THE CONSTITUTION OF ENGLAND FROM QUEEN VICTORIA TO GEORGE VI

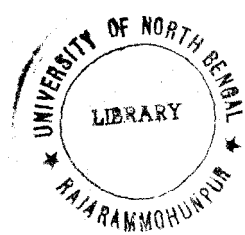
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VOL. I



MACMILLAN AND CO., LIMITED
ST. MARTIN'S STREET, LONDON
1940

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STOCK TAKING - 2011

ST - VERF

24654
29 AUG 1968

PRINTED IN GREAT BRITAIN
BY R. & R. CLARK, LIMITED, EDINBURGH

In Memoriam

MARGARET STOBIE KEITH

AND

MARGARET BALFOUR KEITH

PREFACE

THE foundation of the modern constitution of England was laid when the Reform Act of 1832 created for the first time an electorate which could not be controlled by the King and the oligarchy, by whose co-operation the destinies of the country hitherto had been guided. In 1841 the young Queen had to part with Lord Melbourne, in whom her confidence was undiminished, because the new electorate had declined to share her sympathy. For a generation thereafter control of the Government rested with the House of Commons, for electors deferred to the views of their members and trusted their discretion. The extension of the franchise, ironically enough by a Conservative leader, led to the development of the party system, until now the Prime Minister looks to the electors rather than to the Commons as the basis of his power, and can alone on foreign territory negotiate and conclude a treaty determining the fate of Czechoslovakia with full assurance that his sovereign and the Commons will homologate his action.

Changes so great in the relative position of the Crown, the Commons, and the electors render the constitutional history of England of special interest. It is the aim of this book to give an account of the constitution as it stands to-day, based on the history of its evolution since the accession of Queen Victoria. Hence those matters have been stressed which are of essential interest as leading

to the present state of affairs, and the problems of the immediate future have been fully discussed, for the main value of the study of constitutional history is the guidance which can be derived thence for dealing with emergent circumstances. I have dealt fully with the doctrines of the rule of law and the rights of the subject, because they are undoubtedly threatened on the one side by Fascist, and on the other by Communist, and even certain types of Socialist, ideals. I have also discussed the issues of delegation of legislative and judicial powers to the executive, but without finding therein ground for belief in the advent of a " New Despotism ". The danger to the State, if any, from Civil servants lies rather in their power to influence ministers, and to secure Cabinet endorsement of unwise legislative projects, than in the exercise of delegated functions, which are indispensable for the working of Government under modern social conditions.

In criticising the actions of ministries I have assumed as the essential characteristics of English democracy certain principles : the duty of the Cabinet to conduct the government of the country in accordance with the mandate for which they asked at the general election to which they owe their power ; the obligation of the Cabinet to impart to the electorate such knowledge of issues of defence and foreign policy as will enable it to give a wise judgment on issues submitted ; the paramount importance of the maintenance of national defence ; the necessity of the effective maintenance of the law, and of the extension by legislation, if need be, of the liberty of the subject and his capacity for self-development; and, last not least, in international affairs absolute loyalty to treaty obligations and firm refusal to take any part in the destruction of liberty for other peoples.

The omission of any treatment of local government is deliberate. In part it is due to the fact that space forbade more than a summary of authorities and powers, the value of which seems to me doubtful, but in part it is motived by the slightness of the impact of local government authorities on the essential interests of the subject, as compared with the central control of foreign affairs, defence, finance, and social amelioration. The apathy of local government electors may be regretted, but it is largely the outcome of the quite justifiable conviction that the limits set for local initiative are such that nothing vitally harmful to their welfare can be accomplished, even if the control of the machinery passes, as in London, into the hands of persons opposed to them in political opinion.

Of matters which have taken place since this book was printed, that of prime importance is the visit of the King and the Queen to Canada and the amazing quality of their welcome by the peoples of Canada, whatever their racial origin. If the King found Parliament not ready for prorogation, it proved possible for him to give in person assent to the vital measure to put in operation the trade agreement between the Dominion and the United States, which, like that between the United Kingdom and the States, aims at lowering unnatural barriers to the free movement of trade, and at strengthening the bonds between the two greatest of democracies at a time when democracy has suffered the severest set-back in Europe. The attendance of Mr. Mackenzie King on the sovereign during his brief and most successful visit to the United States was a significant assertion of Imperial unity and the power of each unit on occasion to represent the whole. The episode must unquestionably add greatly to the weight of the views

of the sovereign in relation to the conduct of the affairs of the United Kingdom, and may well serve to restore to the throne the prestige acquired under George V.

It is interesting to note that during the royal tour the counsellors of state to act for the King as authorised by the Regency Act, 1937, included the Queen, though her absence along with her husband rendered the inclusion ineffective. The letter describing Parliamentary affairs, though no longer written by the Prime Minister or the Home Secretary, continued to be sent to the King by the Vice-Chamberlain of the Household.

Members of the Commons by a free vote have provided by the House of Commons Members Fund Act, 1939, for a system under which members of at least ten years' service may, if need be, receive small allowances, up to £150 a year (£75 for a widow), while orphan children under age sixteen may also be aided. The fund is to be derived from deductions of £12 a year from all members' salaries, and no burden will fall on public funds. This is clearly desirable, as it was unfortunate that both ministers and members in 1937 added substantially to the public burdens by increase of remuneration, without the slightest shadow of a mandate from the electorate.

The Limitation Act, 1939, diminishes the prerogative right of the Crown to recover land by reducing the period of limitation for recovery of land to thirty years (sixty years still applying to the foreshore), and increases the possibility of remedy against public authorities by extending to one year the period within which an action can be brought. What is not less important is the fact that the period will run only from the time when the claimant ceased to be under a disability, and disability includes

unsoundness of mind, which is defined to extend to detention under any provision of the Mental Deficiency Acts, 1913 to 1938.

A certain amount of disorganisation in Cabinet control of the ministry was revealed on July 24 when the Prime Minister had to explain away rumours that an effort had been made to secure a settlement of differences with Germany on the basis of a large pecuniary contribution (£1,000,000,000 loan) to aid German economics, and a condominium in Africa. The suggestion, rejected naturally as impossible by Germany, was not authorised by the Cabinet nor did it represent governmental policy, but was the idea of Mr. Hudson, Secretary of the Overseas Trade Department, who had earlier shown some inclination to act independently. It appears that what the Prime Minister disapproved was not the conversation with Dr. Wohltat, a German economic expert visiting London on such issues, but the fact that the proposal was revealed to the press. It is, however, patent that leakage in such cases is inevitable, and it is not surprising if in Poland the report of the interview, added to difficulties in arranging a cash loan for armaments, caused fear, shared by the Liberal and Labour parties in Britain, that the policy of appeasement might at any time be renewed. Colour was lent to this belief by the accord reached at Tokio [1] regarding relations between Britain and Japan, which was regarded in Japan, Germany, and Italy as a diplomatic defeat of first-rate importance for Britain, and even in the United States was treated as marking the beginning

[1] Announced in Commons, July 24; severely criticised in Chungking, July 25. What it means is obscure, and the British position is not inevitably compromised.

of the renunciation of the former commanding position of Britain in the Far East. The Chinese Government made it clear that it expected Britain to remain faithful to the Nine-power Treaty regarding the integrity of China and the open door. The terms of the new accord are ambiguous, but they certainly ignore British obligations under the League Covenant, and appear in spirit to contravene the treaty in question. But it must be remembered that the United States had failed [1] to give Britain any effective support in maintaining the principle of the open door in China. On the other hand, it is clearly improper to afford Japan the rights of a belligerent power when, by refusing to declare war, she enjoys the advantages in the United States of escaping the operation of the neutrality legislation.

A certain amount of dissatisfaction has been manifested recently in respect of Civil Service organisation as the outcome of the necessity felt by the Prime Minister to go outside the Treasury for a suitable Permanent Secretary, and the passing over of the staffs of the Colonial Office, and all other offices, and Colonial Governors in replacing the permanent Under-Secretary of the Colonial Office,[2] and the sudden transfer of the Under-Secretary, Air Ministry, to the Imports Advisory Committee. It must be remembered that the freedom to allocate positions to the staff of any great business undertaking is strange to the Civil Service, and whatever may be gained in freshness

[1] On July 27 the denunciation of the treaty of 1911 with Japan by the United States was announced. It was welcomed in China as indicating American determination not to be deprived of her rights in China and as encouraging a firmer attitude in Britain.

[2] Transferred to the Dominions Office, in defiance of the original argument for separating the offices, that a Crown Colony mind was not fit to deal with Dominion affairs.

of outlook by introducing an outsider may be lost in the disappointment of legitimate ambitions, and the resulting temptation to regard the Civil Service not as a career offering full satisfaction, but as a mere stepping-stone to posts outside it, a view which in the long run must work serious injury to the State.

Defence requirements have necessitated Parliamentary amendment of the limits set by the Army and Air Force (Annual) Act, 1939, to the strength of the regular army and air force. The cost of defence, it was notified early in July, must be increased by £40,000,000 for the army, £20,000,000 for the air force, and £30,000,000 for Civil defence, and a further increase of £20,000,000, making a total of £750,000,000 was announced on July 27, rendering the borrowing in the year of some £500,000,000 inevitable, and a very large increase of the National Debt of £8,163,000,000 on April 1939. The Reserve and Auxiliary Forces Act, 1939, was put in operation to add 12,000 officers and men to the navy for August, and the increased importance of the army reserve was marked by the decision of the King to confer on it the title Royal Army Reserve. Very large subsidies over a five-year period for the strengthening of the mercantile marine were voted in July, the allocation of aid to liner traffic injured by foreign subsidised competition has necessitated the creation of an important advisory committee to aid the Board of Trade.

A constitutional innovation, bitterly condemned by the Labour party, curtailed by four days the minimum of twenty days allocated by the Standing Orders of the Commons for discussions in supply. The step was prompted in part by the desire to allow the Commons to be adjourned on August 4, subject to the usual provision

for early recall if need be. That a general election should follow the completion of the governmental programme of legislation would be normal; it is certainly undesirable on constitutional grounds that the electorate should not be given an early opportunity to homologate the complete change in governmental policy since March 17. Though as usual by-elections[1] since then have been far from conclusive, and the decline in some cases of the numbers voting has been disturbing as an indication of unjustified apathy, the results of North Cornwall, where a marked increase of the Liberal majority followed on a contest based on the policy of the Prime Minister, and a serious fall in the majority for the Conservatives at Hythe in the vacancy caused by the regretted death of Sir P. Sassoon, indicate a certain lack of confidence in a ministry from which Mr. Churchill and Mr. Eden, among Conservatives, are excluded, and which contains no representative of Labour or the Liberal party. It is naturally suggested that, as a National ministry would be desirable in war, it might be well to seek to avoid war by the added weight to British influence in Europe which would be secured if a ministry less one-sided could be brought about. Anxiety regarding the danger lest, when Parliament was not sitting, erroneous decisions should be taken, resulted in suggestions for occasional meetings of the Commons in the vacation and its drastic curtailment, but without securing any accord from the Prime Minister.[2]

The best argument for curtailment of supply discussions, paralleled in the Great War, was the need of passing the

[1] In 76 contests since 1935, 16 have been lost to Labour, 4 to Independents.

[2] Cf. Mr. Greenwood and Sir A. Sinclair, House of Commons, July 27, 1939.

Prevention of Violence (Temporary Provisions) Act against "acts of violence designed to influence public opinion or Government policy with respect to Irish affairs". The Secretary of State — normally the Home Secretary though as usual the duty may be performed by any Secretary of State — may make an expulsion order against any person in Great Britain not being a person who is and has been throughout the last preceding twenty years ordinarily resident in Great Britain, if he is satisfied that he is concerned in the preparation or instigation of such acts of violence or is harbouring any other person so concerned; he may also prohibit the entry of any person in analogous circumstances, while he may order any person whomsoever suspected of being concerned in such acts or of harbouring persons concerned to register with and report to the police. Punishment on indictment or summary conviction is provided against persons who remain in Great Britain when forbidden to do so, or enter it against prohibition orders, or disregard registration regulations. The powers are drastic, but they have excuse in the fact that warnings against plotters often come from persons whom they have terrorised into co-operation, and who would be liable to murder if their identity was revealed by Court proceedings. No imprisonment without judicial trial is provided for, but, should Eire refuse to accept back deported nationals, internment on suspicion might become necessary, though in peace-time that is open to grave objection. As a safeguard against unfair expulsion or prohibition of entry, any person may protest, and the Home Secretary will probably refer the protest to an independent person, without power to decide but with authority to make full investigation and to report to the Secretary of State who

will then decide. The issue of warrants to search suspected persons and premises, and to take possession of evidence found, is permitted to magistrates; in case of great emergency a superintendent or higher officer of police may authorise search without warrant, reporting his action to the Secretary of State.

The measure is for two years only, a necessary concession to public feeling, and it is to the credit of the Government and the Commons alike that, though the murder of Dr. Campbell, of Edinburgh University, a man distinguished alike by attainments and character, was reported during the discussion of the Bill in the Commons on July 26, resentment at so shameful a crime did not lead to any fundamental alteration in the Bill. But it was decided in view of police representations to authorise not merely as originally proposed arrest without warrant of any person against whom a prohibition or expulsion order had been made, but also any person whom a police constable might suspect of being concerned in the preparation or instigation of acts of violence. This drastic power is intended to allow time to consider whether an expulsion or prohibition order should be made, and, to lessen its dangerous extent, it is made clear that a maximum period of seven days' detention is allowed. When the terms of the Act are compared with the powers exercised in foreign States or in Eire under the new Offences against the State legislation, the regard for liberty is doubtless creditable, but the inroad on British tradition is still severe.

One point is clearly indefensible. The Act gives the power of expulsion or prohibition as against any British subject, though born in Great Britain, if for the last

preceding twenty years he has not been ordinarily resident in Great Britain, including therefore those who have in the service of the Government or in trade or other pursuits been abroad during the years in question. Now the British Government has rightly stood out for the principle that a country ought to accept responsibility for all its nationals therein born, should not expel them to become a danger or burden to other countries, and should accept them back if sent from other countries. The Act, however, ignores absolutely this principle and must deprive the British Government of any right to urge it on foreign countries. The natural explanation of the error is that the measure was passed as an emergency one, and it would still be possible to adjust matters by the simple method of a statement in Parliament that the Act will be read as subject to the British Government's principle that it claims no right to prohibit the entry of, or to expel, any person who is a British subject by reason of birth in Great Britain, and who still retains British nationality. Unless this is done, the claim of the Home Secretary that Britain expects that foreign countries and Eire will take back persons who originated therein cannot be regarded as cogent.

The reference to "Government policy" in the new Act is interesting as it stresses the fact that the ministry which decides policy is the Government.[1] This corrects the decision of the High Court of Calcutta in *The Emperor* v. *Hemendra Prosad Ghosh and Sashi Bhusan Dutt*, on June 7, 1939, which ruled that the Council of Ministers were not covered by the penalisation of certain forms of

[1] The same use is found in the Trade Disputes and Trade Unions Act, 1927, s. 1.

attack on the Government by Section 124A of the Indian Penal Code, on the ground that they did not constitute part of the executive, which the term "Government" in the Code is defined to mean (Section 17). But under Section 49 (1) of the Government of India Act, 1935, the executive government is vested not only in the Governor for the King but also in subordinate officers, and despite the denial of the Court that ministers who are advisers can be deemed subordinate officers, their position is patently analogous to that of the Cabinet, who indeed advise authoritatively the King but are in law his confidential servants.

The extent of the authority which local authorities can exercise in defence against air raids is illustrated by the important decision[1] in *Att.-Gen.* v. *Finsbury Borough Council*; *Martin, Ex parte*, which was an effort to prevent the Council securing protection for some 8000 people by securing the construction of a deep shelter through an agreement with a company. The Council had held worthless the scheme of portable steel shelters proposed by the Lord Privy Seal, but its own plan of deep shelters had been rejected by the minister as entitled to contribution to the cost under the Air-Raid Precautions Act, 1937. The attempt failed, the Court finding that the actions of the Council fell within its general powers to lease a clearance area, on which the shelter will be constructed, and to pay out of revenue a certain amount to recoup the cost of construction by the company. It is in fact clear that, if the ministry regards such schemes as definitely dangerous, they should be prohibited by legislation.

By Order in Council gazetted on July 14 the Army

[1] *The Times*, July 29, 1939; 55 T.L.R. 1078.

Council is reconstituted, the Secretary of State to be responsible to His Majesty and Parliament for all its business. The Parliamentary Under-Secretary is responsible to his chief for War Department lands and such other business as is assigned to him: there are three military members, Chief of the Imperial General Staff, Adjutant-General, and Quartermaster-General, responsible for organisation, disposition, personnel, armament, and maintenance; the Financial Secretary is responsible for finance, and the Director-General of the Territorial Army for business affecting Territorial Army Associations; the Permanent Under-Secretary is a member and Secretary of the Council, responsible for preparation of official communications and the interior economy of the War Office, and as Accounting Officer for control of expenditure and for advising his chief and the administrative officers in the War Office and in commands on all questions of army expenditure. The slight change in composition reflects the situation due to the creation of a Ministry of Supply.

As regards the question of privilege of Parliament and the Official Secrets Acts, it should be recorded that the House of Lords has also expressed the view that the privileges of its members are not affected by these enactments. On July 25 the Committee of Privileges ruled in favour of the right of Lord Sinha to take his seat in the Lords. The matter had been delayed by the difficulty of proof of qualification, monogamic marriage not being the normal rule in Hinduism. The decision rests on the fact that the first Lord Sinha was a member of a sect which required monogamy of its members, and his marriage was in fact monogamous. The position regarding succession to a polygamous peer was left absolutely open, and will

have to be decided if the question ever arises. But it may be pointed out that in the case of the desire to confer a peerage in such a case it would be easy to provide a special remainder to cover the next in succession.

The increase this year of Secret Service money to £700,000 indicates the danger from espionage, and may be supported by the singular failure of British representatives in Spain to supply information of the vast extent, now officially revealed by Germany and Italy, of their part in the destruction of the Republican Government. But it must be remembered that the fund is not under normal control, and it may be doubted whether so large an amount should be left in the same position as the virtually nominal sums which in the Victorian epoch could be regarded as immune from any possibility of misuse.

The difficulty of controlling expenditure in time of war danger is proved to the hilt by the report issued on July 27 of the Select Committee on Estimates.[1] It stresses overpayments made to aircraft and aero-engine contractors, urges that revised terms should, in view of the prolonged delay in revision, be made retrospective, criticises Home Office extravagance in placing sand-bag contracts in Dundee, over-lavish expenditure on agricultural education, and unduly high administrative costs for the National Fitness scheme. The Machine Tool Trades Association has continued, as reported in 1938, to be obstructive as to facilities for the investigation of costs, and the Committee regards such action as deplorable, and approves the provision in the Ministry of Supply Act to empower the minister to examine costs. Waste of money is clearly

[1] *H.C. Pap.* 145, 1939.

unpatriotic, especially at a time when increase of old-age pensions has to be deprecated for lack of funds.[1] The weight, however, on the Government of rank-and-file opinion is seen in the partial surrender of the Prime Minister on July 27 to their representations as to the necessity of modifying in view of the general election his originally negative attitude to the issue of an increase.

If war takes place there will be made operative under new legislation changes in the places of holding courts, and other judicial matters; wide powers such as those given to the Lord Chancellor in this sphere are also accorded to the Archbishops under the Clergy (National Emergency Precautions) Measure, approved by Parliament, as regards provisions for spiritual ordinances in war-time and for pecuniary arrangements therewith connected, so as to ensure that clergy given extra duties are duly remunerated.

The necessity of constant vigilance to maintain in proper and useful bounds the authority of ministers is illustrated by the decision of the Court of Appeal[2] on July 6. A local authority had made, and the Minister of Health had confirmed, an order for the compulsory purchase of an area of land, including part of a property consisting of a country-house and land adjoining. It was objected that the area fell under the category "park", and that the compulsory taking of part of a park was forbidden by the Housing Act, 1936 (Section 75). But

[1] In *Barnes* v. *Hely-Hutchinson*, 55 T.L.R. 1073, the House of Lords overruled the Court of Appeal's decision in favour of an income-tax payer. But the Crown had to pay the costs, the Court of Appeal having imposed this condition on giving leave. Yet that Court was patently in error.

[2] *Ripon (Highfield) Housing Confirmation Order, 1938, In re; White and Collins* v. *Minister of Health*, 55 T.L.R. 956.

the High Court ruled that, as a public local enquiry had duly been held at which evidence had been given that the land was let for grazing, and as the minister had confirmed the order, the Court could not reopen the issue. The Court of Appeal reversed this finding, on the ground that the minister was not given power to confirm an order which affected part of a park, and that the Court must consider evidence properly tendered and itself decide whether or not the land affected fell under that description, which it might well do, for letting for grazing was a normal procedure in respect of parks.

