'

The Councillors

The borough council is a body consisting of such multiple of three members as may be fixed by the borough charter or Order in Council, elected for three years by the burgesses, from their own ranks,[1] or from persons who have resided for twelve months in the borough, but retiring annually by thirds, so that there is an election each year. They are elected by the 'wards' into which the borough is divided for election purposes; three (or a multiple of three) for each. But no person in Holy Orders, nor the regular minister of a dissenting congregation, nor any person directly or indirectly interested in any contract with the council, nor any bankrupt, nor person recently found guilty of corrupt practices at an election (p. 150), can be elected or sit; even though some of these may act as burgesses. There is no disqualification of sex or marriage; but a councillor must have attained the full legal age of twenty-one. Municipal and all other local government elections are conducted under the provisions of

[1] At least this has been so since the new Representation of the People Act took effect. Formerly a councillor need not have quite all the qualifications of a burgess.

the Ballot Act (p. 147), substantially in the same manner as, and subject to similar restrictions to, parliamentary elections.

The Burgesses

The burgesses are, substantially, the rate-payers of the borough, male or female, of full legal age, and the wives, being of the age of thirty, of resident ratepayers, except aliens or persons under sentence for felony or corrupt practices. In order to exercise their rights, they must be enrolled upon the 'local government register,' which is annually made up by the Town Clerk; and their most important duty is to vote for the election of councillors in the ward for which they are registered. They are, however, as has been said, part of the corporation, and, as such, entitled to take part in town's meetings, and to make representations, and otherwise protest, against any injury to the borough property or privileges. Occasionally also, they must be consulted before the Council commits itself to special expenditure (p. 369).

The Auditors

In addition to its mayor, aldermen, and council, a borough has three auditors, for whom no parallel is found in other local government bodies. One is appointed annually by the mayor, from among the members of the council; the other two are elected by the burgesses as a whole, from persons who are qualified to be, but are not, members of the council, nor acting as Town Clerk or Borough Treasurer. Their duty is to audit half-yearly the accounts of the borough, before they are submitted to the Ministry of Health (p. 254).

Borough Officials

Besides the Auditors, every borough has, as such, a Town Clerk and a Treasurer; and, as an urban

sanitary authority, it has a Medical Officer of Health, an Inspector of Nuisances, a Surveyor, and similar officials (p. 351). But these persons are appointed by the council, and are subject to limitations similar to those affecting county council officials (p. 360); except that they are not legally excluded from sitting in Parliament.

Powers of Council

Fortunately, the numerous powers and duties of a borough council can be largely disposed of by reference to previous descriptions in this book. As an urban sanitary authority, every borough council has the powers and duties of an urban district council, including the making of by-laws (p. 351). As an education authority, the council of every borough of more than 10,000 inhabitants has the same powers and duties as an urban district council whose district contains more than 20,000 (p. 350). It has also special powers, under the *Town Police Clauses Act of 1847, of regulating* traffic, preventing or extinguishing the outbreak of fires, and the licensing and control of hackney carriages, which are exercised by some, though not all, ordinary urban district councils. It may also, with the approval of the burgesses, proceed to act on the provisions of various 'adoptive' Acts of Parliament, in the provision of public libraries, baths and washhouses, and similar public amenities (p. 350). But, beyond all this, it has the general power of making by-laws 'for the good rule and government of the borough'; and, as has been hinted (p. 366), its powers in this respect have received a wide interpretation.

Municipal By-laws

It is well, therefore, to notice that a by-law of this kind, like that made under a similar power by a county council, must be passed at a meeting at which two thirds of the full council are present; and it has no

effect until a copy of it has been affixed to the Town Hall for forty days, and another sent to the Home Office, which, within that time, may disallow it. On the other hand, no by-law made by any other local government authority has any force within a borough.