The Court of Appeal [1] has also ruled in a case, which involved the interests of the Crown in right of the Duchy of Lancaster, that the courts should be careful not to overrule a decision [2] which is not manifestly erroneous or mischievous, if it has stood unchallenged for some time and has presumably affected the conduct of a considerable element of the community in the matter of property rights. The claim, which on this basis was disallowed, was the audacious one of letting down the surface during mining operations without compensating those whose property was thereby affected. A judgment of the High Court [3] elucidates the application of the patently sound principle [4] that the courts are reluctant to allow a Private Act, subsequent in date, to derogate from the provisions of a Public Act, unless such derogation is made perfectly clear.

The vexed issue of privilege in regard to slander has

[1] *Newcastle-under-Lyme Corpn.* v. *Wolstanton, Ltd., and Att.-Gen. for the Duchy of Lancaster*, 55 T.L.R. 965.

[2] *Hilton* v. *Lord Granville* (1844), 5 Q.B. 701.

[3] *The Millie*, 55 T.L.R. 972.

[4] *Great Northern, Piccadilly and Brompton Ry. Co.* v. *Att.-Gen.*, [1909] A.C. 1, at p. 6, *per* Lord Loreburn.

been elucidated in *White* v. *J. and F. Stone Lighting & Radio Ltd.*,[1] which makes it clear that privilege attaches only to communications to third parties, who are properly interested in the communication, and not to communication to the person slandered, so that, if words are spoken while terminating employment which may impute dishonesty and they are heard by another employee, no privilege attaches. On the other hand, it may be noted that the position of a member of Parliament is such that a communication [2] to him from a constituent complaining of acts of local officials may be deemed *prima facie* privileged.

In Imperial affairs the constitution of a strategic reserve in the Middle East has been facilitated by the removal of troops to Egypt from India, but the situation in Palestine has deteriorated owing to the systematic illegal immigration of Jews, which has been condoned by the Jewish Agency and energetically defended by prominent members of the Jewish community. This defiance of the law has compelled cessation of immigration under official auspices for six months, and its resumption must depend on the success secured in preventing this immigration. The determination of the Jewish community to ignore the generosity of the British people and to defy the British Government, has been properly deprecated by the Colonial Secretary ; [3] it presents unquestionably the best justification yet found for the German view of Jews

[1] 55 T.L.R. 949, following *Adam* v. *Ward*, [1919] A.C. 309, 334 *per* Lord Atkinson.

[2] *R.* v. *Rule*, [1937] 2 K.B. 375.

[3] House of Commons, July 20, 1939. Liberal and Labour attacks, aided by Conservatives, ignore the fundamental injustice of placing Arabs under Jewish domination ; the moral injury to British prestige of a policy of forcible suppression of liberty cannot be exaggerated.

as unworthy to be citizens, and it menaces the Arabs with destruction in their own land, and gives their resistance more clearly the character of national self-protection against the most grave injustice. It also raises for the adjacent Arab territories the question whether in self-defence they must not combine to prevent the creation of a militant Jewish State marked by bitter hostility to their continued enjoyment of independence. While Arab terrorism has rapidly diminished, a Jewish National Military Organisation has been established, which, through its secret broadcasting stations, has made known its responsibility for the campaign of outrage and murder which has been waged since the announcement of British policy.[1] Such action casts the utmost doubt on the wisdom of creating in Palestine facilities for the development of a movement which treats assassination as compatible with its religious principles, and it imposes on the British Government an obligation to suppress it, in which so far it has clearly failed. It is possible that better results in colonial policy may result from the creation of a Parliamentary Committee to keep in constant touch with the Colonial Office, and the experiment should throw some light on the much-debated question of the general principle of attaching such Committees to all the great departments of State, as a means of affording suitable scope for private members' abilities and of furthering harmony between the departments and the representatives of the people.

I owe sincere thanks to Messrs. Macmillan for undertaking the publication of the work, to Messrs. R. & R. Clark of this city for their care in production, to my sister, Mrs. Frank Dewar, for suggesting it and her interest in its

[1] *The Times*, July 28, p. 13.

progress, and to my Secretary, Miss Patricia Ambrose, for much help. For the opinions expressed I am solely responsible: such value as they possess is due to the fact that they are not influenced by any party connections and are formed with that freedom from deference to authority which the tradition of the Universities of Scotland accords to those who enjoy the advantage of working therein.

A. BERRIEDALE KEITH

THE UNIVERSITY OF EDINBURGH
July 29, 1939

POSTSCRIPT

The Anglo-French negotiations with the Soviet Government for a defensive pact against German aggression failed, partly through Polish reluctance to allow Russian forces to enter Polish territory, and on August 21 a pact of non-aggression between Russia and Germany was announced, the terms of which exclude Russian aid to Poland in case of German aggression. This led rapidly to an unprovoked attack by Germany on Poland on September 1, followed on September 3 by the entry of Britain and France into the war on the refusal of Germany to withdraw the invading forces and to take part in a conference. The Dominion of Canada, the Commonwealth of Australia, and New Zealand accepted the British attitude as fully justified and as placing them in a state of war with Germany, but Eire declared the intention of remaining neutral, despite the grave legal difficulties arising from the fact that Irish nationals are in large measure also British subjects. In the Union of South Africa, General Hertzog proposed to

remain at peace with Germany while fulfilling the Union obligations regarding the defence of Simonstown, a position legally novel, but presumably motived by suggestions from the German minister that as a return for neutrality Germany would leave South West Africa in Union hands, taking other African territory in lieu. General Smuts succeeded in defeating this proposal by 80 to 67 votes in favour of a policy of severing relations with Germany but refraining from any despatch of forces overseas. The Governor-General refused, in the absence of a Cabinet majority, to give General Hertzog a dissolution, and commissioned General Smuts, his former political chief, to form a government, while the Nationalists in the United party entered into arrangements to join the Nationalists in opposition who, of course, favour not merely neutrality but secession and the domination of the Afrikaans-speaking people over the English-speaking elements as well as over all the non-European elements of the population. The action of the British Government covers, of course, all dependent territories, including the mandated areas and the Kingdom of Tonga, while Egypt under the treaty of alliance broke off diplomatic relations with Germany at once.

In Britain the creation of a War Cabinet was immediately announced, but it differed in certain important points from that of 1916. The Labour party decided to refuse membership for the time being, holding that independent support of the policy of the ministry was to be preferred, while the Liberal Opposition was, it appears, not offered a seat in the War Cabinet but only a ministerial office. The ministry, however, though Conservative or National, was strengthened by the acceptance by Mr. Churchill of the First Lordship of the Admiralty, and he with the Secretaries

of State for War and Air, and the Minister for Co-ordination of Defence, were given seats in the War Cabinet, thus avoiding one of the serious blunders in the War Cabinet of the Great War. The suggestion that Lord Chatfield alone should have sat in the Cabinet was clearly indefensible, and would have been deeply resented by the Commons. The other members of the Cabinet are the Chancellor of the Exchequer, who will relieve the Prime Minister of much of the work of speaking in the Commons, the Foreign Secretary, the Lord Privy Seal, Sir S. Hoare having taken over that office in lieu of the Home Office, and as minister without portfolio Lord Hankey, the former Secretary to the Cabinet. Mr. Eden has been made Dominions Secretary with assurance of special access to the War Cabinet in order to act as liaison officer with the Dominions; the Home Secretary is also Minister of Home Security, including the functions exercised by him as Lord Privy Seal, and the Minister of Labour is also Minister of National Service, while the Chancellor of the Duchy of Lancaster adds to his existing function in respect of the co-ordination of defence the duties of Minister of Food. Two new ministries appear, the Ministers of Information and of Economic Warfare, power to create new ministries, with Parliamentary Secretaries, being given by the Ministers of the Crown (Emergency Appointments) Act. The reduction of the Cabinet to a War Cabinet creates an anomalous position for those ministers who, like the President of the Council, obtain increased emoluments if in the Cabinet.

By the House of Commons (Service in His Majesty's Forces) Act, service in any capacity in the forces does not interfere with the right to stand for Parliament.

The Military Training Act, 1939, ceases to operate under the National Service (Armed Forces) Act, which provides for compulsory service from age 18 to age 41. The liability is imposed on those persons between the ages prescribed when a proclamation calling up special classes is issued, and exemptions follow the lines of the earlier Act, with the addition of men in holy orders or regular ministers of any denomination, a change necessitated by the higher age contemplated; it was made clear in the Commons that youths of 18 and 19 would not be among the first to be taken. There are provisions, as in the earlier Act, for exemption for conscientious reasons, and for postponement in case of hardship, while those, whose claim to be registered as conscientious objectors is rejected, may, if sentenced by court-martial, claim a hearing by an appeal tribunal on the score that the sentence is due to an offence based on conscientious objections. The Act, it will be seen, does not differentiate in principle between married or unmarried, and it is left to the Government to decide as it thinks fit what men shall be temporarily or permanently exempted from service in order to carry out work of national importance. Important changes in the rules of service in the defence forces are authorised by the Armed Forces (Conditions of Service) Act, and the prolongation of the services of the military and air forces and the royal marines is provided for in the Military and Air Forces (Prolongation of Service) Act, 1939 and in the Royal Marines Act, 1939 respectively; like provision already existed for naval personnel. All the army forces now form a single British Army, incorporating the Territorial Army as a unit. The Minister of Pensions is given by the Pensions (Navy, Army, Air Force, and Mercantile Marine)

Act the powers of the service departments as to pensions for soldiers, sailors, and airmen injured and for the dependants of those killed, while like powers are given as regards members of the mercantile marine, the pilotage, and lightship services.

The safety of the realm is provided for by the Emergency Powers (Defence) Act, which gives the widest authority to the King in Council to make defence regulations deemed necessary or expedient for securing, public safety, the defence of the realm, the maintenance of public order, and the efficient prosecution of any war, and for maintaining supplies and services essential to the life of the community. Power to delegate such authority is given, and the only control over the making of Orders is the possibility of annulment by resolution of either House passed within twenty-eight days after the laying of the Order before it. An affirmative Order was ruled to involve too much delay. The Act gives a wider power than was ruled to be given by the Defence of the Realm Act; the Treasury may impose charges in connection with any scheme of control under defence regulations, *e.g.* of food, and such Treasury orders must be validated within twenty-eight days by the passing of a Commons resolution. The power may be exercised of interning suspects without trial, though the ministry promised, as in the Great War, facilities for representations to be made by internees. The Act limits the powers given only by forbidding military, naval, or air force, compulsory service or any form of industrial compulsion, or the making provision for trial by court-martial of persons other than those subject to the Naval Discipline Act, to military law, or to the Air Force Act. Otherwise a defence regulation or any order,

rule, or by-law duly made thereunder may vary the terms of an Act or regulation thereunder other than the new Act itself. The territorial extension of the Act is carefully defined, and power is given to apply it to the Isle of Man, the Channel Islands, Newfoundland, any colony, any protectorate, any mandated territory, and, to the extent of such jurisdiction, any foreign country in which the King has jurisdiction. As usual the position of the Dominions and of India, Burma, and Southern Rhodesia is duly safeguarded. The Act only lasts for a year, unless extended by the King in Council on addresses by each House of Parliament. This emphasises the temporary nature of such grave inroads on the liberty of the subject. There is indeed no doubt that the multitude of regulations issued under the Act imposes a severe limitation of the rule of liberty and offers much room for oppression and unfairness by subordinates through whom the Act must be administered. How long it will be acquiesced in must depend on many circumstances, including the fortunes of the royal forces and the view taken with the passage of time of the moral justification of the war. Large inroads are naturally made on the right to property, the most far-reaching powers over finance in its various forms, commerce, and industry being taken under the Act, but the ministry is little likely to strain this form of exercise of paramount power. Inevitably a censorship of communications for oversea countries has been inaugurated, while effective propaganda is the affair of the Minister of Information, whose use of the torpedoing of the s.s. *Athenia* was marked by strict insistence on fact as the most useful means of persuasion.

It has been found desirable to enact a Trading with

the Enemy Act to supplement and modify the common law on the lines of the legislation of the Great War. As regards the treatment of aliens who become by reason of the war enemy aliens, promises have been made to treat as friendly many Austrian and German refugees, while Czecho-Slovakians are not recognised as enemy aliens at all. It is to be noted that the unfortunate British decision to recognise the *de facto* situation in Bohemia and Moravia by applying for an *exequatur* for a consul general was frustrated by the German refusal to accept mere *de facto* recognition of the protectorate ; it has now lapsed. Certain States, of course, such as France and the United States, have never recognised at all the destruction of the Czech State, and Poland has authorised the raising of Czecho-Slovak legions to serve as part of the Polish forces against Germany.

The wise use of man-power explains the National Registration Act, which will result in the issue of identity cards to all, police and certain other authorities being empowered to demand their production, and the Control of Employment Act to allow of due regulation of employment in the public interest, as opposed to unrestrained competition for workers by rival firms, a frequent feature in the Great War, but which should cease if proper steps are taken to prevent the profiteering which disgraced the country and generated so much social bitterness. Generous powers are given to regulate import, export, and customs matters, and the consultation of the Import Duties Advisory Committee is now waived. A Prize Act applies the law of prize to aircraft and goods carried therein, and provides generally power to set up prize courts in protectorates, mandated territories, and places where the

Crown has jurisdiction in prize. As from the Admiralty Division and Colonial Courts the final appeal is to the Privy Council. The Ships and Aircraft (Transfer Restriction) Act requires the consent of the Board of Trade or Secretary of State for transfer of British ships or aircraft.

The Compensation (Defence) Act provides for the assessment of compensation for the taking possession of or doing work on land, and the requisition of vessels, vehicles, aircraft, and other goods. There are a Shipping Claims Tribunal of three persons, and a General Claims Tribunal of seven members, including judges of England, Scotland, and Northern Ireland.

The Currency (Defence) Act removes restrictions on the amount and use of the Exchange Equalisation Account; under it £280,000,000 in gold has been transferred from the Issue Department of the Bank of England to that account. Relations of landlord and tenant are vitally affected by the Rent and Mortgage Interest Restrictions Act, the Landlord and Tenant (War Damage) Act, the Housing (Emergency Powers) Act, and the Essential Buildings and Plant (Repair of War Damage) Act. Great powers of legislation are given to the Minister of Labour by the Unemployment Insurance (Emergency Powers) Act and the Unemployment Assistance (Emergency Powers) Act.

Power to transfer sittings of the courts and to make other arrangements are given by the Administration of Justice (Emergency Provisions) Act, passed before the outbreak of war, and the Courts (Emergency Powers) Act confers certain powers in respect of the normal remedies available in respect of non-payment of money and the non-performance of obligations.

In an important case regarding four Chinese found in

the British concession at Tientsin, and claimed by the Japanese authorities controlling the Chinese Court in the Chinese area, on the ground that they were guilty of crimes, abortive efforts were made to obtain their release on *habeas corpus*, including an application to a judge of King's Bench. It was ruled on August 23 by Cassels, J., that there was no precedent for action in the case of aliens on foreign territory in which the Crown exercised jurisdiction only over British subjects, the rule being that Chinese accused of crimes committed outside the concession should be handed over to the Chinese authorities. The Chinese Government protested on the ground that handing over to a Chinese Court outwith Japanese control should be arranged, but this strong appeal was ignored. It must be added that the blockade of the concession and maltreatment of British subjects adopted by the Japanese forces to compel Britain to aid Japan in the destruction of the legitimate Chinese Government was indefensible under international law. Since the outbreak of war Japan, while resenting the Russo-German pact, remains ready to exert pressure at discretion to further her conquest of China, which, however, is menaced by the possibility of Russian or United States hostility.

Enormous demands on finance are preluded by a vote of £500,000,000 in addition to sums already granted. The relaxation of control is provided for by the Exchequer and Audit Departments (Temporary Provisions) Act, which authorises the making of issues and transfers from the Consolidated fund of the United Kingdom without the grant of credits by the Comptroller and Auditor-General, and suspends the necessity of his counter-signature to warrants for the issue of Treasury bills.

An innovation is provided by the creation of Regional Controllers who will represent locally the central government and exercise authority on its behalf in the event of communications being suspended. They remain eligible, though salaried, for membership of the Commons.

The great political parties have arranged a truce in by-elections; prolongation of the life of Parliament is contemplated; its constitutionality must depend on public acceptance. Russian intervention and the partition of Poland render its complete restoration impossible, but its new government in France is recognised by the United States. Any peace offer will be submitted to Parliament. The necessity of keeping it in session is shown by its forcing withdrawal of the fish distribution scheme, restoration to the service departments of their press functions from the costly and incompetent Ministry of Information, and curtailment of the extravagant air defence expenditure, inexcusable when income tax has been raised to 7s. 6d. a pound. It remains for the Commons to prevent profiteering, already rampant, and the making of war fortunes; to secure the due consultation of Labour in industrial matters, the proper functioning of the B.B.C., and the formulation of practicable war aims to win over neutral and German opinion; to preserve freedom of criticism of governmental acts and home propaganda; and to assure that British liberty is not destroyed under the plea of restoring to Poland a liberty which she has not always wisely used.

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PART I

THE CONSTITUTION

CHAPTER I

THE BASES OF THE CONSTITUTION

1. *Common and Statute Law*

THE constitution under which Queen Victoria ascended the throne had received its essential legal foundation at the revolution which deprived James II of the Crown and excluded his luckless son from the succession. The Bill of Rights, 1689, proved the supreme authority of Parliament as represented by the two houses. They had met under a summons legally without value, for it did not emanate from the King, and had assumed the right to declare the throne vacant, and to constitute a new sovereignty. With the assent of William III to accept the terms offered, the Convention legislated to declare itself a Parliament,[1] and, as a Parliament, it fixed the succession and curtailed what had been amiss in the actions of the deposed sovereign.[2] Its action ended once and for all the possibility of seriously maintaining the doctrine that the authority or prerogative of the King was superior to the law. That doctrine was bound up with the claim that the sovereign reigned by divine right. Had not Parliament sought to bar the Scottish King from his hereditary right to the throne, and yet James VI of Scotland had added England to his realm? If Charles I had fallen a victim to revolutionary violence, Charles II had resumed triumphantly the exercise of royal power. The judges of James II had shown themselves

[1] 1 Will. & Mary c. 1.

[2] 1 Will. & Mary, sess. 2, c. 2.

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ready to admit prerogative claims as superior to the common law. They had asserted the validity of the dispensing power,[1] and admitted the right of the Crown to suspend the operation of statutes made by the Crown in Parliament.[2] The Court of High Commission had been permitted to function in defiance of statute, and large numbers of troops had been maintained without due Parliamentary authority. Even judicial approval of raising money without the assent of Parliament might be anticipated, while freedom of speech and the right to petition Crown and Parliament were in jeopardy. With the Bill of Rights remedy was accorded for all these issues, and what was vital, the authority of Parliament to limit and define the prerogative was established. It now became impossible for the courts to treat prerogative claims as beyond their power to question. The prerogative became a normal part of the common law, and the courts fell under the obligation of examining all claims of power thereunder, as matters to be dealt with on the analogy of every other claim of common law right by any person or body of persons alleged.

The field of prerogative remained wide, and covered very much of the working constitution. Parliament was by no means anxious to intervene in the executive side of Government, and in 1837 legislation on matters of Government machinery was in the main confined to the succession to the throne as declared in the Act of Settlement, 1701; to the enactments of 1707[3] and 1800[4] carrying out the accords achieved between the Governments and Parliaments of England and Scotland, and between those of Great Britain and Ireland, for the union of these countries;

[1] *Godden* v. *Hales* (1686), 11 St. Tr. 1166; *Thomas* v. *Sorrell* (1674), Vaugh. 330.

[2] Cf. the attempt of Charles II to declare indulgence; *Parl. Hist.* iv. 526, 561; 25 Car. II. c. 2.

[3] 6 Anne c. 11.

[4] 39 & 40 Geo. III. c. 67.

and to measures dealing with the electorate, qualifications of members of Parliament, representation of areas in the Commons, and electoral matters. The activities of Parliament had hardly touched the great offices of State; the Treasury, the Admiralty, the Secretariat, the Lord Chancellor, and others conducted their work in large measure under prerogative authority. The relations of the two houses of Parliament were wholly undefined, so far as Parliamentary enactment was concerned, but the crisis of the Reform Bill had shown that the prerogative right to appoint peers gave the Crown the power to bring pressure on the upper chamber which availed to compel it to accommodate its attitude on the issue of reform to that demanded by popular opinion.

Though the wide issues had been decided before 1837, there remained much that was obscure in the extent of the prerogative, and the process of elucidation has been continuous, though far from exhausting all the questions which may arise. It was obvious that statute could limit prerogative; but what of cases where statute did not purport to limit, but merely dealt with matters in respect of which prerogative might exist? The difficulty of the issue may be seen from the diametrically opposite views which were taken by Mr. Disraeli[1] and Mr. Gladstone[2] on the character of the action of George III in the proclamation of 1801[3] by which he assumed the style of King of the United Kingdom of Great Britain and Ireland and abandoned the claim to be King of France. Mr. Disraeli insisted that his action was an exercise of prerogative; his great rival maintained that it was an exercise of statutory authority given by the Act of 1800 for the union of Great Britain and Ireland. It is curious to find that Lord Haldane more than half a

[1] 227 *Hansard*, 3 s. 1747. [2] *Ibid.* 1733 f.
[3] S.R. & O. Rev. I. Arms, Ensigns, etc., p. 1.