Enforcement of By-laws

The by-laws of a borough, like all by-laws of local government authorities, are usually enforced by the ordinary police force, whose members of various grades often conduct in person prosecutions for breach of them before the Justices of the Peace in Petty Sessions, in the less important cases; though there is rather a feeling against allowing a police constable to double the part of witness and prosecuting counsel. But, as we shall see in a moment, not every borough has its own police force; many of them are 'policed' by the county, and contribute to the county police rate. Only, it is not generally known, that every borough is bound to keep in reserve a stock of 'special constables,' appointed annually by two Justices, and consisting of as many inhabitants of the borough as may be deemed necessary, and are not exempt from service. They do not, however, act except under the special warrant of a Justice, which must state that, in the maker's opinion, the ordinary police force is insufficient to maintain the peace. These special constables have rendered valuable service during the great war.

Borough Finance

The last important duty, which is incumbent on all boroughs alike, is the provision of funds for the performance of the council's duties, in its dual capacity of municipal and sanitary authority, as well as for the contributions which all except 'county boroughs' have to make to county needs. Some boroughs, as

has been stated, have a good deal of property, derived from ancient sources, the income of which may be, however, earmarked for special purposes. The larger boroughs receive Treasury grants (p. 362) in respect of such services as education and police, usually through the County Council. In addition to its loan-raising powers as a sanitary authority (p. 353), a borough council may also, with the consent of the Ministry of Health, raise loans for strictly defined municipal purposes, such as the purchase of sites for, and the erection of, municipal buildings, and houses for persons of small means.

Borough Rates

But the bulk of the income of an ordinary borough is derived from the borough rate, which is levied by the overseers, on the demand of the borough council, from each parish within the borough, on the basis of the poor-rate (p. 344); unless the council chooses to order an independent valuation. But an appeal lies by any person aggrieved by the incidence of such rate, as in the case of a county rate, to the Quarter Sessions, either of the borough itself, held by the Recorder (p. 373), if it is a 'Quarter Sessions' borough, or to the Quarter Sessions of the county in which the borough is situated. All income received by the borough council, unless earmarked for special purposes, is paid into the borough fund; and no payment thereout, except for regular outgoings, such as salaries or allowances of the Mayor, Recorder, Town Clerk, Stipendiary Magistrate, and other officials, can be made, except upon an order of the council, signed by three members, or of a Court of Quarter or Petty Sessions.

Special Types of Borough

So much for the general features common to all boroughs, of which there are some three hundred and

twenty in England and Wales. We have now to notice the peculiarities of certain groups within this large number, which are apt greatly to puzzle observers; the more especially as these groups are not distinct, but cut into one another, *i.e.* some boroughs have more than one of the peculiarities referred to.

Police Boroughs

As has been hinted recently, some boroughs have their own separate police forces, maintained and controlled independently of the county police force, partly out of the borough rate, partly by Treasury grants (p. 353). No borough with less than 10,000 inhabitants can have a separate police force of ordinary paid constables; and not every borough with more than 10,000 inhabitants has one.[1] Where a borough has such a force, however, it must appoint a Watch Committee of not more than one third of its own members, exclusive of the Mayor; and this committee appoints the Chief and other constables, issues regulations (which must be approved by the Home Office) for their conduct, and, generally, manages the force. Every constable, county or borough, must, however, obey the lawful orders of any Justice of the Peace (borough or county) within the limits of his (the constable's) authority, which are the borough and a radius of seven miles therefrom, and the county of which the borough forms part. A police borough may, by ancient custom, have power to levy a special 'watch rate' on certain specified buildings; but such rate may not exceed eight pence in the pound of the net annual value of the rated premises to a tenant on a repairing lease. Usually, however, the police of a borough are maintained out of the ordinary borough income, supplemented, as has been said, by Treasury grants.

[1] There is even one case (Gloucester) in which a 'county borough' (p. 374) has no separate police force.

Borough Magistrates

Further, a borough may have a separate Commission of the Peace, *i.e.* Justices of the Peace appointed by the King to act in and for the borough; about one hundred and twenty boroughs have such separate commissions. But the mere fact of having such a commission does not exclude the jurisdiction of the county Justices, or exempt the borough from contribution to county rates; unless it is accompanied by the grant of a separate Court of Quarter Sessions (p. 276), the issue of which may be opposed by the county authorities. For the grant of a separate Court of Quarter Sessions will, practically, exempt the borough from the judicial authorities of the county, and, consequently, from contribution to their expenses, and will free the burgesses from service on county Quarter Sessions juries; though it will not, if made since 1888, and, even if made before, not if the borough has less than 10,000 inhabitants, confer on the borough council or Justices the former administrative powers of Quarter Sessions (pp. 357–358), which have now passed to the county councils. And the council of a borough having a separate Quarter Sessions must pay the salaries of a Recorder, who acts as judge in criminal matters and rating appeals, and is appointed by the Crown (p. 277), and a Clerk of the Peace (p. 358) and a Coroner (p. 356) appointed by itself; unless, in the latter case, its population is less than 10,000.

Stipendiary Magistrates

A Stipendiary Magistrate (p. 271) is not strictly a borough official; though he may be appointed by the Crown, on the petition of any borough, to act for a district of which the borough forms part. In such a case, the borough pays his salary; and he takes precedence of all the other Justices of the borough, having generally, as has been said (p. 271), the judicial, but not the

administrative powers, of a Court of Petty Sessions. There are eighteen provincial stipendiary magistrates, mostly for boroughs; as well as twenty-five metropolitan, appointed under different rules (p. 231).

Borough Civil Courts

A borough may, in addition to its magisterial courts, have a court of civil jurisdiction, or 'borough court,' for the trial of cases arising within the borough. Since the establishment of the County Court system (p. 283), these courts have not been favoured by authority; and no new ones are created, while those which survive from ancient times are mostly regulated by modern Acts of Parliament.

Counties of Cities and Towns

A few ancient boroughs are 'counties of cities' or 'counties of towns.' This is a picturesque survival, almost the only visible result of which is the annual appointment of a sheriff (p. 355) by the borough council, to act within the borough. Formerly this class of boroughs had most of the distinctive features of the ancient county system, including special Parliamentary franchises and separate Assizes. But the latter have long ago disappeared; while the former have been abolished by the new Reform Act (p. 143). It may be mentioned, in passing, that there is no legal difference in England or Wales between a 'city' and an ordinary borough, or between a 'Lord Mayor' and a simple mayor. The title of 'city' is ancient tradition; that of 'Lord Mayor' is conferred by message from the Crown.

'County Boroughs'

Very important, however, is the class of 'county boroughs' created by the Local Government Act of 1888; because, in addition to their powers and duties

as municipal boroughs and sanitary districts, they have, with slight exceptions, the administrative powers and duties of county councils, and are, to all intents and purposes, outside their counties for administrative and financial purposes, though, if they are not Assize towns, they will have to contribute to the cost of the county Assizes, and, if they have no Quarter Sessions of their own (p. 373), to the cost of the county Quarter Sessions. But the gift of these powers and duties does not cause any change in the government of the borough, nor does it make it a county of itself (p. 374); though, for obvious convenience, in selecting their first list of county boroughs, the framers of the Local Government Act did not overlook the claims of counties of cities and towns. The chief test, however, is population; and 50,000 is the minimum limit. But there is quite a large number of boroughs with greater population which are not county boroughs.

Finally, before leaving the subject of local government in England, it must be remembered that, being English, it is subject to anomalies and exceptions, which do not fit in with the scheme sketched in this and the preceding chapter. Still, if we make one important reservation, the divergences from plan are less serious in this than in most English institutions. The great exception, however, of the City and County of London is so anomalous, as to necessitate a word of mention; even if, being an unlikely model for imitation, we do not give it the attention it deserves.

London

There are really many 'Londons'; but the only two which are concerned with local self-government are, as has been suggested, the City of London and the County of London. It is difficult to say whether the

former is, legally, within the latter; because for most purposes it is wholly independent of it, and ranks as a county of itself. It does not contribute to the ordinary county rate (p. 363); though it does contribute to the education rate, and send members to the London County Council.