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century later could still speak of the change of style effected under the Royal and Parliamentary Titles Act, 1927, as a prerogative act.

But it was not until 1920 that the House of Lords[1] was compelled to give judgment on the issue of the exact relation of prerogative and statute. The issue there raised arose out of the claim of the Government under the prerogative to take possession of hotel premises for military purposes, and to deny legal liability to pay, though compensation *ex gratia* was not precluded. The Attorney-General contended for the Crown that, where a prerogative right existed and statutory power also existed — in that case under the Defence Act, 1842 — it was a matter for the discretion of the Crown to decide which power to use. If the prerogative gave wider authority, it might be resorted to; if statute was more convenient, it might be applied. The House of Lords declined to accept this doctrine, though in addition it is clear that they were not impressed by the contention that the prerogative extended further than the taking possession of premises, subject to an obligation to pay for their use. Lord Atkinson, while disliking the suggestion that the prerogative could be said to be "merged" in the statute, held that, if the King in Parliament gave authority to do a thing in a specific manner, it must be held that the statute "abridges the royal prerogative while it is in force to this extent: that the Crown can only do the particular thing under and in accordance with the statutory provisions, and that its prerogative power to do that thing is in abeyance". Lord Dunedin held that, by assenting to an Act dealing with a matter which could be dealt with by prerogative, and permitting action but subject to conditions, the Crown must be deemed to accept the curtailment of the prerogative. Lord Parmoor held that the

[1] *De Keyser's Royal Hotel Case*, [1920] A.C. 508.

passing of a statute implied that the conditions on action which it laid down were intended to be obeyed, and that the prerogative so far as inconsistent with this intention could not be enforced. Lord Sumner held that the Defence Acts had superseded the prerogative. Valuable as the case is, it is clear that much remains to be settled, and that it is necessary in each case which may arise to scrutinise carefully both the extent of the prerogative claimed and the presumable effect on its exercise of legislation, which may cover the same subject matter. In some cases there can be little doubt. The Regency Act, 1937,[1] incidentally must be deemed to deprive the Crown of its power, as exercised by George V in 1928, to select at its discretion persons to act for it during illness or absence, and to confine royal action within the limits therein set out.

Where statute does not intervene, definition of prerogative rests with the courts, which here as always in declaring the content of the common law exercise a quasi-legislative function. To declare a rule of law is no doubt not an arbitrary action, and the courts are influenced by considerations of custom, and of analogy with established rules of law. In constitutional issues such declarations have in the past century been of special importance in the field of the prerogative in foreign affairs of the Crown. The right to make treaties appertains solely to the Crown, but the courts have asserted the vital principle that such treaties do not avail to alter the law of the land.[2] They differ thus entirely from treaties under the Constitution of the United States, which become part of the law of the land and can override existing statute law,[3] and it is in entire accord with English use that the Constitution of Eire

[1] 1 Edw. VIII. & 1 Geo. VI. c. 16.

[2] Cf. *Walker* v. *Baird*, [1892] A.C. 491.

[3] *Cook* v. *United States* (1933), 288 U.S. 102.

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asserts the right of the legislature to decide whether treaties can be given validity as part of the internal law. On the other hand the House of Lords [1] has insisted that the recognition or non-recognition of foreign Governments *de facto* or *de jure* is entirely a matter for the royal prerogative, though the legal effects thence ensuing are decided by the courts. It has again been laid down that the Crown may not by prerogative alter International Law, though the Crown in Parliament may thus act.[2]

It follows from the rules of the courts that changes in the constitution by use of the prerogative are illegal, for the prerogative is something fixed, whose exact content the courts may have to define but which no royal order can extend. It falls, therefore, to Parliament alone to alter the law of the constitution.

2. *The Sovereignty of Parliament and the Flexibility of the Constitution*

By 1837 Parliament had established itself, as we have seen, as absolutely sovereign, not subject to control of any superior authority. For the purposes of the jurisdiction of the courts the rule is that they must give effect to whatever is laid down by statute. They may properly have regard in their interpretation, as will be shown later,[3] to principles of international law; they may assume that normally the statutes are intended to be limited in application to territories under British sovereignty or protection, and to persons who are resident therein, or, if they have extra-territorial application, that the persons affected thereby must be understood to be British subjects or persons under

[1] *Govt. of Republic of Spain* v. *s.s. Arantzazu Mendi* (1939), 55 T.L.R. 454.
[2] *The Zamora*, [1916] 2 A.C. 77.
[3] See Chap. XXII *post.*

British protection, who for that reason owe a duty of obedience. But they cannot refuse to give effect, so far as the authority of the court allows, to legislation which transcends these limits. They must content themselves with indicating the difficulty which may arise and leaving it to the executive to secure a remedy. Again, the courts will endeavour to interpret legislation in conformity with the rules of common sense and natural justice, but they will not disregard the wording of statutes even if by carelessness Parliament has enacted rules which are unworkable.

From the complete legal authority of Parliament there flows the flexibility of the constitution. We owe to Sir F. Bacon[1] the classical expression of the principle and the example of the vain effort of Henry VIII to establish for the benefit of his young son a rule enabling him to obtain freedom from legislation passed during minority, which was defeated by the repeal of his Act by the new sovereign in his first Parliament. The issue, however, arose during Queen Victoria's reign as regards both of the Acts of Union. The more striking case was that of the disestablishment of the Church of Ireland. By the Act of Union, 1800, the preservation of the United Church of England and Ireland thereby created was made a fundamental part of the union. Yet Queen Victoria found no difficulty on this score in accepting the Irish Church Act, 1869, whereby the union was dissolved and the bishops of Ireland were excluded from membership of the House of Lords. Nor was it unimportant that the Queen accepted alterations of what the Union with Scotland Act, 1707, had declared unalterable, the position of the Universities and the obligation of the professors therein to subscribe to the confession of faith prescribed by a Scots Act given abiding force by the Union

[1] *Works* (ed. 1861), vi. 159 f.

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Act.[1] A very much more serious breach had been accepted by Queen Anne [2] when the system of patronage had been reintroduced by statute into the Church of Scotland, to result ultimately in the secession of 1843 which was healed only in 1929, though the *fons et origo mali* had been with general satisfaction repealed in 1874.[3]

The validity of the new legislation has never been questioned in the courts, and instead the incapacity of the legislature to bind its successors has been effectively declared. In the Acquisition of Land (Assessment of Compensation) Act, 1919, an attempt was made to provide a set of rules regarding the manner in which compensation should be assessed which was to operate in all future cases. When, however, it was claimed in *Ellen Street Estates, Ltd.* v. *Minister of Health* [4] that these rules must be adhered to, the Court of Appeal had no difficulty in laying it down that the legislature was unable to bind itself as to subsequent legislation, even to the extent of laying it down that in no subsequent Act dealing with the same subject matter should there be a repeal of an earlier statutory provision by implication, and that in fact the Housing Act, 1925, contained provisions which must be deemed an implicit repeal of the Act of 1919. In complete harmony with this view is the fact that even of the Statute of Westminster, 1931, which contains the most solemn affirmation of the status of the Dominions, the Privy Council could say: [5] "The Imperial Parliament could, as a matter of abstract law, repeal or disregard Section 4 of the Statute. But that is theory and has no relation to realities."

It is not then possible for Parliament to limit its action

[1] See now 22 & 23 Geo. V. c. 26, s. 5; 16 & 17 Vict. c. 89, s. 1.

[2] 10 Anne c. 21.

[3] 37 & 38 Vict. c. 82.

[4] [1934] 1 K.B. 590; *Vauxhall Estates, Ltd.* v. *Liverpool Corporation*, [1932] 1 K.B. 733.

[5] *British Coal Corpn.* v. *R.*, [1935] A.C. 500, at p. 520.

in a manner which could be enforced by the courts. If, for instance, during the period from 1782 when the Irish Parliament was recognised as free from British supremacy Britain had legislated for Ireland, it is clear that the courts must have ruled that legislation valid, so far as Britain was concerned. Parliament might no doubt extinguish itself or alter its component elements, so that the two houses ceased to exist. But, until it does so, the King with the two houses must remain in possession of plenary power. It is significant that the effort made by the Irish Free State to secure that the Statute of Westminster, 1931, should take the form of a renunciation of legislative power on the model of 1783 was rejected by the British Government, and not asked for by the other members of the Imperial Conference of 1930. The mode of limitation preferred then was a declaration[1] formally enacted of the interpretation of British Acts under which they shall be deemed to apply to the Dominions only if it is stated in the Act itself that the Dominion has requested and assented to the enactment of the measure. That the British Parliament respects the rule rests not on legal power but on convention. In the case of Northern Ireland, the fullest legal power to regulate affairs therein is reserved by the Government of Ireland Act, 1920, but in practice the right of Northern Ireland to manage her own affairs within the sphere assigned by the constitution is fully recognised by the fact that, when dealing with these topics, the Imperial Parliament enacts specifically that the legislation does not apply to Northern Ireland.

There are, it may be admitted, dangers in the power of constitutional change on the widest basis by simple Act of Parliament. Prior to the passing of the Parliament Act, 1911, the existence of the House of Lords interposed a stout

[1] 22 & 23 Geo. V. c. 4, s. 4. Cf. Keith, *The Dominions as Sovereign States*, p. 87.

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barrier against any advanced legislation, but the power to override that house given by the Act opens up prospects of revolutionary change. The alteration of the position has raised the issue of the duty and right of the Crown to intervene as guardian of the constitution to the extent of securing that no change be made save on a definite popular mandate. This issue will be later discussed.

3. *The Conventions of the Constitution*

Though in 1837 the terms " conventions of the constitution " had not attained regular currency, the thing meant thereby was in effective operation, and had been so in essence since the revolution. The Stuarts had shown that the existence of an executive independent of Parliament, and dependent on the royal pleasure, was inconsistent with a Parliament which had emerged from the stage when, as under the Tudors, it was mainly an instrument of the King. The revolution was accepted as entailing the necessity of the sovereign having as his ministers those who could maintain good and cordial relations with the Commons, so that royal policy might not be thwarted by conflict with the body on which he must depend for the provision of the funds necessary for the carrying on of any new policy. The law courts strengthened an inevitable tendency by declaring as law the necessity of a ministerial counter-signature to royal disposition of funds,[1] while the accession of a sovereign who could not speak English, and whose ministers were determined not to learn German, accelerated the process by which the sovereign ceased to take a personal part in framing policy in Cabinet, while ministers acquired the initiative and reported to the King for confirmation plans already matured without his participation.

[1] *Vernon* v. *Benson* (1723), 9 Mod. Rep. 47.

It was inevitable that, after the efforts of George III to recover for the Crown the authority, with which his predecessors had parted, had resulted in the loss of the first British Empire, the doctrine of ministerial responsibility should be revived with increased force. Great as was the authority exercised after 1784 by George III and later by his sons, the era of the determining of national policy by the sovereign was over, and the advent of a young girl to the throne did not introduce a new régime, though it saved the country from the friction which might well have been created, had the Duke of Cumberland acceded to the throne instead of departing to Hanover to exercise there in comfort his love of personal authority and dislike of constitutional restraints. Even before Parliament was reformed, George IV was compelled to yield to the demands of his ministers that he should assent to the Roman Catholic Relief Act. Yet his father had been able to dispense with the services of the younger Pitt rather than yield,[1] and had successfully dismissed the Grenville ministry when it very properly declined to bind itself not to tender him any advice on the issue.[2]

But, though the convention had been established that the King must act as advised by ministers, the power of the Crown to choose ministers remained far from negligible. The influence possessed by the Crown over the composition of the Commons, if placed at the disposal of ministers, would assure them sufficient support in the Commons to enable them to secure such legislation and financial grants as they might desire. Hence, when George III passed into hopeless insanity, none doubted that his son might, if he liked, confer office on the Whigs, who once had enjoyed his favour, and his former associates resented justly his failure in gratitude.[3] But in 1832 there occurred a decisive change

[1] May, *Const. Hist.* i. 65. [2] *Ibid.* i. 73 f., 427. [3] *Ibid.* i. 82 ff.

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in the conditions which permitted this state of things. The reform of the franchise and the sweeping away of constituencies under the control of the Crown or private persons created a House of Commons which was to prove immune from the measures of persuasion formerly enjoyed by ministers in possession of royal favour. In 1841 it appeared decisively that royal favour was insufficient to keep ministers in office, if they failed to secure the support of the electorate under the new conditions.

Hence from the reign of the Queen there developed a set of conventions based on the results of reform. There was, and is, nothing in law to confine the choice of ministers to those members of Parliament whose views command the support of the majority of the Commons, and other rules, regularly observed, equally are without legal sanctions. As will be seen, there dates from 1868 the rule that ministers who are defeated at a general election shall resign without waiting to meet the Commons and suffer defeat there; Mr. Disraeli innovated and Mr. Gladstone followed suit, despite grave doubts of the propriety of departure from the dependence of ministers on the Commons, not the people. It has become necessary also for the Crown in the event of the resignation or death of the Prime Minister to select his successor on the basis of his ability to command a majority in the Commons, a complete contrast to the days of George IV. More and more the tendency is for the electorate at the general election to mark out the Prime Minister-to-be; not all Queen Victoria's influence could avail her to avoid accepting as her Premier Mr. Gladstone in 1886 or in 1892.[1] In like manner it is now hardly possible for the Crown to refuse a recommendation of dissolution; to do so would mean that the Crown did not wish to allow the electorate to pass judgment on ministerial policy.[2]

[1] See Chap. III, § 2 *post.*

[2] See Chap. III, § 3 *post.*

Other conventions predate the Reform Act. That Parliament shall meet each year rests on custom, not law; were it not summoned, no authority exists to secure that this should be done. The old convention which excluded the House of Lords from interference in money bills was challenged in 1860,[1] but strengthened in 1861, and it sufficed to prevent disputes of serious character until 1909, when the House of Lords, largely changed in character in the course of time, attempted a challenge which resulted in the Parliament Act, 1911, and its loss of all control over legislation purely financial in character. The same Act supplemented the convention that the power of the Lords to reject general legislation emanating from the Commons should not be used in cases where the electorate had expressed definite views. The rules of procedure of both houses are conventional; if they are disregarded, no legal redress is available. Even the vital principle that money grants will not be considered by the Commons, unless recommended by the Crown, rests on nothing more substantial than a standing order of the Commons which it could suspend at will, or simply ignore if the Speaker was willing.

Convention rules in many other spheres. The elaborate safeguards for the special treatment of private bills might be disregarded at pleasure by the Commons, for they rest on nothing save standing orders. If the House of Lords as a judicial body decides causes without intervention by lay peers, the rule is conventional. Lord Spencer[2] could still remember when, as a youth, he had been called upon to take formal part in judicial proceedings, but serious participation in a decision is now utterly impossible;

[1] See Chap. X.

[2] See *Kinross (Lord), In re*, [1905] A.C. 468. The rule that Privy Councillors may practise before the Privy Council, even if ex-Cabinet ministers, dates from Mr. Asquith in 1895; Spender, i. 125 f.

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Parliament[1] indeed has intimated its view of the principle by permitting the House of Lords to function in its judicial capacity even during a dissolution, and in such a case, of course, lay peers could not possibly sit. Otherwise, the sole provision is that no appeal may be disposed of unless judicial peers are sitting.

Other conventions again affect the reference of issues to Parliament before action is taken. There is the classical example under Queen Victoria when, much to her annoyance, Lord Salisbury not only insisted on the cession of Heligoland to Germany in consideration of a settlement of African territorial claims, but demanded that the approval of Parliament should be obtained.[2] In like manner Mr. Balfour insisted against royal opposition[3] in securing Parliamentary approval of the cession to France of the Îles de Los and the other terms of the Anglo-French accord of 1904. But the further issue whether all treaties should be submitted to Parliament is yet disputed and no convention attains, nor is there any regarding the consultation of the Commons before the grant of recognition to a foreign State or Government *de jure* or *de facto*.

As conventions are not laws, they are in a constant state of flux, and to regard any convention as absolutely binding is impossible. No doubt since Anne refused assent in 1707 to the Scotch Militia Bill, no sovereign has refused assent to a Bill duly passed by both Houses, and even now there are strong reasons to doubt if such action will ever be taken. Yet the passing of the Parliament Act, 1911, has created circumstances which render the precedents from 1707 to 1911 not essentially relevant.

If we ask what gives conventions force, the answer

[1] Appellate Jurisdiction Act, 1876, ss. 5, 8, 9.
[2] *Letters of Queen Victoria*, 3 s. i. 611 ff.
[3] Lee, *Edward VII*, ii. 252 f.

reveals itself in the fact that departure from convention may result in breach of law or, where this is not the case, that human nature is such that to follow precedent is in itself attractive. When departure from convention is mooted, those who propose it must consider whether or not they will run the risk of breach of law. The convention that Parliament shall meet each year rests no doubt on the utter dismay which would be created in the country if its meeting were intermitted, but, if it did not meet, the Army and Air Force (Annual) Act would lapse, and it would be impossible to maintain the forces. Even more decisive would be the absence of authority to spend money, despite the fact that much money would come in from taxation.

In like manner, when the issue arises whether a ministry should be dismissed and another summoned, the essential problem to be faced is the question whether the new ministry would be able to carry on the government of the country without breach of law. The normal answer must be that the new ministry must be prepared forthwith to appeal to the people for a mandate, and it cannot properly do so unless there is a reasonable prospect of success. We find this doctrine at times candidly recognised by Mr. Balfour,[1] who saw clearly that he could not advise the King to dismiss or compel the resignation of the Asquith ministry in order to evade the necessity of assent to the Parliament Bill, when he was not in a position to assure the King that a dissolution would give him a majority to defend the royal action. It is true that Mr. Chamberlain was more reckless. He contemplated as a means of defeating the policy of Mr. Asquith's ministry the drastic step of an appeal to the people, followed, if it failed of effect, by yet another appeal. But even he had to consider whether such action was practicable. Would it be possible to obtain money for

[1] Chamberlain, *Politics from Inside*, pp. 242 ff., 254 f., 256 ff.

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current needs if the Comptroller and Auditor-General[1] refused to approve issues? Would the Bank of England or any other banks be prepared to lend the necessary funds when well aware that the question of repayment would depend ultimately on the decision of a Commons in which there might well be a ministry infuriated by the effort to destroy its majority by renewed dissolution? It is not surprising that no effort was actually made by the King to compel his ministry to resign.

That controversy elicited a project to depart vehemently from convention. It had been established by unbroken usage that the Army (Annual) Act should be passed by the Lords without substantial change. The idea was mooted[2] in March 1914 that the Bill should be rejected, so that the Government would be unable to employ armed forces in imposing the Government of Ireland Bill when passed into law under the Parliament Act, 1911, on Northern Ireland; an alternative suggestion seems to have contemplated the less drastic step of amending the Bill to forbid employment of the forces to deal with unrest in that territory.[3] The result in the latter case must plainly have been the refusal of the ministry and the House of Commons to accept the change in the Bill, and the Lords would have been compelled to choose between surrender or leaving the country without an army. It is not surprising that the wiser Unionist leaders saw the unwisdom of the course, and that Mr. Asquith was able to bring influences to bear which prevented so rash a proceeding. It may safely be said that the sovereign was included in these influences. The resort to a revolutionary procedure of this kind would have been fatal to the maintenance of the constitution.

[1] Chamberlain, p. 264. [2] Spender, *Lord Oxford*, ii. 28.

[3] Chamberlain, *Politics from Inside*, pp. 609, 618 f., 620. He suggested an amendment to forbid stationing troops in Ulster.

Where convention rests on nothing more solid than usage, it can be varied without trouble. It was and is the practice to approve the royal speech at the opening of Parliament in Council; yet when in 1921, in the absence of the King at Balmoral, that course was found inconvenient, the formality was dropped for the occasion.[1] The established practice that the Convocations should be dissolved at the same time as Parliament rested on no important basis, and could thus be departed from when it was desired to bring into operation the newly created National Assembly of the Church of England.[2] On the other hand, some departures from convention may prove undesirable; thus the claim apparently now made that the Prime Minister and not the Cabinet is authorised to recommend a dissolution is open to objection as adding unnecessarily to the importance of his position.

4. *Cabinet Government*

The result of conventional developments presents itself as the cabinet system of government. The Cabinet is frankly referred to in the Ministers of the Crown Act, 1937, but merely in connection with the higher salaries granted to ministers who serve therein, and its character is anomalous. As all its members are Privy Councillors, there is a loose sense in which it can be regarded as a committee of the Council, but it has never been treated as such as regards the mode of summons. In the period before the creation of a formal Cabinet Secretariat it was summoned by the Prime Minister's Secretary, now by the Secretary to the Cabinet, while the Council is summoned by the Clerk of the Council, whose existence is attested as early as 1540,

[1] Fitzroy, *Memoirs*, ii. 756 f.
[2] *Ibid.* ii. 743 f., 751.

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and any committee thereof is also thus summoned.[1] Moreover, the Cabinet is summoned as a meeting of His Majesty's servants, not as a Committee of their Lordships of the Council. The Cabinet is thus a meeting of those servants of the Crown who hold the highest offices of State for the purpose of determining policy in all matters which do not fall within the conventional competence of individual ministers. Their unity arises from the fact that experience since the latter part of the eighteenth century has proved, in the words [2] of the younger Pitt when Mr. Addington proposed to repeat with him the policy of Mr. Fox and Lord North and to dispense with a Prime Minister, that it is "an absolute necessity in the conduct of the affairs of this country that there should be an avowed and real Minister possessing the chief weight in the Council and the principal place in the confidence of the King. That power must rest in the person generally called First Minister." Hence the Cabinet possesses the unity born of selection by the minister to whom the duty of forming a ministry is from time to time accorded by the King.

Equally the working of the constitution has established that the King must choose as his ministers those who can command the support of the majority of the Commons, even if they may be regarded with complete disfavour by the members of the upper chamber. But since 1832 the Commons in composition depend on the electors, and more and more the choice of Prime Minister comes to depend on the will of the electorate directly, as shown at a general election. Obviously, within the general framework of the essential doctrine that the country cannot be ruled safely except in accordance with the will of the major part of the electors, there is abundant room for variations in the

[1] Anson, *The Crown* (ed. Keith), i. 110.

[2] Stanhope, *Life of Pitt*, iv. 24.

mode of action of responsible government, and its future development offers varied possibilities.

Cabinet government involves essentially the existence of an opposition prepared to step into the shoes of the ministry if it should resign, and the opposition, to be effective, must be one which is based on differences of principle regarding the conduct of the affairs of the State. Where such opposition does not exist, the result is unstable government lacking in coherent direction, and personal issues play a predominating part in politics. But the success of the Cabinet system in the past has been founded on the essential basis that the parties accept certain fundamental doctrines. They have believed with varying degrees of emphasis, no doubt, in the principle of democracy as opposed to autocracy, and in the general soundness of the existing economic system. They have accepted the doctrine of the progressive amelioration of the position of the people of the country on the basis of the gradual reform of the existing anomalies and unfairness of the distribution of worldly goods, and the removal of obstacles to the attainment by individuals of the maximum happiness. If these fundamental doctrines are repudiated, then the future of Parliamentary democracy must be uncertain. The full Socialistic theory would very possibly so extend the control of the State over the individual that the present form of government would become impossible.

PART II

THE CROWN

CHAPTER II

THE CROWN

1. *The Title to the Crown*

THE settlement of 1688–9 established the title to the Crown as resting on the determination of the people as represented by a convention. This body was a regular Parliament in respect of mode of election of the Commons and the personnel of the peers. Its one irregularity, but a fatal one, was that the summons was not in regular form, for there was no King willing to have issued writs in the ordinary way and the Prince of Orange was the head of a revolutionary movement. The convention made a definite breach with the principle of heredity, for it passed over the infant son of James II, whose legitimacy was undoubted though discredited by rumour, and it gave the Crown to William and Mary, and the survivor, with exercise of the royal power by William alone, and the Bill of Rights [1] settled the succession on the issue of Mary, the issue of Anne, and the issue of William. The Act of Settlement, 1701,[2] met the failure of these three possible lines by giving the succession after Anne to the descendants of James I, through Elizabeth, Queen of Bohemia, and her daughter Sophia, widow of the Elector of Hanover. George I thus ascended the throne, Sophia predeceasing Anne; he was succeeded by his son, George II; he by his grandson, George III; he by his son, George IV; and William IV; he by his niece, Victoria; she

[1] 1 Will. & Mary, sess. 2, c. 2.

[2] 12 & 13 Will. III. c. 2.

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by her son, Edward VII; he by his son, George V; and he by his sons, Edward VIII and George VI. The succession now goes normally to the elder daughter of George VI, for the doubt alleged by some authorities[1] regarding the position of daughters of a King where there is no son cannot be taken seriously.

The Act of Settlement, however, provides that a person who is or becomes reconciled to the Church of Rome, or holds communion therewith, or professes the Popish religion, or marries a Papist, is excluded from and cannot inherit the throne; the people are absolved from their allegiance and the Crown goes to the next in succession, being a Protestant, as if the person normally entitled were dead. It also imposed on the Crown the obligation of making a declaration against transubstantiation at the first day of the meeting of his first Parliament or at his coronation, and required the administration of the coronation oath provided by 1 Will. & Mary, c. 6. Moreover, every person in possession of the Crown must join in communion with the Church of England. In the Acts of Union with Scotland and Ireland the succession was confirmed as in the Act of 1701.

The form of accession adopted on that of Queen Victoria was followed in each case down to that of Edward VIII and George VI in 1936. The proclamation of the new sovereign is made by a gathering of Privy Councillors with the Lord Mayor and Aldermen of the City of London and other persons of distinction, among whom modern usage includes the High Commissioners for the Dominions as representing the people overseas. This gathering is a representative of the Anglo-Saxon Witan or the Norman Magnum Councilium, meeting to choose and proclaim the new King. Thereafter the King addresses the Privy

[1] Lee, *Edward VII*, ii. 33.

Council, and takes and subscribes the oath for the security of the Church of Scotland, which is required by the Act of Union. In Scotland the King stands to that Church in a relation analogous to that in which he stands to the Church of England in so far as participation in its services is concerned. The Privy Councillors were then resworn, and in 1901 a proclamation was issued continuing in their offices all persons then in office; this was rendered unnecessary in later years by the Demise of the Crown Act, 1901, which prevents offices being affected by the demise. In 1901[1] the King had still to make the declaration against transubstantiation in the presence of both houses at the opening of Parliament, but the Act was unsatisfactory to him, and he urged that its terms should be modified. The proposal failed to be carried through during his lifetime. Lord Halsbury[2] was difficult to move, and Lord Salisbury was old and apathetic. A half-hearted effort to legislate miscarried and was not resumed, and it was left to the new reign to see passed the Accession Declaration Act, 1910, which requires only the declaration by the King that "I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the throne of my realm, uphold and maintain the said enactments to the best of my powers according to law".

The coronation of the sovereign follows ancient forms, which have been modified in detail, but not in substance, since those carried out for Queen Victoria. For Edward VII there was, owing to his recent illness which caused a postponement, a certain curtailment, but the full service was renewed for George V and George VI, Edward VIII having abdicated before coronation; this resulted in the

[1] Required under the Bill of Rights, 1689.

[2] Lee, *Edward VII*, ii. 22-4.

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coronation of George VI being held earlier than usual, in order to minimise the public loss through the abdication. The ceremonial is held at Westminster Abbey, in the presence of a great gathering representing the peers, the Commons, and all great public interests, with special care for the presence in 1937 of Dominion representatives. The ceremonial begins with a recognition, when the Archbishop of Canterbury, accompanied by the Lord Chancellor and others, presents the King to the assembly, which acclaims him, the boys of Westminster School being privileged to represent in part the acclamation with which in older times the people had been wont to accept their chosen King. The administration of the coronation oath is likewise a relic of the ancient contractual character of feudal monarchy. It ran until the oath of George VI on lines asserting the full sovereignty of the United Kingdom only, but, in view of the development of Dominion autonomy by the Statute of Westminster, the oath was altered to run: "Will you solemnly promise and swear to govern the peoples of Great Britain, Ireland, Canada, Australia, New Zealand, and the Union of South Africa, of your possessions, and the other territories to them belonging or pertaining and of your Empire of India, according to their respective laws and customs?" There was thus omitted the old reference to the supreme authority of "the statutes in Parliament agreed on", and to "the dominions thereto belonging" in reference to the United Kingdom. The old obligation to maintain the Protestant reformed religion established by law was confined to the United Kingdom. These changes were in themselves not open to grave censure, and if made by statute would have been accepted as inevitable. But the changes were clearly a violation of the statutory law on which the King holds his throne, and it was regrettable that he should have been advised at a critical moment in his

career to take an oath in an illegal form, simply to save the ministry the trouble of passing an Act.[1]

The anointing of the King which followed is an old religious rite, dating back to Egbert, son of Offa of Mercia. Then came the investiture with regal vestments, with spur, sword, orb, and sceptre. The homage of the peers was performed by the senior in each order after the Archbishop and the Princes of the blood royal. The ceremonial is reminiscent of the oath of fidelity by the *ministri* of the Saxon kings and the great vassals of the Norman régime.

2. *The Abdication of Edward VIII*

The circumstances attending the abdication of Edward VIII were unique and their constitutional implications have yet to be worked out. The facts of the case as revealed are not seriously in dispute.[2]

The association of the King with Mrs. Simpson, a lady of United States origin, but a British subject by a second marriage, after she had obtained a divorce from her husband in an American State court, was widely commented upon in the American press in August, September, and October 1936; the newspapers containing this comment were in free circulation in Canada, they were read to some extent in Britain, but outside London there was little appreciation of the position as represented in the American press. In October, however, Mrs. Simpson lodged a petition for divorce which fell to be heard at Ipswich Assizes. The silence of the British press was due, perhaps, to fear of

[1] Keith, *The King, the Constitution, the Empire, and Foreign Affairs, 1936–7*, pp. 21-31.

[2] See Mr. Baldwin, 318 *H.C. Deb.* 5 s. 2186 ff. Mr. Compton Mackenzie's *The Windsor Tapestry* is a very ineffective apologia, putting forward unsubstantiated rumours against Mr. Baldwin. See also Keith, *The King, the Constitution, the Empire, and Foreign Affairs, 1936–7*, pp. 3 ff.

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charges of seditious libel, but it may have been caused by reticence and the hope that the rumours had been exaggerated. In October, however, so many communications had reached the Premier that Mr. Baldwin felt bound to see the King on October 20 at Fort Belvedere, and to explain to him the damage which might result to the prestige of the Crown from reports of the kind current. On October 27 a decree nisi was granted, the case being undefended and the usual evidence being duly tendered. The fact was widely commented on in America and much gossip spread in London. On November 16 at royal initiative the Prime Minister saw the King at Buckingham Palace, and there in effect laid it down that the choice of a Queen was not a matter for private decision, but that the sovereign must bow to the view of the people that such a marriage as that contemplated would not be acceptable. The King evidently indicated his determination to marry the lady in question, and to abdicate in favour of the Duke of York. On November 25 the King raised the question whether a morganatic marriage was possible ; Mr. Baldwin gave it as his personal impression that no Bill to that effect would pass Parliament, but asked if he were to consult the Cabinet and the Dominions. This was requested.

The British Cabinet negatived any such marriage on November 27. Mr. Lyons, General Hertzog, and Mr. Mackenzie King expressed personal views of their countries' opposition to any marriage. On December 1 the Bishop of Bradford commented on some failure on the part of the King in his duties of religion, referring no doubt to the royal failure in devotion to the practice of religion which marked his father, and on December 2 the British press broke the unnatural silence regarding the royal desire to marry Mrs. Simpson. On the same day, Mr. Baldwin informed the King that a morganatic marriage would not

be approved in Britain or the Dominions, and that issue was dropped. A crisis was obviously at hand; formal advice against the marriage, but the desire that the King should remain on the throne, was tendered by the Cabinets of Australia, the Union of South Africa, Canada, and the United Kingdom, while the Governments of the Irish Free State and New Zealand raised no objection to the actions of the other Empire Governments. It was all in vain; on October 10 the King executed an instrument of abdication [1] renouncing the throne for himself and his descendants, and expressing the desire that effect should be given immediately to the instrument. The Commons that day was fully informed of the facts by Mr. Baldwin, and a Bill to meet the King's wishes was duly read a first time. The Canadian Government secured an Order in Council expressing the request and consent of Canada to the Bill, thus fulfilling the requirements of Section 4 of the Statute of Westminster, 1931, which states the conditions on which an Imperial Act can have effect in Canada. Next day the two houses of Parliament in Australia expressed assent to the Bill, thus complying with the principle enacted in the preamble to the statute that any change in the succession requires the assent of the Dominion Parliaments as well as that of the Imperial Parliament. The New Zealand and Union Governments, whose Parliaments were not in session, expressed assent, and the Act was passed and assented to by commission by 1.52 P.M. on December 11.[2] It enacted that the instrument of abdication should take effect, that Edward VIII would cease to be King, that there should be a demise of the Crown, and that the member of the royal family next in succession should succeed thereto. It formally excluded

[1] This instrument was not countersigned by any minister, but witnessed by his brothers, showing that it was a personal act. No minister clearly could be responsible; none could defend the failure in duty.

[2] Keith, *The Dominions as Sovereign States*, pp. 27 f., 100 ff.

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Edward and his descendants from any claim to the succession, and relieved them from the terms of the Royal Marriages Act, 1772, thus permitting marriage without royal assent.

Opportunity was taken by the Irish Free State to pass on December 11 a Constitution (Amendment No. 27) Act which cut out from the constitution references to the King, and in the main to the Governor-General, but authorised the executive council to avail itself, for diplomatic and consular appointments and international agreements, of any organ used for these purposes by the other members of the British Commonwealth, though that term was avoided. Next day the Executive Authority (External Relations) Act provided specifically for the taking effect of the instrument of abdication so that the royal successor became the person who might thus be used by the Free State for diplomatic and consular appointments and international agreements. The Constitution of Eire of 1937 preserved this peculiar and limited position of the King while eliminating the Crown absolutely from all concern with the internal affairs of Eire. Canada thought it desirable in 1937 to re-enact the statute, and the Union of South Africa took like action. New Zealand was content with approval of the assent to its enactment, which had been given by the Government, being ratified by the two houses. It must be noted that in Australia and New Zealand the Statute of Westminster had never been brought into effect, and there was, therefore, not the slightest necessity for legislation, even if in the case of Australia it were possible. Neither Canada nor the Union required, strictly speaking, to legislate. Their existing law provided for the succession to the throne following that of the United Kingdom, but in both cases national autonomy dictated action. In the Union the measure passed was peculiar in that it treated the

abdication as effective *ipso facto*, and so dated the royal abdication from December 10, while in the Free State it was December 12, in the rest of the Empire December 11.

The constitutional issue was from the first simplified by the determination of the King, announced on the first occasion of discussion, to settle the matter with Mr. Baldwin without any external intervention.[1] He might, it is clear, have decided to refuse to accept the advice of ministers, have insisted on the fact that no law governed his marriage, and that he would appeal to the people for support. He might then have obtained a ministry willing to take office and to appeal to the people to give their action approval. There were signs even in the Commons that this might have been possible, and Mr. Churchill's pleas for not rushing the matter suggested that he might have been willing to head a King's party. But in all likelihood there was never any chance of this. All that Mr. Churchill may have hinted at was that, if the matter could be delayed, the King might have seen his way to renounce his intention of marriage. But this was clearly out of the question.

The fact that the Archbishop of Canterbury was not called into consultation by the King indicates that he had definitely failed to bear in mind his duty of close connection with the Church of England. The Archbishop, of course, was precluded by the principles of the Church from contemplating as possible the marriage by Anglican rites of the King with a lady who had twice divorced her husbands when both of these gentlemen were still living. The broadcast address by the Archbishop after the abdication was a model of dignified disapprobation, which justly expressed the overwhelming majority of British opinion. No doubt the King's readiness to go indicated that he was weary of the work of monarchy, and had not that deep sense

[1] 318 *H.C. Deb.* 5 s. 2190.

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of devotion to duty which carried George V through his long and troubled reign, and induced him to bear cheerfully the strain imposed on him by his round of duties after his recovery from his all but fatal illness in 1928–9.

It would be difficult to say whether the episode means a permanent diminution of royal influence. On the whole it probably does, because the effect on the minds of the people of the readiness of the King to sacrifice his throne for the sake of marriage is unquestionably to lessen the respect for the monarch, and to raise the question whether a royal line is of great value. It has already been suggested by careful writers that the value of monarchy is outweighed by the sentiments of snobbishness which it tends to encourage in a nation,[1] and no doubt there is much truth in the suggestion. But the fact that the sentiment of loyalty is most easily focused on an individual instead of an abstraction like the State is obvious and of great importance. The German Republic evoked no feeling sufficient to resist its overthrow by devotees of the Hitler cult, and the Italian Constitution was easily shattered by loyalty to Signor Mussolini. Importance attaches also to the position of the King as a link between the various units of the Commonwealth.

3. *Provision to meet Royal Incapacity*

As the Princess Victoria was but eleven years old on the accession of William IV at the age of sixty-five, it was deemed wise to provide for a regency in case of her accession while under eighteen years of age. Her mother by an Act of 1830 [2] was made sole regent in that event without

[1] Cf. Finer, *Modern Govt.* ii. 1126-8.

[2] 1 Will. IV. c. 2; 1 *Hansard*, 3 s. 499, 764, 954.

the aid of a council; if by any chance a child were born posthumously to the widow of the King she would then become regent for the child. In fact the Queen had attained age eighteen when her uncle died. In 1837 [1] an Act provided for lords justices to act pending the arrival in England of the King of Hanover should the Queen die unmarried and without child, and on her marriage in 1840 [2] an Act provided for Prince Albert to act as regent should the Crown pass to a child under eighteen. Neither this nor a subsequent Regency Act [3] came into operation, and, when George VI became King, it was determined to make some changes in the position.

It was decided at the same time to make provision for the contingency of royal disability due either to insanity, as in the case of George III, or to grave ill-health, as in the case of George V in 1928, or to absence, as in the case of George V's visit to India in 1911–12. In the case of insanity in 1811 it had been necessary to have resort to action without a royal signature for the summoning of Parliament and assent to a Regency Bill, a most objectionable fiction. In the case of grave illness in 1928 it had just been possible to obtain the royal signature to a warrant for letters patent appointing counsellors of state with powers to act for the King, and during his absence a like plan has been followed. But in 1936 it had been all but impossible to obtain a signature, and it was decided to make statutory provision for some possible emergencies. The Regency Act, though amended in its passage, remains a rather cumbrous enactment.

The regent is to be the next person in the succession, who is not disqualified under the Act of Settlement, who is

[1] 7 Will. IV. & 1 Vict. c. 72.
[2] 3 & 4 Vict. c. 52; 55 *Hansard*, 3 s. 754, 850, 1054.
[3] 10 Edw. VII. & 1 Geo. V. c. 26.

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domiciled in some part of the United Kingdom, is of full age, and a British subject. The term "domiciled" is unfortunate, "normally resident" was clearly meant. He has the full royal power in the event of a sovereign succeeding under age eighteen, save that he may not assent to a Bill to alter the succession or the position of the Church in Scotland. He is to administer the royal property, but guardianship is given to the mother of an unmarried sovereign, and to the spouse of one married and under eighteen or declared incapable.

The regent is also to act in the case where three or more of the royal spouse, Lord Chancellor, Speaker, Master of the Rolls, and Lord Chief Justice declare in writing that they are satisfied by evidence, including that of physicians, that the sovereign is, by reason of infirmity of mind or body, incapable for the time being for the performance of the royal functions, or that they are satisfied by evidence that the sovereign is not for some definite reason available for the performance of these functions. The last power is dangerously wide; it would cover indeed the case of a sovereign captured by enemy forces *en route* back to London from a tour overseas, but it would cover the case where a sovereign refused to carry on his duties, desiring to abdicate, and the ministry desired for a time at least to avoid a decision. The rules regarding the sovereign apply to the regent, so that a refusal to act in his case might be met thus, the next in succession taking the office of regent. The regent swears to maintain the true Protestant religion in England and Scotland; this ignores the disestablishment of the Church in Wales and its establishment in the Channel Islands and the Isle of Man. The powers of the regent terminate on the giving of a certificate of recovery or availability.

For the case of absence or illness provision is made that

by letters patent the King may authorise counsellors[1] to act for him, subject to such conditions as he thinks fit, provided that he may not delegate power to dissolve Parliament, without his authority which may be telegraphed, or to grant any rank, title, or dignity of the peerage. The counsellors are not left, as under the common law prerogative, at his discretion. They are the royal spouse, and the four next in succession, provided they would be eligible to be regents; they may act by such number as is laid down. The regent may likewise delegate power. Their authority ceases on the demise of the Crown or the occurrence of any event necessitating a regency or change of regent; if a regent dies, or is incapacitated, the next in order acts, and, if the one who is eligible except in point of age, the regency shifts to him.

The position as regards the Dominions is very unsatisfactory. The Act applies to Australia and New Zealand and the rest of the Empire, but not to Canada, the Union of South Africa, or Eire. The patent in May 1939 gave no power in respect of the Dominions.

Reference has been made above to the former practice of continuing in office servants of the Crown on a royal demise. The rule that appointments were vacated on a demise, though logical, was so inconvenient that the Succession to the Crown Act, 1707,[2] provided that offices should continue to be held for six months, unless the new sovereign dispensed with the services of any officer. This was extended to eighteen months by 1 Will. IV. c. 4 for employment in British territories overseas, and under Queen Victoria, army and marine commissions were made to endure despite a royal demise.[3] The case of ministers, how-

[1] For older discretionary action, cf. Edward VII's authority of 1903 for the Prince of Wales to hold councils, and of 1906 for the Lord Chancellor, Prime Minister, and Lord President to act.