'The City'

The City comprises only a limited area of about one square mile on the north bank of the Thames, in the heart of the metropolitan area. Its boundaries and its government are alike ancient. It is governed by Lord Mayor, Aldermen, and Common Council; the last being annually elected, not by the rate-payers, but by the livery-men of the ancient gilds or 'City Companies,' who are, in theory, the free craftsmen of the city. As a matter of fact, they are persons co-opted by their fellow gilds-men, who thus have the control of the City government in their hands. The aldermen form a separate chamber of the City government, being elected for life by the wards into which the City is divided; and the Lord Mayor, though nominally elected by the Livery, is, almost invariably, the senior alderman who has not 'passed the Chair.' Lord Mayor and Aldermen are alike Justices of the Peace for the City, and sit regularly at the Mansion House and the Guildhall as such. In addition to the ordinary borough officials—the Town Clerk and Treasurer (who is here called the 'Chamberlain'), the Clerk of the Peace, the Medical Officer of Health, the Surveyor, and the Engineer—the City has many other important officials, such as the Recorder and the Common Serjeant, both appointed by the Crown, who exercise criminal jurisdiction in the Central Criminal Court at the 'Old Bailey' (p. 278), the Assistant Judge of the Mayor's Court (p. 289), the Comptroller, the Remembrancer, the City Solicitor, and the 'Secondary'; its chief police officer is called a 'Commissioner'; it has, as a 'county

of a city' (p. 374), two sheriffs, elected by the liverymen from among the aldermen who have not already served as such; and it appoints several important education officials for the various educational institutions (not elementary) maintained by the City. The City's annual income from its permanent property alone, independently of rates, approaches £250,000.

The County of London

The London County Council governs an area of approximately 121 square miles, or, roughly, an area having a radius of about six miles from Charing Cross, on both sides of the Thames, cut out of the counties of Middlesex, Surrey, and Kent. It is, of course, an arbitrary, not an historic area, chosen as the result of the practical needs of the huge and dense population settled round the City centre. Its council, created by the Local Government Act of 1888, consists of a Chairman, one hundred and eighteen councillors, and nineteen ordinary aldermen, elected every three years, in the same manner as an ordinary county council (p. 359); and it has the powers within its area of an ordinary county council, with the striking exception of the maintenance and control of the police, for it is within the orbit of the Metropolitan Police, which is, as previously explained (p. 10), the one police force of the country which is under the direct control of the central government, though it is largely maintained out of local rates. In addition, the London County Council has special powers in the matter of main sewers, which are not exercised by ordinary county councils; and it is the sole authority for public elementary and other education within its area. This authority it exercises through its Education Committee (p. 263), which is, virtually, the old London School Board without a special election. Two of its best known and most important activities are

the re-arrangement of the medieval streets of London to suit the needs and tastes of modern times, and the provision and maintenance of the London tramways. The magnitude of its operations may be guessed from the fact that, in normal years, its expenditure amounts to upwards of £12,000,000.

The Metropolitan Boroughs

Within the area of the London County Council, and in some sense under its jurisdiction, are the twenty-eight Metropolitan Boroughs, which correspond to the urban sanitary districts of ordinary counties. Some of them, such as Westminster, Kensington, and Southwark, are old municipal boroughs with long histories; the majority are ancient parishes, which, owing to an enormous increase in population in the late eighteenth and nineteenth centuries, acquired a special form of government, known as a 'select vestry,' either by custom or under the provisions of an Act of Parliament of the year 1831, known as 'Hobhouse's Act.'

'Select Vestries'

The powers of these 'select vestries' were not, however, always exercised with vigour or discretion; and much of the government of London outside the City was transferred to another representative body, the Metropolitan Board of Works, created in 1855. This step naturally tended to the further disparagement of vestry government; and, when the powers and duties of the Metropolitan Board of Works were themselves transferred to the London County Council in 1888, it was widely assumed that the parochial government of the 'inner suburbs' (for, by that time, 'London beyond the border' had become a very obvious fact) would disappear. But politics ruled otherwise; and, in the year 1899, the vestries of London were raised to the dignity of borough

councils, with mayor, aldermen, and councillors, though rather on the model of county than of ordinary borough government. Thus, for example, the councillors retire all together every three years, instead of by thirds (p. 367); and the disqualification of Holy Orders does not apply to the metropolitan borough councils.