[2] 6 Anne c. 41, s. 8.

[3] 7 Will. IV. & 1 Vict. c. 21.

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ever, was complicated by the rule of the Act of 1867,[1] elsewhere referred to, which made the duration of Parliament independent of the death of the King, and, to obviate doubts, in 1901[2] the principle was established that tenure of office was not affected by any demise, so that ministers could not be said to have been reappointed and so to be required to face re-election either at once or within six months. The Act covered also officers in protectorates which are not British territory and other officers abroad who were not within the terms of the Act of 1707.

4. *The Royal Titles and Ensigns*

The royal titles are such as may be determined by the Crown under the authority given by the Act for union with Ireland[3] and later legislation. In 1901[4] it was felt proper to authorise expressly action to give recognition of the importance of the dominions of the Crown, and by proclamation of November 4, 1901, the words "and of the British Dominions beyond the Seas" were duly added; the fact that in their Latin version they suggest complete subordination has so far, owing presumably to the lack of familiarity with the Latin implication, escaped serious attention. By a proclamation[5] under the Royal and Parliamentary Titles Act, 1927, which was agreed to in principle at the Imperial Conference of 1926, the royal titles became "George V, by the grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India". The style of Defender of the Faith was given to Henry VIII by Pope Leo X in recognition of the royal writings against

[1] 30 & 31 Vict. c. 102, s. 51 (8), (9).
[2] 1 Edw. VII. c. 5; 92 *Hansard*, 4 s. 382.
[3] 39 & 40 Geo. III. c. 67, Art. 1.
[4] 1 Edw. VII. c. 15.
[5] May 13, 1927; S.R. & O. No. 422, p. 325; 17 & 18 Geo. V. c. 4.

Luther, and, though it was later abrogated, by statute Henry declared his right,[1] which is now beyond question; any change demands under the Preamble of the Statute of Westminster, 1931, the assent of all the Dominion Parliaments. The style of Emperor of India goes back to the Act of 1876[2] by which Mr. Disraeli won the gratitude of the Queen, who would have welcomed the title, when she took over the direct government of India in 1858. But, apart from the style, England was long ago declared by Henry VIII[3] an empire, and its imperial rank is not dependent on the possession of oversea dependencies, but on its freedom from the domination of any other State or prelate.

The King by the Acts for union with Scotland and Ireland appoints the flags and royal arms;[4] the latter were altered in 1837, when Hanover ceased to belong to the sovereign. George III had abandoned those of France in 1801. The royal standard is personal to the King and may be displayed only when he is present; but the Scottish standard with its pleasing lion may be displayed in Scotland by subjects, for the King by royal warrant of September 1934 was pleased to forbid the Lyon King of Arms vexing his subjects by proceedings on this account. The national flag is the Union Jack, the white ensign[5] is used by the royal navy, the blue ensign by merchant vessels commanded by Royal Naval Reserve officers with Admiralty authority, the red ensign by merchant ships in general. The position is governed by the Merchant Shipping Act, 1894,[6] which provides penalties against wrong use of flags at sea. The Dominions can have their own flags, as in the case of Eire

[1] 35 Hen. VIII. c. 3.

[2] 39 & 40 Vict. c. 10.

[3] 24 Hen. VIII. c. 12; 1 Will. & Mary sess. 2, c. 2; 39 & 40 Vict. c. 10; 1 Edw. VII. c. 15.

[4] 39 & 40 Geo. III. c. 67, art. 1; 6 Anne c. 11, s. 1; Proclamation, Jan. 1, 1801.

[5] Order in Council, July 9, 1864.

[6] 57 & 58 Vict. ss. 73 (1), 74 (1), 734.

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and the Union of South Africa, but in general they use the Union flag with the badge appropriate to the Dominion, colony, etc. Their arms have all, save those of Eire, been approved by the Crown.

The use of flags for aircraft is regulated by statute[1] and by prerogative, distinct ensigns being prescribed for defence and civil aircraft, the latter being dealt with by the Civil Air Ensign Order in Council, August 11, 1931.[2]

5. *The Civil List*

William IV had surrendered the revenues drawn by his predecessor in respect of the hereditary revenues of Scotland, droits of the Crown and Admiralty and certain colonial duties, and casual revenue. He had been given a civil list of £510,000 which included a pension list of £75,000, and he was relieved of the payment of the salaries and pensions of the diplomatic service, part of the salaries of the judges and some other miscellaneous expenses. In the case of Queen Victoria [3] the sum fixed, after examination as usual by a select committee of the Commons, was £385,000, but in lieu of the £75,000 pension list, the Queen was authorised to grant pensions annually to an extent not exceeding £1200. This meagre amount was allocated for such persons as have just claims on the royal beneficence, or who by their personal services to the Crown, or by the performance of duties to the public, or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country.

The civil list was divided under heads for the Queen as

[1] 10 & 11 Geo. V. c. 80; 26 Geo. V. & 1 Edw. VIII. c. 44.

[2] *London Gazette*, 1931, p. 5535.

[3] 1 Vict. c. 2; Commons' resolution, Feb. 18, 1834; Report on Civil List, Dec. 5, 1837.

for her predecessor, and in 1850 Lord Brougham [1] raised the question what was done with savings on the salaries, allowances, and pensions of the staff, his contention being that it was not the plan of the constitution to allow the sovereign to accumulate sums which might lessen dependence on Parliament. The Government refused to investigate the matter unless the Crown were compelled, as often in the past, by debts to approach the Commons for relief. In 1871 a pamphlet, *What Does She Do With It*, accused the Queen of failing to spend on the scale of her predecessor, of hoarding the money saved, and of acquiring thus a private fortune of £2,500,000, to which must be added £1,500,000 [2] left her by an eccentric millionaire, and, £1,000,000 from the Prince Consort. Moreover, while in 1857 no difficulty arose in the grant of a dowry to the Princess Royal, there was complaint in 1871 at the grant of £30,000 to the Princess Louise on her marriage to the Marquis of Lorne. There was a good deal more opposition to the £15,000 a year granted to Prince Arthur, 53 members voting for £5000 less, 11 for nil. In 1882 Mr. Fawcett and Sir C. Dilke, who had bitterly annoyed the Queen by attacks on the civil list in 1871–2, and by republican sentiments, were complained of by the Queen for not voting for the annuity for Prince Leopold. In 1888–9 [3] the objections to grants to children on marriage became more vocal, and it was with Mr. Gladstone's help that it was possible to provide sums for the children of the Prince of Wales without too bitter hostility. The Queen had to drop pressing then for provisions for the children of the Dukes of Connaught and Albany.

The Queen succeeded to no private property, but she

[1] Keith, *The King and the Imperial Crown*, pp. 392 ff.
[2] *Letters*, 1 s. ii. 392; really £500,000.
[3] Lee, *Edward VII*, i. 599-605.

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received the revenues of the Duchy of Lancaster and those of Cornwall, which were not included in the surrender of other revenues to the Crown. Both came under the wise control of Prince Albert to yield large sums. Those of Cornwall passed to the Prince of Wales on birth, but the Queen might, during his minority, have used them; instead accumulations amounting to half a million were invested for his benefit, a fact of which due note was taken when he was married, £40,000 a year being accorded, while in 1889 he had £36,000 for grants to his children.

On Queen Victoria's death [1] Edward VII was allowed £470,000 with free postage and telegraphic facilities; £60,000 was allowed for the Queen on his death; £40,000 for the Duke of Cornwall with, of course, the Duchy, and £10,000 to the Duchess, with £6000 each for the royal daughters. With pensions and annuities a total of £543,000 resulted. In 1907 the Treasury sought to secure that the King should pay the cost of visits of royalties, but this was refused, as was the suggestion that the Foreign Secretary should have a voice in deciding what royal visits should be treated as official.[2]

For George V no change was made; for staff and pensions there was allowed £125,800; maintenance of the royal household, £193,000; works, £20,000; royal bounty, £13,200; privy purses of their Majesties, £110,000 with the balance unassigned. For each son except the heir apparent, who had the ample revenues of the Duchy, was allowed £10,000 with £15,000 on marriage and £6000 for the Princess Royal.[3] The civil list of Edward VIII was affected by his being unmarried and enjoying the revenues of both Duchies. £410,000 was granted, £40,000 not to be drawn while the

[1] The Queen's private property was left to her younger children. Such property is subject to ordinary taxation.

[2] Lee, ii. 29-30.

[3] 10 Edw. VII. & 1 Geo. V. c. 28.

King was unmarried. But the King also promised to apply to the reduction of the total the revenues of the Duchy, whence £25,000 would go to the Duke of York and about £54,000 would be applied to reduce the civil list.[1]

For George VI, who was married, new arrangements were necessary. £410,000 was granted; salaries and pensions, £134,000; maintenance of households, £152,800; royal bounty, alms, and special services, £13,200; £110,000 for the privy purses; of the total, £40,000 was intended to be the Queen's. The Duke of Gloucester was given an additional £10,000 for extra work during the minority of Princess Elizabeth, who was given £6000 to be increased to £15,000 at age twenty-one; provision for her on marriage was left over for the future; for Princess Margaret Rose the usual £6000 after age twenty-one was allowed. Elaborate provision was made for the contingency of the birth of a Duke of Cornwall. The King intimated that, until such a contingency arose, the revenues of the Duchy would go to meet the extra payment to the Duke of Gloucester and Princess Elizabeth, and the balance to lessen the burden of the civil list. The other payments, of course, remain, but lessened in 1938 by the death of Queen Maud of Norway.

The discussion of the civil list brought from the leader of the Labour party a definite theory[2] that numerous residences, attendants, a titled *entourage*, and an elaborate ceremonial were hindrances to the right understanding between the King and his people. He suggested therefore that the existing arrangements might stand, while the issue was thought out by the Select Committee. This was negatived by the other members of the Committee, and Mr. Churchill enunciated the theory of the value of ancient

[1] 26 Geo. V. & 1 Edw. VIII. c. 15.

[2] Mr. Attlee, House of Commons, May 24, 1937; 1 Edw. VIII. & 1 Geo. VI. c. 32; Clynes, *Memoirs*, ii. 241 f.

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ceremonial as a barrier against dictatorship, which seems to have had little relevance. What is more to the point is that there seems a good deal of popular liking for ceremonial. On the other hand, it is true that ceremonial usages and his normal *entourage* do render it difficult for the King to get into real touch with the people. It is clear that Edward VIII had very little understanding of the essential attitude of the working classes, or he would never have contemplated a marriage which would have been unpopular with them, and he does not appear to have ever been in close touch with any Labour leader. It may be assumed that George VI will endeavour to secure a gradual democratisation of ceremonial.

It has been suggested, not unnaturally,[1] that, in order to secure closer touch between the King and public opinion in general, his personal staff should be placed on a Civil Service basis, so that his advisers should have the impartiality and breadth of outlook which mark the best type of Civil servant.

It must be noted that the present civil list is freed from the cost of works which used to be borne on it. The exchequer always bore, in addition to the sums allowed from the civil list, considerable sums, and it seems simpler to place the whole on the Exchequer. The Treasury pays also the retiring allowances, of which it approves the grant, to retired officials. There are also charged on the consolidated fund, and not upon the civil list, the pensions granted to deserving persons or to the dependants whom they leave ill provided for. On the passing of the last civil list, the sum was increased to £2500, largely owing to the persistence of private members. It cannot be said that the sum is exorbitant, when it is compared with the £6000 a year for Princess Margaret Rose or the £70,000 to be drawn

[1] H. J. Laski, *Parl. Govt.* pp. 437-9; see Chap. III, § 13, *post*.

by the Queen should her husband predecease her.

Due provision is made for the audit by a high officer of the Treasury of the civil list accounts.

The Crown lands which are managed for the nation have under proper management long yielded a revenue much in excess of the civil list cost.

6. *The Royal Family*

Mention has been made above of the recognition of the members of the royal family in the grants made to them. It is a characteristic of English law that the members of the royal family, other than the King, are not strongly differentiated except by precedence from the other subjects of the Crown. A Queen Consort's person and chastity are still protected by the law of treason, but on widowhood this ceases, nor is it even clear that she cannot remarry, as Coke asserts,[1] without the assent of the reigning monarch.

The position of a Prince Consort is naturally difficult. In the case of Queen Victoria, Prince Albert of Saxe-Coburg and Gotha was her deliberate choice, and, when she decided to marry him, his position as a British subject free from any disabilities of a naturalised subject was assured by statute.[2] He was also given precedence by letters patent after the Queen,[3] for the Duke of Cumberland objected to a statute. In 1857 the style of Prince Consort was accorded.[4] He was introduced into the Privy Council but not sworn, a right the sovereign can exercise as to children and other members of his family if he please. But he was not given a peerage. He had no procedural rights other than those

[1] 2 Co. Inst. 18; 1 Bl. Com. (14th ed.), 222.

[2] 3 & 4 Vict. cc. 1, 2. He was not made a peer, to negative any idea of his interference in politics; *Letters*, 1 s. i. 198 ff.

[3] *London Gazette*, March 6, 1840.

[4] Letters patent, June 25, 1857; cf. *Letters*, 1 s. iii. 196 f.

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of the ordinary subject; for infringement of copyright shared with the Queen, he sued by a simple action,[1] while for the Queen the Attorney-General presented an information.

At first not admitted to full confidence in public affairs,[2] the Prince soon acquired a large measure of control over the mind of his wife, and, taken on the whole, there is no doubt that his influence was salutary; her prejudices which injured her conduct in later years certainly were not exhibited in strength while he lived, and, while it has been suggested that he left the Queen with too exalted ideas of the royal functions, there is nothing to suggest that, so long as he lived, the ideals he inspired would not have been satisfactorily translated into practice. Nor can we assume that he would have failed to adjust his doctrines of royal duty to meet the emergence of new prospects with the growing Liberalism of Mr. Gladstone. The Queen was unhappily unable thus to enlarge her horizon.

The position of the heir apparent to the throne is differentiated only slightly from that of a subject. He is by birth Duke of Cornwall and the revenues fall to him, but only by creation by letters patent is he Prince of Wales and Earl of Chester. He is also Duke of Rothesay, Earl of Carrick, and Baron Renfrew in Scotland, Lord of the Isles and Great Steward, and the revenues of the principality of Scotland fall to him.[3] For Edward VIII no special provision fell to be made, as his Duchy revenues sufficed; but provision was made for his wife and, if he predeceased her, for his widow. An Act of 1795 [4] regulates his establishment, and Acts regarding him must be judicially noticed as

[1] *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25.

[2] Cf. Lord Melbourne's advice in 1841; *Letters*, 1 s. i. 305. For Disraeli's eulogy see Monypenny and Buckle, ii. 115 ff.

[3] 3 & 4 Will. IV. c. 69, ss. 19, 20.

[4] 35 Geo. III. c. 125.

opposed to other private Acts. The law of treason protects his person and the chastity of his wife.

The daughter of the King is usually created Princess Royal, but not Princess of Wales even if she is the heir presumptive, nor does she have any claim to the Duchy of Cornwall. Her chastity while unmarried is protected by the law of treason. But otherwise she is in the same position as the other members of the royal family.

All sons and daughters of the King are given the style Royal Highness, and this is accorded also to the children of sons, but not to those of daughters, unless of course the King should be pleased to confer that style, which is a matter for discretion. Princess Victoria Eugenie was given this distinction[1] on the eve of her marriage to the King of Spain, and a formal marriage treaty was entered into in accordance with precedent, as in the case of Queen Maud of Norway. The right of the Duke of Windsor, the style conferred on Edward VIII on abdication, to bear the style was perhaps doubtful, as he and his descendants were excluded from the succession, but all doubt was removed by it being formally conferred on him by letters patent in May 1937, but it was expressly refused to his wife.[2]

The descendants of George II, excluding only the issue of princesses who have married foreigners, are subject to the Royal Marriages Act, 1772, which was secured from Parliament by very energetic exercise by George III of his authority over Parliament.[3] He was induced to take this action by the marriage in 1771 of the Duke of Cumberland to Mrs. Horton, sister of Colonel Luttrell, the famous rival of J. Wilkes, and the avowal by the Duke of Gloucester of his earlier secret marriage to the Countess Dowager of

[1] Lee, *Edward VII*, ii. 514.

[2] Cf. Keith, *The King, the Constitution, the Empire, and Foreign Affairs, 1936–7*, p. 6.

[3] May, *Const. Hist.* i. 179 ff.

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Waldegrave. The Act imposes an absolute invalidity on marriages contracted without the royal consent under the great seal signified in Council by any descendant of George II (except the issue of princesses married into foreign families) under the age of twenty-five. Above that age such consent is necessary unless the person concerned notifies the intention to marry to the Privy Council, and the two houses do not within a year express disapprobation. The proviso was inserted apparently as a concession to objections raised by some of the advisers of the Crown. The new measure far transcended the common law, which, as declared by the judges on the request of George I in 1718, gave the King control over the education and marriages even of his grandchildren but took the matter no further. The validity of the prohibition was tested under Queen Victoria. The Duke of Sussex in 1793 married Lady Augusta Murray, but, on the initiative of the King, the Court of Arches declared the marriage void.[1] In 1831 the Law officers gave a like opinion and in 1843 the Duke's son, Sir Augustus D'Este, raised an action to establish his right to the dukedom, but the judges and the Lords decided that the Act of 1772 was intended to have extraterritorial operation, and that the marriage was invalid.[2] The Duke, after his wife's death, went through the form of marriage a second time with Lady Cecilia Underwood, who rather later was granted the style of Countess of Inverness by the Queen.[3] The Duke of Cambridge, the Queen's cousin, also married without royal assent, but his wife was not recognised by the Court, though their children were accepted in society.

[1] *Heseltine* v. *Lady A. Murray*, 2 Add. 400; *Ann. Reg.* 1794, p. 23.

[2] 11 Cl. & F. 85.

[3] This was apparently done as an inducement to the Duke to accept the precedence of the royal consort. The Duke's failure to notify his second marriage to the Privy Council is not explained.

CHAPTER III

THE KING'S ACTS OF GOVERNMENT

1. *The Official Acts of the King and Ministerial Responsibility*

THOUGH it is often suggested that the Crown exercises the whole executive government of the country, either directly or by delegating executive power, there have always been wide fields of activity in which neither the Crown nor officers thereof have any *locus standi*, and the inevitable tendency with the growth in complexity of modern government is to assign by Act of Parliament powers to bodies of men who cannot in the exercise thereof be regarded as in any accurate sense servants of the Crown. The British Broadcasting Corporation, for example, performs tasks which might well be regarded as so important to the State that its powers should be exercised by ministers and Civil servants, but in fact the Corporation is a statutory creation, under governmental influence and control in certain specified matters; it does not represent the Crown. Nor are local government servants officers of the Crown nor do they exercise prerogative functions.

But, apart from these cases, the authority of the Crown has necessarily tended to be removed from direct exercise by the King. The trend of legislation since 1837 is to assign powers to ministers, or to Civil servants, without any necessity of royal intervention. On the accession of Queen Victoria, statutory authority was hastily found to

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relieve her of the function, still exercised by her predecessor, of considering in Cabinet the fate of persons sentenced to death at the Central Criminal Court. This marked the establishment of the rule that the prerogative of mercy is primarily a matter for the Home Secretary, and that the royal share is mainly formal. When the practice of delegating legislative powers to the executive developed, the tendency was at first to accord the powers to the Crown in Council; with the passage of time the practice has changed in favour of giving powers to ministers to make rules, regulations, and orders. So far as any principle is to be discerned, the practice seems to be that matters of high importance, such as the regulation of aliens or air navigation, fall to the Crown in Council, while lesser issues are dealt with by ministers. In the same way the regulation of foreign jurisdiction is assigned to the Crown in Council.

There remain for the King certain important spheres of action wherein he alone can act. Parliament cannot be summoned, prorogued, or dissolved or assent given to its Bills without at least a signature to the necessary instrument, if he does not appear personally in the Lords, which now is not usual. By established custom Parliament begins its work only on the receipt of an address, now read by the King in person, though Queen Victoria seldom consented to face what she felt an ordeal.[1] It is characteristic of modern tendencies that, while the royal intervention is needed on every hand for the functioning of the ancient Convocations of the Church of England, the National Assembly of that Church functions in complete independence, save in so far as the sovereign's formal assent is given to measures passed thereby, on the recommendation of both houses of Parliament. The judicial power is exercised essentially by judges, and even James I was told that he

[1] For her action in 1876 see Monypenny and Buckle, *Disraeli*, ii. 798-800.

might not sit as a judge in the courts of common law, though all process issues in the royal name.

There remain to the Crown for personal exercise by the King important functions in the sphere of executive action. He appoints his ministers and approves the formation of the Cabinet, and he can dismiss those whom he appoints. There rests with him the right to give or refuse a dissolution, and he has an unquestionable right to discuss with ministers their projects, and to accord to them the benefits of his experience whether to advise, criticise, or warn. This right applies no less to matters in which no formal action of his is required than to those in which his signature is necessary. The personal action of the King is seldom required in colonial affairs, but his assent to important changes of policy should diligently be sought. In foreign affairs and in defence the King is regularly associated with ministerial policy, and he acts in certain issues as the sole link of formal connection between the Dominions and the United Kingdom.