Their Duties

The metropolitan boroughs are sanitary districts, with most of the powers of ordinary urban councils (pp. 337–351); though their duties in this respect are shared in a rather special way by the London County Council. They had also 'distress committees' under the Unemployed Workmen Act of 1905 (p. 351); while the County Council sent members to the 'central body' for London established under that Act. The metropolitan borough councils also assess and levy rates, much as ordinary urban councils (p. 352). But they are not education authorities under the Education Act of 1902; for, by the London Education Act of 1903, the duties of the old London School Board were, as has been said (p. 377), transferred to the London County Council.

London Poor Relief: The Metropolitan Asylums Board

The heavy duties connected with the relief of the poor in the metropolitan area are confided to Guardians elected by the rate-payers of the various metropolitan Unions in the same way, and having the same powers, as other Guardians (pp. 340–342); with the exception that, instead of maintaining their own or county asylums, they send representatives to a central Metropolitan Asylums Board, which contains also nominees of the Ministry of Health, and which undertakes, besides the provision and maintenance of asylums, the provision of some hospitals for special classes of diseases.

The Metropolitan Water Board

The metropolitan borough councils send representatives also, as do the Common Council, the London County Council, and the councils of certain areas adjacent to London, to the Metropolitan Water Board, an independent body created in 1902 to take over the water supply of 'Outer London' from the various private companies then engaged in providing it. This body assesses and collects, within statutory limits, its own rates.

Scotland: County Councils

In spite of the great differences which at one time existed between England and the other countries of the United Kingdom, the schemes of local government in Scotland and Ireland have recently shown a marked tendency to approximate to the English. In the former country, county councils, thirty-three in number, much on the lines which have been described (p. 359),[1] were introduced to take over the powers of the older Commissioners of Supply or county committees of landowners, and the various bodies of Road Trustees. In the matter of police, which has been a regular county force since 1857, the Commissioners of Supply are still associated with the county councils in joint committees, which have also important powers in the matter of finance; while, as has been remarked (p. 298), the granting and renewal of liquor licences is still in the hands of the Justices of the Peace. But the Scottish county councils have large powers in the matters of contagious diseases of animals, public health, weights and measures, and lunatic asylums.

[1] An interesting variation is, that the representatives of the smaller burghs which are included in the county administration are not elected directly to the county council, but by and from the burgh councils.

School Boards

The only unit of local government between the county and the parish in Scotland appears to be the school district, formed under the provisions of the Scottish Education Act of 1872; and this is hardly an exception, for, under that Act, the school district is either a parish or a borough. But the district is still a distinct part of the scheme of local government in Scotland; for each school district elects its own school board for educational purposes, as a distinct body from the burgh or parish council, and the electors are not necessarily the same in both cases.

Parish Councils

By the provisions of a recent statute, the Parish Councils Act of 1894, parish councils are also instituted in all Scottish parishes, 'landward' (rural) and 'burghal' (urban), to take over the duties of the old parochial boards, which were formed in the middle of the nineteenth century to replace, in the matter of poor-relief, the somewhat limited activities of the kirk sessions (p. 326). The subject of poor-relief is, however, much less onerous in Scotland than in England, owing to the fact that it is, so far as the State is concerned, confined to the impotent poor, and takes largely the form of 'out-door relief' (pp. 341–342). The difference in the policies adopted by the two countries in this important matter at the Reformation is striking, and has persisted ever since.

Burghs

In theory there are four, in substance two, classes of urban municipalities in Scotland, viz. (i) royal and parliamentary burghs and (ii) police burghs. The former are governed by elected provosts and 'bailies,' or councillors, having extensive powers, which include

minor criminal jurisdiction; but the municipal franchise in Scotland, in spite of its modification (at least as regards men) by the provisions of the recent Representation of the People Act (p. 367 n.), appears at present to be much more restricted than the English, and not to include all the burgesses of the burgh. Many of the royal and parliamentary burghs have separate Commissions of the Peace (p. 373). The police burghs, as their name implies, have more restricted powers, being governed by elected Commissioners, chiefly concerned with police matters. These powers are elaborately defined by a great Act of Parliament of the year 1892; and, in fact, they include a considerable number of matters of public health and convenience, such as lighting, paving, and sanitation. Formerly the royal and parliamentary boroughs alone sent delegates to the annual Convention of Royal Burghs; but now all burghs have that privilege.