A large number of appointments still require royal signature and therefore approval, judges, bishops, professors, officers in the army and air force, governors, diplomats, consuls, and many others, civil or defence. In regard to honours the King has real authority, as regards mercy his part is more formal.

There are certain spheres of royal activity in which the King acts on his own judgment; Queen Victoria effectively determined her own movements, and one of her most serious early disagreements with Mr. Gladstone was because he endeavoured in 1871 to induce her to remain longer south than suited her convenience.[1] It still rests with the sovereign to arrange his movements in the United Kingdom

[1] Guedalla, *Queen Victoria and Mr. Gladstone*, ii. 300 ff. For Disraeli's dislike of Balmoral see Monypenny and Buckle, ii. 395.

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at his discretion; Queen Victoria refused to consider returning to Ireland for a brief visit until 1900, and neither she nor the Prince of Wales would consent to his residing there regularly or performing the duties of Lord Lieutenant, decisions detrimental to the future of British rule in Ireland. The holiday abroad of Edward VIII in 1936, which afforded a good deal of occasion for scandal, was doubtless decided upon by himself, without ministerial prompting. Yet Mr. Baldwin's attitude at his interview with the King on October 20 suggests that he felt entitled to urge that the sovereign, even in private relationships, owed it to his people to observe a certain discretion; it is an interesting example of the hardening of public opinion as regards royal conduct since the days of the sons of George III.

But, apart from personal activities, the King can act officially only on the advice of ministers, and in most matters he must act in set forms, some of them deliberately designed in earlier times to protect monarchs from the risk of rash grants to unworthy favourites; by rendering a rather complicated round of authorities necessary before payments could be made, it was hoped to prevent unwise concessions; later these formalities were clung to because they involved the payment of fees to the holders of the offices concerned. It is curious to think that as late as 1852 the work of obtaining a simple patent for an invention had to pass through nine processes in seven offices, on each occasion fees being exacted. A vital simplification in many cases was essential. Thus,[1] under statute of Henry VIII and custom, if letters patent were desired to be issued by a Secretary of State, he had to obtain (1) a sign-manual warrant which he countersigned, directing the Attorney-General to prepare a Bill. (2) When prepared, the Bill went back to the Secretary of State for the royal signature.

[1] Anson, *The Crown* (ed. Keith), i. 67 ff.

(3) The Bill, duly signed by the King, was deposited in the Signet Office, which was attached to the Home Secretary's department. (4) An attested transcript was there sealed with the signet, and sent to the Lord Privy Seal's office with directions for him to request the Lord Chancellor to issue the letters patent. (5) An attested transcript of the formal patent, sealed with the privy seal, was then lodged with the Clerk of the Crown in Chancery. (6) An engrossment and the privy seal document were laid before the Lord Chancellor, who might sign the grant, whereupon the great seal was affixed. In 1851[1] the necessity of the signet was abolished, in 1880[2] that of the preparation of a Bill by the Attorney-General, in 1884[3] the whole use of the privy seal disappeared, and it was provided that a sign-manual warrant, prepared by the Clerk of the Crown, countersigned by the Lord Chancellor, a Secretary of State, or two Lords of the Treasury suffices to authorise the affixing of the great seal to any document. But this does not limit the right of the Lord Chancellor to authorise in certain special cases the issue.

Under modern practice, therefore, the issue of letters patent normally follows on a sign-manual warrant countersigned by a Secretary of State or sometimes the Lord Chancellor. Thus powers to sign a treaty and instruments of ratification are thus authorised to pass the seal, or a royal commission, or the creation of a peerage or the conferment of an office, or the opening of Parliament by commissioners, or the assent to Bills. In some cases it is necessary that an Order in Council be passed to authorise the issue of the warrant; this is required when charters for corporations of any kind are approved by the Privy Council, or when the office of Governor of a colony is constituted and royal instructions are approved.

[1] 14 & 15 Vict. c. 82. [2] 43 & 44 Vict. c. 103. [3] 47 & 48 Vict. c. 30.

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In other cases the fiat of the Lord Chancellor suffices, as for the autumn circuit commissions, commissions of the peace, writs to summon to the Lords peers who have succeeded to the peerage, and certain judicial writs. For other commissions of assize the King actually signs warrants, one to assign judges to the respective circuits, one to specify the King's Counsel and others to be included in the commission. Writs to returning officers for Parliamentary by-elections are issued on the warrant of the Speaker.

An Order in Council is the authority for the issue of royal proclamations, and, though the writs for a general election go out on the strength of the royal proclamation summoning a Parliament, an Order in Council is also passed authorising the Lord Chancellor to issue them.

Orders in Council do not pass the great seal. They are made in Council, the King sitting with three councillors at least — four are normally summoned, the fact of the royal assent is recorded, the council seal being affixed, and the clerk of the council signing.

Royal proclamations are used for announcing the summoning of a new Parliament and the dissolution of the existing Parliament, for declarations of war or peace or neutrality, or of a state of emergency under the Emergency Powers Act, 1920, or coinage changes under the Coinage Acts. The form adopted is because it is desired to give wide publicity, and the royal signature is affixed, as well as the great seal on the authority of an Order in Council. Orders in Council may be issued under the prerogative or under statutory powers and they cover a very wide field. Thus by the Foreign Jurisdiction Act, 1890, protectorates are governed by Orders in Council, while in the case of conquered colonies letters patent are issued, approved by Order in Council made under prerogative power.

In many cases the royal pleasure is expressed by sign-

manual warrants, not merely to authorise, as we have seen, letters patent, but for substantive purposes. Thus appointments of stipendiary magistrates are effected by sign-manual warrants, countersigned by the Home Secretary, of the Paymaster-General and the First Commissioner of the Office of Works by a warrant countersigned by two lords of the Treasury. For army pay there is a royal warrant, and so for various post-office matters.

A sign-manual commission is used for the appointment of officers of various kinds, *e.g.* in the army or air force, or the Viceroy of India, while a colonial governor has a commission under the sign-manual and signet.

A sign-manual order for the issue of funds voted by Parliament is provided in lieu of earlier formalities by an Act of 1866.[1] It is countersigned by two lords of the Treasury.

In all these cases there is clear ministerial responsibility for all that the King signs. In the case of an Order in Council it is true that the actual councillors present cannot be held responsible, for any may be summoned and very often, if the King is not in London, those who are present may not be ministers, or at any rate may not include the minister responsible for the particular piece of business, who, if the matter is complex, is usually expected to be present to explain any point on which the King may desire information. But responsibility rests with the minister at whose request the President of the Council has caused the draft Order to be laid before the King, or, failing such a minister, the Lord President himself. It is a proper rule of the Privy Council Office that the request for the enactment of an Order must distinctly bear ministerial authority.

In regard to the admission of members of the Privy Council, or the declaration of the Lord President, or the

[1] 29 & 30 Vict. c. 39, s. 4.

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handing of seals to the Secretaries of State there is no writing by the King, but the appointment can always be traced back to the Prime Minister, by whose authority alone these things can be done. The King might unquestionably do to-day what he did in the case of Mr. Fox, and with his own hand[1] erase the name of a Privy Councillor from the roll, but none the less responsibility would be fastened on the Prime Minister for such action, and, in fact, when the power was actually exercised in 1921, the removal of the name was ordered in Council,[2] in order to render the position constitutionally perfectly clear. There is an interesting contrast in methods which reveals the change of the position of the King. George III, when after his threats had secured the rejection in the Lords of the India Bill of the coalition ministry on December 17, 1783, sent instructions to Lord North and Mr. Fox to return their secretarial seals through their Under-Secretaries so as to avoid a personal interview disagreeable to the King.[3] There is no reason to suppose that Mr. Pitt was cognisant of his master's amiable action. In 1895,[4] on the other hand, Sir H. Campbell-Bannerman was astonished on June 25 to receive from Lord Salisbury's private secretary a request for his seals as Secretary for War. The request was the more improper, because Lord Salisbury had not even taken office as Prime Minister, and Sir H. Campbell-Bannerman properly refused to treat a request of this kind as a royal command. A lame apology for his gravely improper action was forced from Lord Salisbury by Lord Rosebery in the House of Lords, while the Queen was justly annoyed at this usurpation of her power, and her comment on her Premier's exculpatory

[1] May 1798; May, *Const. Hist.* i. 61.
[2] Sir E. Speyer in 1921.
[3] May, i. 49 ff.
[4] Spender, *Campbell-Bannerman*, i. 158-61.

memorandum was terse and just: "It was quite wrong and Lord Salisbury's fault. The precedents are totally different, and not at all cases in point."

Ministerial responsibility in most cases is obvious, and in a few instances only can it even appear doubtful. There is an anomaly no doubt in the fact that a retiring Premier, after electoral defeat, is allowed to recommend honours, but the practice is conventional, and so long as it is kept within bounds can hardly raise any difficulty.[1] The peerage of Mr. Asquith admittedly had its origin in the suggestion of the King, but it is clear that Mr. R. MacDonald was technically responsible, and would have defended it on that score in the Commons, had it been attacked.[2] No doubt on occasion slips have been made by the King in acting without securing advice, but they have been remedied by its grant *ex post facto*.

In the case where the sovereign might feel bound to refuse advice, and to force a ministry to resignation, it is clear that the constitutional theory imposes responsibility on the new ministry. The issue was still open in 1807[3] when the King compelled the resignation of the Grenville ministry by demanding from them an improper pledge not to tender advice on the subject of the removal of Roman Catholic disabilities. Mr. Perceval actually contended that no responsibility rested on the incoming ministry; ministers had been dismissed in the past by royal caprice; were others to refuse office and the Government to be brought to a standstill merely because of this idea of responsibility? Mr. Canning also denied the possibility in common sense of ministers being taxed with responsibility for actions of the King some weeks before they took office. The Reform Act put an end to this outlook. Sir R. Peel

[1] See § 10 *post*.

[2] Clynes, *Memoirs*, ii. 47.

[3] 9 *Hansard*, 1 s. 327 ff., 345, 471 ff., 552, 629 f.

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had the strongest grounds for following the line of Mr. Perceval and Mr. Canning, for the Melbourne ministry had resigned when he was abroad. We [1] know now, as he did not, that the King did not dismiss his Government, but took advantage of a suggestion of resignation thrown out by Lord Melbourne in the difficulty caused by the elevation of Lord Althorp to the upper house. But Sir R. Peel,[2] thinking that it was a case of dismissal, and regarding the royal action thus viewed without enthusiasm, yet accepted responsibility and negatived the Duke of Wellington's denial thereof. "I am responsible for the assumption of the duty which I have undertaken, and, if you please, I am, by my acceptance of office, responsible for the removal of the late Government."

No other doctrine is indeed possible. The grant of the franchise in 1832 ruled out the possibility of a King who dismissed ministers at caprice, or of a King who set himself up against his House of Commons and the electorate which returned them. To attempt to throw personal responsibility on the King is impossible and most undesirable. In the Commons the Speaker must decline to allow the King to be attacked for any personal action, and for this technical reason in any event criticism ascribing to the sovereign personal responsibility would be ruled out. But, and this is much more important, the persons to be attacked are obviously the new ministry. They must, before the sovereign decided to get rid of his ministers, have made it plain that they would take office and support the Crown. That is clearly seen in the period of stress between 1910 and 1914. All the speculations of the Conservative leaders rest on the view that, if the King should

[1] *Melbourne Papers*, pp. 220 ff.

[2] 26 *Hansard*, 3 s. 76, 83, 89, 215 ff., 257. W. Pitt admitted the royal freedom of choice in 1801, as he had defended it in 1784: *Parl. Hist.* xxxv. 962; May, *Const. Hist.* i. 49 ff.

feel able to rid himself of his ministry, they would have immediately to shoulder the responsibility.[1] It is clear also that they would gladly have urged His Majesty to act, but for the fact that they did not feel any security that they would be able to win an election and thus justify their pressure on the sovereign to act against the advice of his ministry.

The gravity of the responsibility of the King in changing ministers [2] is obvious, and it has been argued that the possibility of disregarding ministerial advice should be ruled out, the official actions of the King becoming always automatic. This issue will be further discussed below. Even those who hold this view, however, do not deny to the sovereign the right, if not the duty, to place at the disposal of his ministers whatever knowledge and judgment he may have and to press his own views, until he is satisfied that the decision of the Cabinet is definitive. Nor do they question the obvious fact that a King after prolonged experience is in a position to tender counsel which ministers would be foolish to reject without according it the fullest consideration.

2. *The Formation and Termination of Ministries*

From her predecessor Queen Victoria inherited Lord Melbourne as Prime Minister, while, when defeat at the election of 1841 dictated his resignation on the ensuing defeat in the Commons, there was available as his obvious successor Sir R. Peel,[3] who had already held office under

[1] Cf. Dugdale, *Balfour*, ii. 64 ff.; Chamberlain, *Politics from Inside*, pp. 256 ff.; Esher, *Journals*, iii. 40-44, 54-6; Chap. X, § 2, *post*.

[2] Yet in 1910 Mr. A. Chamberlain was prepared to urge that the King should follow the action of George III. and force resignation of ministers; *op. cit.* p. 264.

[3] *Letters*, 1 s. i. 308; for his abortive resignation in 1845, ii. 48.

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William IV, and who had actually been chosen as Premier in 1839, though the refusal of the Queen to part with her Whig ladies of the bedchamber led to his withdrawal. In 1846[1] the defeat of Sir R. Peel by the angry supporters of protection left Lord John Russell as the natural successor, for Lord Melbourne's failure in health precluded even the offer to him of ministerial office. When he resigned in 1851[2] Lord Stanley again was the only available candidate, but he proved most reluctant to undertake office, and, after consulting the Duke of Wellington, the Queen induced Lord John Russell to resume office. In 1852, however, his resignation was forced by Lord Palmerston in revenge for his dismissal in the preceding year, and the Queen had great difficulty in finding a successor, though Lord Derby finally agreed.[3] His fall, however, compelled the Queen to look for a successor, and she doubted, on the advice of Prince Albert, Lord Derby's right to recommend action. In fact, however, she ultimately acted with his accord in deciding to see Lord Lansdowne and Lord Aberdeen together, though in fact the illness of the former resulted in her appointment of Lord Aberdeen.[4] His fall in 1855, due to the resignation of Lord John Russell on the plea that he could not resist the demand of Mr. Roebuck for a committee of enquiry regarding the conduct of the war in the Crimea, led to grave trouble. Lord Aberdeen advised that Lord Derby, as leader of the largest opposition section, should be asked to form a ministry, but he found he could win over neither Lord Palmerston nor Mr. Gladstone. Lord J. Russell was given the chance, but, though Lord Palmerston was willing to help, the Peelites and Whigs held aloof from the wrecker, and Lord Palmerston had to be called in to help. The Queen's support secured him the counten-

[1] *Letters*, 1 s. ii. 83, 86.
[2] *Ibid.* ii. 288-308, 312.
[3] *Ibid.* ii. 368.
[4] *Ibid.* ii. 413-29.

ance and aid, without portfolio, of Lord Lansdowne in the Lords, where the rôle of Liberal leader fell on Lord Granville.[1]

Lord Palmerston surmounted successfully the immediate defection of Mr. Gladstone, Mr. Herbert, and Sir James Graham, who resigned when their chief declared that he must accept Mr. Roebuck's motion, which in their view involved too great an inroad by Parliament on the authority of the executive. In filling the vacant posts he had royal aid, and in 1857 a dissolution was readily granted to enable him to win a popular verdict in favour of his rather high-handed treatment of China in the affair of the lorcha *Arrow*,[2] which brought on him in the Commons a marked defeat. His exultation at his good fortune led to his downfall next year on the Conspiracy to Murder Bill. That measure in itself was no more than what was required to show France that Britain had no responsibility for the effort to assassinate the Emperor, but it was possible to represent his action as a surrender to French threats, and his defeat compelled the Queen to accept reluctantly his resignation. Lord Derby[3] was equally reluctant to take office, but, in view of the fact that he had failed his sovereign alike in 1851 and 1855, a negative reply to her commission was impossible. His ministry, however, lacked power and, despite a dissolution in April, fell in June 1859. Lord Aberdeen advised that Lord Palmerston be summoned, but the Queen demurred. Unwilling to ask Lord J. Russell to serve under Lord Palmerston, she asked Lord Granville to take office, with the veterans under him.[4] Lord Palmerston proved willing to meet her wishes, but Lord J.

[1] *Letters*, 1 s. iii. 76-8, 97 ff.

[2] Monypenny and Buckle, *Disraeli*, i. 1471 ff.; Bell, *Palmerston*, ii. 167, 183.

[3] *Ibid.* i. 1510 ff.; *Letters*, 1 s. iii. 266 ff.

[4] *Letters*, 1 s. iii. 343 ff.; Fitzmaurice, *Granville*, i. 332-46; Bell, *op. cit.* ii. 185-218.

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Russell refused outright, and Lord Palmerston had to receive office, with Lord J. Russell undertaking the Foreign Office. On the death of Lord Palmerston, he stepped naturally into his place, though without enthusiasm as he was already seventy-three years of age. It was not, therefore, surprising that the failure of his reform proposals involved his determination against the wishes of the Queen to resign in 1866; she had by private representations to Lord Derby endeavoured to prevent a result which must interfere with her usual retirement to Balmoral. She vainly sought to obtain a ministry under Lord Derby on a broad base, and Lord Derby had to content himself with forming a Conservative Government. Lord Clarendon she urged to remain at the Foreign Office, but he refused on the score of his loyalty to party.[1]

The resignation of Lord Derby in 1868 on the ground of ill-health led to the selection as his inevitable successor of Mr. Disraeli, and the Queen accepted his decision to drop Lord Chelmsford[2] as Lord Chancellor in favour of Lord Cairns. Her next Premier was indicated to her decisively by the voice of the electorate, and there was equally little doubt as to his successor, apart from the fact that she had formed a very favourable opinion of Mr. Disraeli during his tenure of office in 1866–8,[3] and he had actually served as Premier. In his new term of office Mr. Disraeli managed to convince her so fully of the danger of his great rival's policies that, although he had clearly won the election of 1880 by his Midlothian campaign, she insisted on inviting Lord Hartington,[4] the leader of the Liberals in the

[1] Monypenny and Buckle, *Disraeli*, ii. 173 ff.

[2] Cf. Monypenny and Buckle, ii. 329 ff.; Atlay, *Victorian Chancellors*, ii. 121-5.

[3] Cf. his attitude as leader of Her Majesty's opposition in 1868; Monypenny and Buckle, ii. 438.

[4] Holland, *Devonshire*, ii. 272 ff.

Commons, to take the Premiership. Technically, as Mr. Gladstone[1] admitted, she might have given a first invitation to Lord Granville, to whom he had handed over his leadership of the party on retirement, and whom the Queen had recognised as leader in 1875. But the obvious duty of the sovereign was to recognise the paramount claims of the real head of the party, and Lord Hartington advised her to send for Mr. Gladstone, warning her that, if he tried to form a ministry, it would have to be more Radical than that which Mr. Gladstone would form. A further misconception of her position was seen in the terms on which she was prepared to allow Lord Hartington or Lord Granville to form a ministry. There must be no concession to democracy, no change in foreign policy, no hasty evacuation of Afghanistan, and no cutting-down of defence estimates. Yet it was clear that the Crown could not make terms, nor could a Premier undertake to fetter himself in carrying out the policy which he had announced to the electorate and on the strength of which he had achieved his position.

When the Liberal ministry resigned on a budget defeat in 1885, the Queen had a real choice to make, because there was no recognised leader of the Opposition, Lord Salisbury in the Lords and Sir Stafford Northcote in the Commons sharing control. But the position of the latter was undermined by the unceasing carping of Lord R. Churchill, and it was natural enough that the Queen should prefer Lord Salisbury. The limits to her power were interestingly shown. She had found it impossible to prevent Mr. Gladstone giving the Lord Chancellorship to Lord Selborne in 1880, and the Foreign Office to Lord Clarendon in 1868; but Mr. Disraeli had been complaisant as to minor offices. Now Lord R. Churchill refused to serve under Sir S. North-

[1] Fitzmaurice, *Granville*, ii. 193 f.

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cote in the Commons, and the latter had to be sent to the House of Lords.[1]

The defeat of the Salisbury ministry at the election of 1885, which gave the Liberals 335 seats, the Conservatives 249, and Home Rulers 86, resulted in energetic efforts by the Queen to evade the necessity of accepting Mr. Gladstone, but her appeal to Mr. Goschen [2] to rally his Whig friends and to render an alternative ministry possible was met by his courteous refusal to wait on the Queen and the unqualified advice to send for Mr. Gladstone, who, much to the royal satisfaction, was soon in difficulties, being defeated decisively on the first Home Rule Bill by 341 to 311 votes. The following election gave Mr. Gladstone 191 followers, Mr. Parnell 85, the Conservatives 316, and Liberal Unionists 78. The choice of successor fell on Lord Salisbury, for, while he was quite willing to serve under Lord Hartington,[3] the latter was not prepared to weaken the independent position of the Liberal Unionists, who had finally separated themselves from the Liberals on the issue of Home Rule.