Ireland

In Ireland there are no parish councils; and the modern English system of county government was not introduced there until 1898. In that year, however, elective county councils were established, to take over the administrative duties of the old Grand Juries, including the important subject of the county 'cess,' or rate. But the counties are subdivided into urban and rural health districts, which share with the county councils the administration of the laws affecting public health. An interesting section of the Irish County Councils Act contemplates the ultimate decision of disputes arising out of the exercise of a county council's road-making or road-widening powers, by a Judicial Committee of the Irish Privy Council. The subject of poor relief is handled in Ireland, much as in England, by Boards of Guardians, consisting, in rural districts of the district councillors, and, in urban

districts, of specially elected Guardians. There are a few borough corporations in the older and more important towns, and a larger number of unincorporated towns under Town Improvement Commissioners.

Colonial and Indian Local Government

The subject of local government in the colonies and British India, sufficiently vast and complicated in itself, is rendered additionally difficult of treatment by the facts, that information with regard to it is not easily accessible in this country, and that many of its most familiar terms have, obviously, meanings in the countries of their adoption different from those attributed to them in England. Consequently, only a few general indications of its character can be attempted.

The Self-governing Dominions

It appears to be generally true, that no systematic effort to constitute, or re-constitute, the parochial system has yet been made, at any rate in the self-governing Dominions. This is hardly a matter for surprise; for the new territories of the self-governing Dominions were, for the most part, peopled long after the ancient parochial system of the United Kingdom had fallen into decay, and the thinly scattered colonists, bred in an individualist system, felt no desire to revive the rural community of the Middle Ages. It is remarkable, however, that, in the French-speaking portions of the Empire, *e.g.* the Channel Islands and the Province of Quebec, and, apparently, in Ontario, the parish, or *commune*, has survived tenaciously, and shows no signs of extinction. Whether this fact is due to the intense feudalism of Old France, or is an evidence of strong popular resistance to that feudalism, is a problem too difficult to be handled here. It is part of the larger and still unsettled question: whether

feudal influences created, or, on the other hand, tended to destroy, the ancient village community.

Sanitary Districts

Similarly, it may be said, that the rather artificial midway unit between the parish and the county, known in England as the 'district,' or 'sanitary district,' shows little tendency at present to reproduce itself in the Dominions. The nearest approaches to it are, perhaps, the 'ridings' into which the shires of New South Wales, and the 'town' and 'road' districts into which the counties of New Zealand, are, or may be, divided; but the parallel is not close, for the sanitary districts of England are not, in origin, subdivisions of counties. They are, rather, units based on the presumed requirements of public health administration in a densely populated country; and, apart from the great towns, population in the self-governing Dominions is, as yet, hardly dense enough to need them.

Counties

On the other hand, the institution known as the county, shire, or even 'district' (in the larger sense),[1] *i.e.* the self-governing area of large size, running into hundreds of square miles, is a familiar object in Dominion local government. In almost all cases, it began life as a 'road district,' and, in the case of Western Australia, it retains that title; though, in this particular case, we can see the older unit on its way to the fuller developement of a 'county' or 'shire,' in the fact that, in some of the more thickly populated 'road districts,' there are, in addition to the district councils, local boards for sanitation and other health purposes. The 'divisional councils' of Cape Colony, the 'rural municipalities' of the prairie provinces of Canada

[1] Thus, the 'districts' of British Columbia and South Australia are, obviously, what would in England be called counties.