The progress towards gradual conversion of the electorate to the need of a substantial grant of Home Rule to Ireland was rudely interrupted by the disaster of the Parnell divorce scandal,[4] which undid the gain to that politician's cause from the triumphant exposure of the worthless character of the evidence adduced in *The Times* to prove that he was in sympathy with the murderers of Lord F. Cavendish and Mr. Burke. Even so, the election gave Mr. Gladstone 274 seats, enabling him, with the aid of 81 Irish votes, to oppose a majority of forty to the 268 Conservatives and 47 Liberal

[1] Dugdale, *Balfour*, i. 85-7. But royal favour saved Sir R. Cross.

[2] *Letters*, 3 s. i. 26 f. Cf. her earlier appeal, 2 s. iii. 712 ff.

[3] Holland, *Devonshire*, ii. 166 ff. In 1886 a second offer was made on Lord R. Churchill's resignation: *ibid.* ii. 179.

[4] Spender, *Lord Oxford*, i. 47 ff., 58 ff., 64 ff.

Unionists. The Queen[1] denounced the result as an "incomprehensible, reckless vote, the result of most unfair and abominable misrepresentations", and deplored the entrusting of the affairs of the Empire to "the shaking hand of an old, wild, and incomprehensible man of 82½". In such utterances there is little trace of a sense of royal duty, though the narrowness of the majority was unquestionably a disaster for the Empire, as it precluded success in dealing with a vital problem. Though she had to accept the old man, whom she failed to understand simply because with the passage of time her mind had become incapable of appreciating the emergent necessities of her people, and her personal preference had prevented her from visiting her Irish people, she found her Premier ready to meet her wishes in detail. Mr. Labouchere was denied office; the editor of *Truth* had not spared the Crown on occasion, and Lord Ripon was not a strong enough imperialist to be allowed to go to the India Office. On the other hand her protégé, Lord Rosebery, was induced, with the aid of the Prince of Wales, to go to the Foreign Office. It was her personal regard for him which induced her, on the resignation of Mr. Gladstone in 1894, to select him as Premier.[2] Mr. Gladstone had found his colleagues firmly resolved not to share in an attack on the House of Lords for its rejection of the second Home Rule Bill, and had suffered defeat in 1894 in the Cabinet on the issue of the naval estimates, which he thought too high. When he resigned, he thought it probable that he would be asked to suggest a successor, and Lord Spencer was in his mind; he thought that it was impossible to rule out a peer as eligible, and he recognised that against Sir W. Harcourt there was strong feeling. The

[1] *Letters*, 3 s. ii. 132; Newton, *Lansdowne*, p. 407.

[2] *Ibid.* 3 s. ii. 369 ff.; Gardiner, *Harcourt*, ii. 271; Morley, *Gladstone*, iii. 512.

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Queen did not ask his opinion, a rather needless discourtesy, and it has been claimed that the selection of Lord Rosebery was due to the wishes of the majority of Mr. Gladstone's Cabinet. It is, however, clear that she acted on her own preference for Lord Rosebery, her indifference to Lord Ripon whom Mr. Gladstone considered a possibility, and her lack of cordial feeling to Sir W. Harcourt. The latter was in a position to make terms for his acceptance of the leadership of the Commons; he was to be free to make decisions as leader on his own responsibility, to see the Foreign Office despatches, to have some voice in appointments, and to have cabinets called when he deemed them necessary. It might have been expected that the Queen would have sent instead for Lord Salisbury and offered him a dissolution, but her personal convenience was against such a step, and Lord Salisbury was no doubt ready to wait until the unhappy Government became more and more disintegrated, as a result of the complete lack of sympathy between the Premier and Sir W. Harcourt. The ministry was happy to quit office on a vote on deficiencies in cordite [1] supplies instead of seeking to reverse the defeat, and Lord Rosebery emphatically negatived the suggestion that he should dissolve instead of resigning. Lord Salisbury was his obvious successor, and the dissolution gave him 340 Conservatives and 71 Liberal Unionists against 177 Liberals and 82 Irish supporters of Home Rule. His dissolution in 1900 at Mr. Chamberlain's instance [2] was based on a claim that the Boer War had successfully been won, which facts did not justify, but it was successful; the Conservatives lost six, the Liberal Unionists three seats which went to the Liberals, the Irish seats remaining unchanged. But, if the election was brought on by the Premier to please Mr.

[1] Spender, *Campbell-Bannerman*, i. 155 ff.

[2] The pro-Boer cry was exploited by Mr. Balfour; Dugdale, i. 312.

Chamberlain, the latter had to accept the omission from the ministry of Mr. Henry Chaplin and Sir M. White-Ridley, neither of whom welcomed the peerages given as consolation for the end of fruitful activities.[1]

In 1902 Lord Salisbury's resignation, doubtless largely on health grounds though friction with the King regarding honours for his friends and foreign policy was also suggested,[2] gave the King the obligation to secure a new Premier. His choice of Mr. Balfour was no doubt dictated by the fact that under his uncle he had been leading the Commons, and there can be little doubt that the retiring Premier indicated his claim to the King. It was, however, naturally regarded as surprising that no effort was made to sound the Duke of Devonshire [3] as to his willingness to accept office; no doubt he would have declined, but the failure of consultation annoyed both him and his friends, and some lack of tact must be conceded. He could clearly have been sounded through friends. The King showed then and later willingness to help Mr. Balfour in his dealing with colleagues; he acquiesced without much enthusiasm in the arrangement by which, despite the retirement of Mr. J. Chamberlain which was withheld from them until too late, the free-trade members of his ministry were allowed to resign, with the result that the Duke of Devonshire on reflection felt no option but to take a like course. The King,[4] it is clear, has no responsibility for what must be regarded as rather unsatisfactory conduct on the part of Mr. Balfour.

The ministry thus weakened was imperfectly made good by new appointments, and the ingenuity of Mr. Balfour succeeded in keeping it in existence until 1905. Direct

[1] The Hotel Cecil had become "unlimited".

[2] Lee, *Edward VII*, ii. 158 f.

[3] Holland, *Devonshire*, ii. 280.

[4] *Ibid.* ii. 325 ff.; Dugdale, *Balfour*, i. 350 ff.

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challenges on his policy were evaded,[1] partly because his late colleagues were anxious to do nothing injurious to their party, despite their adherence to the free-trade cause, lest Home Rule might gain strength. Even a defeat in committee on Irish estimates was not deemed decisive, but the wholesale growth of popular disapproval of his clinging to office and the taunts of the Opposition at last convinced the Premier that he must resign; his clinging to office is said to have been in part due to anxiety to secure certain defence reforms before he handed over power to others who might not be so much interested.

In this case the King would have preferred dissolution to resignation, but the Premier declined to accept the royal advice.[2] The same issue had arisen in 1885 and 1895, when Mr. Gladstone and Lord Rosebery had declined the suggestions of the opposition leader that they should dissolve, and Mr. Balfour had full justification in precedent in declining to go to the electorate, when he had no positive policy to place before it. Moreover, he had seriously impaired his position by accepting from Lord Milner the policy of developing the mines of the Transvaal by Chinese labour, a system which exhibited in practice very grave moral abuses as well as being open to denunciation as a disguised form of slavery. The electoral result would, in any case, have been unfavourable, but it was doubtless increased by the fact that the Premier had no initiative for which to ask popular approval.

The position of the Liberal party was at first thought to be hesitant. It could no doubt be pleaded that there was no obligation on the Opposition to accept office, when it had not been allowed to do so earlier, and its efforts to obtain a direct issue had been evaded. It was possible

[1] Cf. Dugdale, *Balfour*, i. 413 f.

[2] Lee, *Edward VII*, ii. 186-91. Cf. Halévy, *Hist. 1905–15*, pp. 3 ff.

also to adduce the refusal of Mr. Disraeli to take office in 1873, when the Ministry of Mr. Gladstone had been defeated on the Irish University Bill.[1] Mr. Disraeli had declined to take office, no doubt because a dissolution was at the time out of the question; he would have been compelled to wind up the business of the session in the uncomfortable position of a Premier without a majority. He adduced, however, the doctrine that he was unable to announce a programme because of ignorance on the subject of the great outstanding issues of the position in Central Asia, the new rules of international law arising out of the *Alabama* issue, the French commercial treaty, and local taxation proposals. But he further argued the new claim that an Opposition which defeated a Government could not be expected automatically to be prepared to accept office, if circumstances were such as to preclude it from going to the country forthwith. The answer to that view given by Mr. Gladstone stressed the fact that, in 1830, 1835, 1841, 1852, 1858, 1859, 1866, and 1868, the party victorious in a vote of the Commons on a vital point had accepted the duty of taking office, and that failure to do so in 1832, 1851, and 1855 was due not to reluctance to act but to inability to form a ministry. On the whole, the argument was in favour of Mr. Gladstone, and in 1880 he laid down, on being invited to comment by Lord Hartington on the royal request to form a ministry, that such an invitation should be accepted, unless he could point out an alternative course more advantageous in the public interest, and, if his suggestion should prove ineffective owing to the attitude of the person indicated as a possible choice, he would be under obligation to undertake the task of forming a Government. The opinion seems to be clearly correct.

[1] Guedalla, *The Queen and Mr. Gladstone*, i. 395 ff.; Morley, *Gladstone*, ii. 450 ff., 652 f. Monypenny and Buckle, *Disraeli*, ii. 548 ff.

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Politicians are not engaged in a game for place and power, but are supposed to be moved by desire to promote the public interest, which plainly must suffer if there is in office a discredited and therefore undesirable ministry. The decline in political democracy in Europe, in special in Italy, is largely to be ascribed to the fact that the contending politicians developed the conception of their function as to secure the interests of themselves and their associates as contrasted with those of the State.

At any rate the Liberal party avoided the error of refusing office. Lord Ripon[1] pointed out that, if Mr. Balfour were to resign, the King might send for Mr. Chamberlain or Lord Lansdowne instead of urging Mr. Balfour to dissolve, but Sir H. Campbell-Bannerman had himself no doubts as to his duty. The real difficulty for him was of a different kind. Sir E. Grey, Mr. Haldane, and less decisively Mr. Asquith, had decided, when the Conservative ministry was beginning to totter to its fall, that the King should be induced, while offering office to Sir H. Campbell-Bannerman, to ask him to hold office in the Lords, thus leaving it open for Mr. Asquith to lead the Commons, and indirectly giving the three conspirators the position of an inner Cabinet. The proposal could unquestionably be put, as it was by the King, on the ground of health ; in fact the Premier's doctor sent like advice, but the ruse offended the dignity of Sir H. Campbell-Bannerman, and the support of his wife persuaded him to hold firm.[2] Mr. Asquith loyally accepted his decision, but the other two capitulated only when they realised that their stratagem had failed ; Sir E. Grey later frankly recorded his regret at what was a very unwise and rather discreditable proceeding.

Edward VII made as little difficulty as he had done in

[1] Wolf, *Ripon*, i. 273 f. ; Spender, *Campbell-Bannerman*, ii. 190 ff.

[2] Lee, *Edward VII*, ii. 444 f. ; Maurice, *Haldane, 1856–1915*, pp. 145 ff. ; Spender, *Lord Oxford*, i. 172 ff.

the case of Mr. Balfour in accepting the appointments proposed by his Premier, and in 1908 chose to succeed him Mr. Asquith.[1] There was never any doubt that the succession must pass to him, but the King asked him to go to Biarritz to take his commission, and this departure from the normal rule of action in England caused some unfavourable comment, especially among those who did not realise that the sovereign's health was decidedly precarious. The royal support was also generously given in the ministerial changes then and later made by Mr. Asquith. The King's action unquestionably must be regarded as establishing the view that in normal conditions the Crown should be very reluctant to take objection to those whom the Premier may offer as ministers; the question of officers of the Household is rather different, but no one imagines that for these posts any Premier would fail to consult the wishes of the sovereign.

The difficulties of George V as to cabinet-making came with the Great War. In 1915[1] a coalition government was made necessary by a concatenation of events. The difficulties between Mr. Churchill at the Admiralty and Lord Fisher were rendered acute by the failure of the latter effectively to state his determined opposition to the Dardanelles expedition, and by his vehement resignation at the moment which he deemed most apt to destroy his official superior. On the military side Sir John French had sought to disguise his lack of military skill by accusations of failure in supply of shells which he had brought to the notice of the Opposition and the press, while assuring Mr. Asquith of his satisfaction with his efforts to make good a shortage which was inevitable, because neither civilians nor soldiers before the war had envisaged a struggle of the type which took place. It was natural that Mr. Bonar Law and his friends should take the opportunity to confront Mr. Asquith

[1] Spender, *Lord Oxford*, ii. 164 ff.; Esher, *Journals*, iii. 233 ff.

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with the choice between a coalition and the bitterness of a fierce attack in the Commons which might well have damaging effects on the conduct of the war and the confidence of her Allies in Britain. At any rate a coalition was arranged, including the omission of Lord Haldane, whose great services in securing the preparation of the Expeditionary Force were forgotten and who was falsely accused of having been anxious not at the outset to send overseas the full strength of that body.[1]

The coalition failed to solve the problems with which it was created to deal, and what chance there was of success in the Dardanelles expedition was wasted in the period during which its merits and demerits were laboriously being explained to the new members of the Cabinet. In the long run the coalition proved as ineffective to solve the problem of winning the war as its predecessor, and Mr. Lloyd George[2] meditated the entrusting of executive power to conduct war operations to a small War Council over which the Premier would not preside, though its findings would be reported to him, so that if necessary he could have secured reconsideration by the whole Cabinet. His essential point, it seems, was that the burden of leading the Government and of carrying out immediate control of war operations was too heavy for one man. The plan was not acceptable in this form to Mr. Asquith, who was prepared only to accept the idea of a Council of which he would be president. This compromise might have sufficed, but for a leakage in *The Times* which was held by the Premier inconsistent with the accord he had thought to have been attained. The outcome

[1] Maurice, *Haldane, 1856–1915*, pp. 363 ff.; Trevelyan, *Grey*, pp. 276 ff.

[2] Spender, *Lord Oxford*, ii. 243 ff. Sir E. Carson, Lords Beaverbrook and Northcliffe were in the movement to oust the Premier, with Mr. Bonar Law in the background. Cf. Somervell, *George V*, pp. 154 ff.; Dugdale, *Balfour*, ii. 166 ff., for his ambiguous part; Beaverbrook, *Politicians and the War*, ii. 292 ff.; Lloyd George, *War Memoirs*, ii. 997 ff.; Esher, iv. 73 ff.

was curious. Apparently the Conservative leaders were anxious to have a reconstruction of the ministry to exclude Mr. Lloyd George, who was with many a *persona ingrata*, but Mr. Bonar Law failed to make clear their intention to the Premier, who thought that the Conservatives were hostile to him and who resigned with a view to clearing up the position. Mr. Bonar Law was then by his advice asked by the King if he could form a ministry, but, failing to do so, left Mr. George to undertake the task with success, the Labour party, with scant prevision, having decided to abandon Mr. Asquith. The King's chief part in the proceedings was his effort at a meeting of the protagonists, Mr. Balfour, Mr. Bonar Law, Mr. Lloyd George, Mr. Asquith, and Mr. Henderson, representing Labour, to secure a settlement by which the services of Mr. Asquith might have been retained in a ministerial office. But he, with the assent of the party, wisely refused to accept the suggestion, and Mr. George proceeded to disprove the truth of his own thesis of the necessity of severing the offices of Premier and control of the War Council by holding both posts.

In 1922 the ministry of Mr. Lloyd George fell. The reason for the *débâcle* was in the main that it had served the purposes of the Conservative party, and it was deemed necessary to extricate it from too close connection with so dynamic a force as that of Mr. George. The chief authority of the Conservatives on electoral tactics, Sir G. Younger, had objected to any joint appeal to the electors, demanding that the Conservatives should stand out by themselves, and had negatived an earlier appeal contemplated by Mr. George. The party was further concerned at the surrender to the Irish rebels involved in the treaty of 1921, and was finally alienated by the steadfast determination of Mr. George to prevent the complete surrender of all that had been gained from Turkey by yielding to the pressure of

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Mustafa Kemal's forces on their advance towards Europe. Deserted by the French and Italians, the small British force was in grave danger, but the determination of the Government, as represented by Mr. George and Mr. Churchill, saved the situation from complete disaster. The appeal to the Dominions, however, hastily drawn up and sent without previous warning of danger, was coldly received in Canada and South Africa, and, though it evoked offers of aid from Australia and New Zealand, even there it was felt that there had been failure of consultation. At any rate the feeling in Conservative circles was adverse, though it must fairly be said that in this case the ministry was only carrying out a policy decidedly in British interests.[1] At a meeting of the Conservative party, at which Mr. Chamberlain put the case for continuance of the existing relations with Mr. George, Mr. Bonar Law and Mr. Baldwin led a successful revolt, and the party agreed to stand on its own at the election which must soon be held.[2] The ministry then resigned, and the King inevitably sent for Mr. Bonar Law, who had served in the War Cabinet and had resigned in March 1921 on the score of ill-health, but who was clearly the effective leader of the Conservatives, now that they had in effect repudiated Mr. Chamberlain's guidance. He accepted office on the understanding that he would be adopted as party leader, which at once happened.

On Mr. Bonar Law's resignation next year through ill-health, the King had a delicate problem to solve. The Conservative revolt had been shared by Lord Curzon, who had bitter personal feelings towards Mr. George on the score of his far from fair treatment by the latter during

[1] Somervell, *George V*, pp. 297 ff.

[2] Oct. 19, 1922, at the Carlton Club. Lords Balfour and Birkenhead, Mr. Chamberlain, and Sir R. Horne remained faithful to their leader for the moment. Cf. Spender, *Great Britain*, pp. 634 ff.; Dugdale, *Balfour*, ii. 346-57; Birkenhead, *Birkenhead*, ii. 175 ff.

his tenure of the Foreign Secretaryship after Mr. Balfour's resignation in 1919 of that office. His long political experience gave him a strong claim to the offer of the Premiership, but Lord Balfour was consulted by the King and gave his opinion against him, while other Conservatives communicated like opinions to the sovereign, who, it is clear, had originally intended to make the offer.[1] The cause assigned for the decision was the desirability of having the Premier in the Commons, where was to be found the strength of the Labour opposition; but other reasons no doubt told, above all the fact that the Olympian manner of Lord Curzon had made him many enemies. It is sometimes held that the King had no real choice but to give office to Mr. Baldwin. It is, however, clear that this much under-estimates the power which passes to a minister if he has the authority to offer places in a government, and it is not really in doubt that, if the royal commission had fallen on Lord Curzon, he would have been easily able to draw up a list of ministers. Mr. George in 1916 had succeeded in a far more difficult task because of the natural and indeed laudable anxiety of politicians at all times to obtain office, a desire accentuated in the case of war, when men are apt to over-estimate the value of their services to their country. If, however, Lord Curzon were to be passed over, there was no doubt that Mr. Baldwin was the natural choice.

Mr. Baldwin's own ministry fell on his decision[2] to demand a mandate from the electorate for protection, a project which raised but scant enthusiasm in his followers and brought against him all the forces of the free-trade movement. The coupon election of 1918, fought on the demand for support for the victors of the war, had given

[1] Nicolson, *Curzon*, pp. 353 ff.; Dugdale, *Balfour*, ii. 362.

[2] Spender, *Great Britain*, pp. 645 ff.

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the Coalition Government 526 seats, Labour 63, Independent Liberals 33, Irish 80, and Independents 5. That of 1922, fought after Mr. Bonar Law's accession to power, gave Conservatives 347, Labour 142, and Liberals 114, the latter result reflecting the utter disunion of Liberalism, as the result of Mr. George's participation in the measures taken in 1918 to eliminate Liberal members, who had voted with Mr. Asquith in the controversy over the criticisms of the ministry made by Sir F. Maurice. In 1923 the Conservatives fell to 258, while Labour reached 191 and Liberals 158 or 159. Clearly the ministry could carry on only by some form of coalition, but Mr. Asquith negatived any idea of coming to terms with the Conservatives and equally refused to consider suggestions of an arrangement for co-operation with Labour.[1] His policy was criticised as impracticable, but neither then nor later would he admit that he had any proper alternative, though it is natural to suggest that there was no reason in principle or on colonial analogy to object to the view that, where there were three effective parties in being, there must be agreements to prevent confusion. Mr. Asquith's decision meant the defeat of the ministry when Parliament met. It had refrained, quite constitutionally, from resigning without meeting the Commons on the model set by Mr. Disraeli in 1868 and followed by Mr. Gladstone in 1874 and 1886. The result of the election was, it felt, indecisive, a view taken by Lord Salisbury in 1886 and 1892, though Mr. Disraeli resigned forthwith in 1880. The defeat led at once to the royal commission to Mr. MacDonald. In this case the minister was clearly denoted by the fact that he had been definitely appointed to be leader of the party in place of Mr. Clynes,[2] who lived to

[1] Spender, *Lord Oxford*, ii. 342 f.; Clynes, *Memoirs*, i. 340 ff.