(Manitoba, Saskatchewan, and Alberta), and the 'municipal districts' of Tasmania, are, apparently, in a similar transition stage. We may say, perhaps, without much fear of hasty generalization, that this large unit is, in the self-governing Dominions, the product of a desire to improve the means of locomotion and public health. But we must note, that its powers are considerably less than those of the county in England; because the systems of police, public elementary education, water-supply, liquor licences, and other important matters, are more completely in the hands of the central governments in the self-governing Dominions than is the case in England.

County Councils

Naturally, in countries like the self-governing Dominions, the principle of elected representative councils is almost universal in the shires and counties. Here, again, we notice a striking exception in the cases of Quebec and Ontario, where the county council consists of the 'mayors' or 'reeves' of the parishes, or village *communes*, who are, however, themselves elected by the inhabitants of the parish. In other cases, the county councils are directly elected, usually on a rate-paying franchise, for different 'wards' or 'parishes' which are merely electoral areas. Each council, as a rule, elects an annual 'chairman,' 'warden,' or (in Quebec) 'prefect'; but in Saskatchewan there is a popularly elected 'reeve' as chairman of the council. Nearly all, if not all, of these county councils have power to make by-laws, subject to the approval of a central authority; but, in Saskatchewan and Alberta, any by-law involving the expenditure of funds must be referred to the electors for confirmation.

Urban Municipalities

It is again one of the characteristics of the self-governing Dominions, that urban self-government, the

highest and latest type in England, should have developed there more rapidly than rural self-government. For good or for ill, the self-governing Dominions are remarkable for the number of their great cities and towns. Thus, in Canada, there are fourteen at least with over 20,000 inhabitants each; and three sevenths of the entire population are classed as 'urban.' In Australia, the two great cities of Sydney and Melbourne have each upwards of half a million inhabitants; the former containing three eighths, and the latter more than one half, of the entire population of its State. In South Africa, there were, in 1911, twelve cities with over 12,000 inhabitants each; and the City of Johannesburg holds nearly one-seventh of the entire population (European and native) of the Transvaal. It is not surprising, therefore, to find that 'incorporation' (p. 365), which is one of the most decided marks of advanced self-government, has made great strides in the self-governing Dominions. In the province of Nova Scotia alone, though it has but half a million inhabitants, there are thirty-eight incorporated towns; while there are one hundred and eighty-six in New South Wales, and in Manitoba every city, town, village, and rural municipality is incorporated.

Uniform Councils

The type of government in the urban municipalities as a rule follows pretty closely the English reformed model previously described (pp. 366–368); but, apparently there is in the Dominion municipal councils no process of double election such as that which produces the English 'aldermen.'[1] On the other hand, the process of retiring the councillors by rotation, so as to avoid a completely 'general' election, is, apparently, gaining ground; notably in South Africa, where it prevails in all the four provinces of the Cape Colony, the Transvaal,

[1] The 'aldermen' of Ontario and New South Wales are, apparently, equivalent to the ordinary councillors in England.

the Orange Free State, and Natal. It is to be noticed, however, that, in the two latter cases, the full term of office is only two years; the councillors retiring by halves. To the self-governing Dominions also belongs the merit of giving a legal significance to the distinction between 'cities' and ordinary corporate towns, which, in England, is merely ceremonial. In Victoria, the distinction is based on revenue; in Ontario and Saskatchewan, on population. But in all these cases it involves a difference of powers.

The Cumulative Vote

One feature of peculiar interest in connection with the urban organization of South Africa, is, that it recognizes the cumulative vote (*i.e.* the right of a single voter to give more than one vote for a candidate), based on the ownership of land. In the Cape Colony this apparently reactionary rule prevails. On the other hand, the Orange Free State allows the municipal franchise to all resident householders. Another point of considerable interest is the fact, that the American system of having paid Commissioners, or experts, for urban administration, has gained a footing in Saskatchewan and Alberta; while the 'cities' of Ontario may have special Boards of Control for finance.

India and Egypt

In the countries which, before passing under British control, had old-established civilizations of their own, the problem of local self-government has, naturally, worn a different aspect. There the problem has not been to build up a local system out of the wilderness, but to adapt to modern uses the ancient institutions of the country. In a way, this problem may be said to resemble the English problem; for, even in England, effective local government is very modern, though it is based on ancient institutions which had almost become

extinct. Perhaps that is one reason why British statesmen have, on the whole, been so successful in adapting ancient institutions in other countries.

Indian Village Institutions

Thus, for example, recent researches into the history of administration in British India[1] reveal clearly two things. The first is, that there survived, down to the establishment of British rule, though almost obliterated by the countless waves of conquest which had passed over India, a vast network of local and self-governing institutions, of almost immemorial antiquity. Most of these were connected with the village, or agricultural community, which, though its character varies from province to province, and even from district to district, still shows a general similarity which seems to mark it as an almost necessary stage in the evolution of progressive communities.[2] The village institutions of native India comprise not only a great number of village officials, rendering sanitary, police, educational, and even judicial services, but even, widely spread throughout the country, a rudimentary village council of elders (*panchayat*), chosen by the oldest known form of election, viz. the casting of lots, to discuss the affairs of the village.

Fostered by British Administrators

In the face of this evidence, it is almost impossible to doubt the existence, in some form, of similar institutions in early England; for the later stages of English

[1] These researches have been conveniently summarized in a recently published work entitled, *Village Government in British India*, by John Matthai (Unwin, 1915).

[2] Nothing is more interesting in this connection than a comparative study of such primitive police regulations as those contained in the English Statute of Winchester of 1285, with the description given by Mountstuart Elphinstone of the duties of the village watch in the Maratha country.

developement are also manifest in India. But it is more to our immediate purpose to note the existence of a second fact which appears from the recently collected evidence, viz. the anxiety shown by the British rulers of India, for upwards of a century, to foster and revive these ancient self-governing institutions. These attempts, usually made by Provincial Regulations (p. 91), have not always been successful; and it is clear that official views on the policy which they illustrate have not been unanimous. But it is also clear that, long before Sir Henry Maine, in his brilliant essays, had called attention to village survivals in India, more than one Indian administrator had made an earnest attempt to incorporate native institutions into the fabric of government. But the proverbial difficulty of putting new wine into old bottles nowhere more completely manifests itself than in such a task. Take, for example, the village watchman. So long as he remains a purely native institution, appointed (or, at least, accepted) by the community as part of itself, and paid by a share of the village produce, he is a powerful agency in maintaining order. The moment he becomes a Government official, his position changes, not always for the better. Doors which before were open to him, are now closed; he is hedged around by formalities; he may degenerate into a spy, or, quite unjustly, acquire the reputation of being one.

Lord Ripon's Reforms

Obviously, therefore, the systematic reforms introduced for British India generally by Lord Ripon's Government in 1882, were an experiment of the most delicate character. They did not profess to deal with the smaller units, but confined themselves mainly to establishing self-governing institutions in the larger areas, which, owing to the variety of races in India, were less well-provided with native institutions.

Thus the District Councils, more than two hundred in number, formed to assist the District Magistrates, and the seven hundred municipalities of British India, have, as compared with the ancient institutions of the village, a somewhat artificial air.

Recent Announcements

Still, the facts that they exist and do a certain amount of work, is a step gained; and it is tolerably clear from the recent pronouncements of the Imperial authorities, especially the formal resolutions of the Government of India issued in May, 1915, and the still more recent statements in the Imperial Parliament and by the Viceroy in India, that the policy of Lord Ripon's Government will, in the near future, be extended to the humbler sphere of village institutions. The resolutions of 1915 very wisely determined to leave the actual introduction of reforms to the Provincial Legislative Councils (p. 91), and deprecated the setting up of uniform and compulsory systems; for variety is of the essence of successful local institutions.

Egyptian Developements

The policy thus adopted in British India has also been recently developed under British auspices in Egypt, where Mohammedan *mudirias*, or provinces, subdivided into districts, and again into villages, have been made the basis of a scheme of self-government, beginning with the subject of education, and where there are already thirteen urban municipalities. At any rate, enough has been done in this direction to show, that the often expressed British policy of governing alien races so as to enable them ultimately to govern themselves, is no mere empty theory.

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