[2] For the intrigue which replaced Mr. Clynes, leader in 1920–22, see his *Memoirs*, i. 329-33.

regret the fact that he had allowed himself to be superseded by one who was destined to inflict on Labour a shattering blow in 1931.

Mr. MacDonald's fall in 1924 was dictated by the unpopularity of his treaty negotiations with Russia, at the close of which he was forced by extremists to contemplate a loan to that power which earlier he had negatived, and by the withdrawal of a prosecution for incitement to mutiny originally directed against Mr. Campbell. The decision could be supported, but it was too obviously due to representations made by extreme members of the party, and, though the Liberals endeavoured to provide a mode of escape for the ministry, its leader, fatigued with the double burden of the Premiership and the Foreign Office, was eager to escape, and asked for a dissolution to ascertain if he could secure a popular endorsement for the policies which his minority position had precluded him putting into effect during his brief tenure of office. The result was disastrous for the Liberals, who shrank to 40;[1] Labour was reduced to 151 and the Conservatives secured 420 seats. There could, of course, be no doubt as to Mr. MacDonald's successor, and Mr. Baldwin carried on until 1929, when the passage of time rendered an election appropriate. Conducted on the slogan[2] " Safety First ", and suffering from the unpopularity in many quarters of drastic changes in local government which were held to reduce local influence, the election proved unfavourable. The Conservatives won 260 seats, Labour 287, and the Liberals only secured 59.[3]

Once more the question of resignation after or before meeting the Commons arose, but was swiftly decided as Mr. Baldwin interpreted the verdict as meaning that, what-

[1] Spender, *Lord Oxford*, ii. 347.

[2] Spender, *Great Britain*, pp. 687 f. Unemployment was already grave.

[3] Clynes, ii. 108-12, claims Labour 288, Liberals 58.

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ever the electors desired, it was not his continuance in office, and he resigned forthwith. The royal choice now fell inevitably on Mr. MacDonald, who again had to depend on what votes he could pick up from the Liberals for security from attacks by the Conservatives. On this occasion there was a certain measure of co-operation between the two parties, for the Liberals attributed their imperfect representation in Parliament to the unfairness of the electoral system, and hoped to achieve at least the alternative vote if proportional representation were denied in the franchise measure which the Labour party had prepared.

The fall of the ministry was the outcome of European depression accentuated by the generosity of the unemployment allowances given to those thrown out of employment by causes hard to control. The Government, following a practice begun by its predecessor, borrowed freely to meet the growing drain on the funds whence unemployment payments were made, and the Government was driven by Liberal pressure to appoint a committee on national economy. The beginning of a serious drain on Britain by foreigners, who had placed large sums in London, coincided with the revelation by the committee that an immediate deficit in the national accounts of £50,000,000 and a deficit in the following year of £120,000,000 were inevitable, unless drastic steps to balance revenue and expenditure were undertaken. Efforts to secure this end were rendered difficult by the refusal of the Trades Union Council to appreciate the necessity of retrenchment, and, while the leaders of the opposition parties, called into consultation, were not unwilling to help, they insisted on more drastic economies in expenditure than were acceptable to the majority of the ministry. The hands of the Government, however, were forced by representations by the Bank of England that confidence in United States financial circles

could only be secured by the adoption of substantial economies. The crisis was so serious that the King hastily returned to London. The Cabinet found agreement impossible, and the members placed their resignations in the Premier's hands [1] on the assumption that he would yield office to Mr. Baldwin. In fact, however, the King succeeded in securing co-operation by the Conservatives and Liberals in the creation of a National Government which was to clear up the immediate difficulty, and then to dissolve into its constituent elements. The action of Mr. MacDonald in thus accepting a fresh term of office, while of his former Cabinet only Mr. Thomas, Lord Sankey, and Mr. Snowden retained high office, was widely criticised, and he was hastily replaced as head of the Labour party by Mr. Henderson,[2] nor was the breach between him and his former friends ever bridged. But the royal decision was beyond question constitutional, for the King no doubt felt that the only way in which British credit could be rehabilitated was by showing the world that the leaders of all the great parties had come together to extricate the country from the effects of its imprudently generous treatment of the unemployed.

The ministry, at first restricted to ten, was reconstructed after the immediate crisis was over. Curiously enough, a naval mutiny at Invergordon struck a severe blow at the partially restored credit of the country and compelled immediate action to relieve the Bank of England of its duty to pay out gold. But, though one prime purpose of the creation of the National Government was thus destroyed, the effect of retrenchment and reform under the new régime saved Britain from the grave effects which would almost certainly have accompanied the abandon-

[1] Aug. 23, 1931; Snowden, *Autobiography*, ii. 942 ff.; Clynes, *Memoirs*, ii. 196 ff.

[2] Clynes, *Memoirs*, ii. 198 ff.

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ment of the gold standard before remedial measures had been undertaken. It was naturally felt that a mandate for drastic measures of reform of the financial situation must be obtained from the electors, and the result of an appeal was conclusive of the sense of relief felt by the public at the change of ministry. The ex-ministers of the Labour party suffered personal defeat and the majority for the Government was reckoned as 559 to 56, though there were already differences in Liberal ranks between those who were content to style themselves Liberals *sans* phrase and those who were Liberal Nationals. The Cabinet was then reconstructed and increased to twenty-one members; five representing Labour, five Liberals, and eleven Conservatives. It was not fated to enjoy for a long period real cohesion. It was kept together by an accord announced on January 27, 1932, to allow members who did not accept protection as a wise policy to speak and vote against it without breach of Cabinet solidarity.[1] The policy lasted only until September 28, when the Liberals proper felt unable to remain in the ministry in view of the adoption in the Ottawa agreements of a policy wholly inconsistent with free trade.

In 1935 the electorate gave a fresh mandate but reduced the Conservatives from 471 to 387, Liberal Nationals from 35 to 33, National Labour from 13 to 8; while Labour rose from 52 to 154 and Liberals declined from 33 to 21. Mr. Baldwin's ministry was responsible for the dissolution; he took over power in May from his predecessor, who had long been only a hostage in Conservative hands, and who was disastrously defeated in his own constituency, being ultimately driven to secure by Conservative votes a seat for the Scottish Universities; he had in his Labour ministry

[1] Snowden, *Autobiography*, ii. 1010 f. The dissentients were Lord Snowden, Sir H. Samuel, Sir D. Maclean, and Sir A. Sinclair.

endeavoured to eradicate the University representation as undemocratic, and his *volte face* was not allowed to pass uncriticised.[1] Mr. Baldwin remained in office to secure the abdication of Edward VIII, and to attend the coronation of George VI. His succession by Mr. N. Chamberlain was so arranged as to proceed with automatic precision and without loss of time on May 28, 1937. The King had in this case clearly no possibility of independent choice, for the new Premier was marked out by the authority which he possessed over the Conservative party, and his future succession as Premier had been indicated by the reception given by the party to his destruction of sanctions against Italy in June 1936.

3. *The Prerogative of Dissolution*

At the accession of Queen Victoria the prerogative of dissolution presented itself to her, quite naturally, in the light of a power to be used for the purpose of securing fresh strength for ministers acceptable to the Crown. Such a view was commended by the history of its employment. William III and Anne had both thus gained support for ministries which they favoured; George III had dismissed Mr. Fox and Lord North and had given the younger Pitt in 1784 a dissolution whence he derived decisive victory. So long as he favoured the Grenville ministry it was able to win support at the election of 1806; when he became adverse on the issue of Catholic emancipation, the dissolution he gave to the Portland ministry was no less decisive in its result. Nor less decisive was the result of the dissolution in 1812 after Lord Liverpool's acceptance of office,[2] though it had been hoped that the Prince Regent would

[1] Numerous votes were given to the Scottish Nationalist candidate in protest.

[2] May, *Const. Hist.* i. 87 ff.

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have appointed a ministry of Whig proclivities. Queen Victoria, therefore, readily accepted the view of Lord Melbourne that the return of a majority at a general election against the ministry which had been given a dissolution must be regarded as an affront to the Crown, and she regarded the majority of nearly a hundred returned against her Prime Minister in 1841 as proving that she had been mistaken in her grant of the dissolution.[1]

The Queen's view rested on the failure to realise the effect of the Reform Act in depriving the Crown of the power of controlling the destinies of the country through a ministry acceptable to it. She did not appreciate that ministers now required more than her personal confidence; still less that her confidence must be given only to such ministers as could command a majority in the House of Commons, whose members the Reform Act had made responsible to the electorate. There was nothing in her eyes inconsistent in accepting the resignation of her ministry when defeated in the Commons after the election of 1841, while assuring Lord Melbourne of her confidence in him.

Queen Victoria's views were shared by Sir R. Peel.[2] Dissolution seemed to him out of place in 1846 when he had carried the principle of the abolition of the corn laws, because he felt that "unsuccessful dissolutions are, generally speaking, injurious to the authority of the Crown", whereas the prerogative should properly be a great instrument to the Crown for its protection. He was clearly blind to the consideration that it is essentially democratic to afford to the electors the right to decide policy, and when Lord J. Russell succeeded him nothing was done to clarify the situation until 1847, when the passage of time rendered a dissolution clearly necessary. In the same spirit Queen Victoria felt in no wise bound to give a dissolution to Lord

[1] *Letters*, 1 s. ii. 91 (July 16, 1846). [2] *Memoirs*, ii. 295.

Stanley if the Russell ministry were to fall. In 1851, when Lord J. Russell resigned and the issue arose whether the Queen should grant Lord Stanley a dissolution if he asked for one, Lord John showed more appreciation of the rights of the electorate, and thought it would entail too much responsibility on the Crown to refuse the new ministry the right to appeal for the popular verdict.[1] The Queen was candidly told by Lord Stanley that he would have no chance of forming a ministry if it were understood that he would not be given a dissolution, and she relented sufficiently to allow him to deny if that proved necessary that she would refuse the right to dissolve.[2]

Lord Stanley ultimately did not take office at this time, and the issue was postponed until 1858 when Lord Derby, who had taken office on the fall of Lord Palmerston on the Conspiracy to Murder Bill, enquired whether he could have a dissolution in the event of defeat on the issue of Lord Ellenborough's errors in Indian policy. The Queen was reluctant to concede the request, and objected to the suggestion that Lord Derby should be authorised to let it be known that he would be permitted to dissolve if he were defeated; such a warning would, it was felt, render defeat improbable. Lord Aberdeen,[3] whom she consulted privately, explained the position in convincing terms. The abstract right of the Queen to refuse a dissolution was undoubted, but the statesman who took office in room of the Premier, if he retired on refusal, must accept responsibility for her action, and for refusal of the right to consult the people there was no precedent. The royal impartiality rendered refusal out of place, nor would any arguments as to expediency in regard to public business or the objections to frequent general elections suffice to justify refusal, and the

[1] *Letters*, 1 s. ii. 289 f. [2] *Ibid.* ii. 303 f.
[3] *Ibid.* iii. 286 ff., 289; Monypenny and Buckle, i. 1545 ff.

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new Premier would have to give arguments to defend his action. The reasoning prevailed, the Queen permitted Lord Derby to dissolve, in the event of defeat, and, though this was not formally announced, care was taken to let it be known, so that the ministry survived the attack on the issue.

It will be seen that Lord Aberdeen stressed the theoretic right of the Crown to refuse a dissolution, and his position accords with that of Lord Russell in 1866[1] and of Mr. Disraeli in 1868.[2] But the essential fact of the right of the electorate to decide on fundamental issues of policy dictated the disappearance of that right in practice. Lord Salisbury, when consulted in 1886 whether the Queen should give a dissolution to Mr. Gladstone on the Home Rule issue, advised acceptance of his advice on the ground that it was the natural and ordinary course and that the grant would save her from imputations of partisanship, as well as relieve her of the personal inconvenience which would have resulted from the time of a change of ministry.[3]

In 1900 the Queen was asked to approve a dissolution which was based on grounds rather of tactical advantage than of necessity for consulting the people.[4] There was in fact no doubt that the South African War was in principle approved by the electorate, and no crisis had arisen to demand approval by the ministry. But the time was deemed tactically suitable by Mr. Chamberlain, though Lord Salisbury was not certain that the prestige to be derived from claiming the termination of the war—which in fact was far distant—would outweigh the natural tend-

[1] *Letters*, 2 s. i. 337.

[2] May 1; Monypenny and Buckle, ii. 370-72.

[3] *Letters*, 3 s. i. 129 f.

[4] Garvin, *Chamberlain*, iii. 579, 589, 603 ff. For Salisbury's view see Chamberlain, *Politics from Inside*, p. 262; for Campbell-Bannerman's objections, Spender, i. 292 ff.

ency of the electorate to turn to the Opposition. The Queen clearly did not demur or hold that any obligation lay on the Crown to prevent frequent elections. No doubt she would have readily sanctioned a like appeal had Lord Beaconsfield decided on one in 1878,[1] when the laurels of his peace with honour at Berlin were yet unfaded. The precedent was followed in 1918, but in that case the necessity of an election could not possibly be denied. The existing Parliament had been elected in 1910, its life had been artificially prolonged by reason of the war, and, though it was a singularly convenient excuse for a dissolution, the claim that a mandate from the people was necessary on which to terminate the war could not be disputed. Nor can any exception be taken to the grant by the King of a dissolution in 1935; the issue of sanctions against Italy over her aggression on Ethiopia had definitely arisen, and, whatever view be taken of the use made by Mr. Baldwin of the mandate, the propriety of obtaining it stands out clearly.

The question, however, of the right of a Premier to a mandate was raised in a new form in 1923 when the establishment of three distinct parties suggested to Mr. Asquith[2] that the time had come when it should be accepted as a constitutional convention that, in the event of a party taking office in a minority and being defeated in the Commons, it should not be entitled as of right to a dissolution, but the Crown should be at liberty to consider the possibility of finding a leader who would consent to take office and to carry on the administration without a dissolution. He had in mind of course the position then disclosed, when the Government of Mr. Baldwin had obtained in the

[1] Monypenny and Buckle, ii. 1241.

[2] *The Times*, Dec. 19, 1923 (not dealt with in Spender's biography). Contrast Keith, *Imperial Relations, 1916–1935*, pp. 56-8.

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election only 258 seats as against Labour 191 and Liberal 159. It was his view that Labour should be allowed to take office, but he contemplated the possibility that, if defeated on some item of policy, Mr. MacDonald might seek a dissolution. In that case the King, he held, would have a discretion to seek to form another ministry in lieu of granting the dissolution asked for. When the issue arose in 1924, however, the King had no hesitation in granting forthwith the dissolution for which Mr. MacDonald asked.[1] There could be no real doubt of the propriety of his action. The electorate was entitled to be asked to pass verdict on the performance of the Labour ministry, and on its programme of subsequent developments. Nor was there the slightest chance of the Conservative leader accepting office on a promise of Liberal support, still less of his agreeing to support a Liberal ministry. The Labour Government had so fully compromised itself by its pro-Russian proclivities and was so deeply compromised by the withdrawal of the proceedings for incitement to mutiny against Mr. Campbell that a disaster at the polls was assured.

The right, however, to a dissolution need not be claimed to be absolute. There is wide agreement that the right does not exist in the case of a ministry which already has had one unsuccessful dissolution, and shortly thereafter is defeated in the Commons, and asks for another, in the hope of success at the hands of an electorate wearied of political strife. But any such case would have to be judged by the King on its merits, and no rule of general application could be laid down. It was partly on this difficult question that Lord Byng in 1926 refused a dissolution to Mr. Mackenzie King, who at the general election of 1925 had failed to secure an effective majority and who therefore sought a new dissolution in order to test the question. Lord Byng's

[1] Clynes, *Memoirs*, ii. 61-7.

refusal was proved at once erroneous, because Mr. Meighen, who accepted office when Mr. King resigned, was unable to carry on government without a dissolution, proving the soundness of the opinion of Mr. King that the time had come when the electorate must be given the opportunity to cast a decisive vote.[1] Normally, it may be held, the electorate should be allowed to decide, for it may be held that it must take the consequences of returning a dubious verdict at the preceding contest.

There is, of course, no doubt that the Crown can deprecate dissolution without refusing it, but, if the Premier assents to the advice given, he accepts responsibility for it, and no constitutional question arises. Under modern conditions the probability of ministerial resignation as the outcome of refusal of a dissolution may be deemed to have been reduced to negligible proportions, for in essence it would involve a failure of the Crown to allow the electorate the right to decide on its choice of ministers.

4. *The Power to compel Dissolution and to dismiss Ministers*

While the authority of the Crown has come to be definitely limited by convention regarding the refusal of the request of a Premier for a dissolution, there is less definition of the position as regards the right to demand reference to the people. In 1859 the Queen appears to have contemplated the possibility that she might force a dissolution in order to defeat the excessive pro-Italian proclivities of her Premier and her Foreign Secretary, but she found this expedient unnecessary; so reluctant were their colleagues to follow their lead beyond due bounds.[2]

[1] Keith, *Responsible Government in the Dominions*, i. 186 ff.

[2] Cf. Fitzmaurice, *Granville*, i. 349 ff.

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It was not until 1892 saw Mr. Gladstone placed in nominal authority that her distrust induced her to consider the possibility of compelling a dissolution in order to counter any attempt by Mr. Gladstone to carry out an attack on the House of Lords in retaliation for the rejection of the Home Rule Bill. Lord Salisbury, consulted privately and irregularly,[1] deprecated such action. Ministers would resign if called on to dissolve, and would go to the country as critics of the royal authority, which might injure the position of the Crown. His advice seems to have been dictated rather by expediency than by any profound constitutional convictions, for, when the same issue arose under Lord Rosebery's ministry, he seems [2] to have been quite ready to approve a royal demand for a dissolution in view of Lord Rosebery's projects for reform of the House of Lords. This advice was rejected by Sir H. James,[3] who insisted that, if Lord Rosebery agreed to dissolve against his own views, he might have to reveal that he was acting in deference to royal requests, and this might lead to the election turning on the view taken by the electors of the Queen's intervention. If, on the other hand, he resigned, the Queen would have to find other ministers, and to dissolve on their advice, but this would involve the election turning on issues other than that of the House of Lords as desired by the Crown.

The issue arose in a much more difficult form in the next reign. The controversy with the Lords over the Finance Bill of 1909 led to the inevitable royal grant of a dissolution, but the result of the election of January 1910 was to render the ministry of Mr. Asquith dependent on the Irish vote, and the Irish members were reluctant to agree to the whisky duties in the budget, unless assured that steps would forthwith be undertaken to legislate to

[1] *Letters*, 3 s. ii. 297 ff. [2] *Ibid.* ii. 433 f. [3] *Ibid.* ii. 442 ff.

override the Lords' power of veto. The issue was with difficulty accommodated,[1] but not before Mr. Balfour had committed himself to the opinion that, if the King were asked to create peers to carry a Bill to destroy the Lords' veto, or to grant a dissolution on the understanding that, if the ministry were victorious, he would then create peers, he should refuse either suggestion and ask the opposition to take office and to dissolve Parliament, a proposal patently open to grave constitutional objections.

The issue was renewed on the question of the passing of the Parliament Bill, intended to reduce to modest dimensions the authority of the Lords. The ministry had advised a dissolution when attempts by conference to arrange a compromise had failed after the accession of George V, but only on receiving a definite promise [2] of the creation of peers if necessary, provided the party was sustained by an adequate majority in the new House of Commons. It is true that by a serious error secrecy was asked for, and observed by the Crown, regarding this pledge which was not published until July 22, 1911, but the claim that the Crown should require a further dissolution, refusing to assent to the Bill until assured of the definite approval of the electorate, was an impossible one. The election would necessarily have been fought on the issue of King and peers versus the people, and, whatever the immediate result, the monarchy would have taken its place in the popular opinion as linked with the peers in the nefarious work of destroying beneficent efforts of the Commons.

The issue that was presented in the following years over the Government of Ireland Bill was much more difficult.

[1] Lee, *Edward VII*, ii. 698 ff., 705 ff.

[2] Spender, *Lord Oxford*, i. 296 f. It is clear that Edward VII would have required a second dissolution before creating peers: *ibid.* i. 261 (memo. by V. Nash, Dec. 15, 1909); Lee, ii. 710-12; and that Asquith agreed: Spender, i. 333 f. Cf. Esher, *Journals*, ii. 442.

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The attitude of the ministry was simple. The Parliament Bill had been sought and passed essentially in order to secure that the Irish Home Rule issue should be disposed of, and this fact was recognised on every side at the second election of 1910. The ministry would not dissolve,[1] whether the King so desired or not; he must dismiss them if a dissolution were to be held. No doubt, as Lord Halsbury insisted on November 5, 1913, the royal power to refuse assent to a Bill was intact, but that meant the resignation of ministers and the raising of the relations of Crown and Cabinet. It was an established principle of the constitution that the Crown acted on advice. The precedent to the contrary of William IV in 1834 was not a happy one. Queen Victoria and Edward VII had always in the long run accepted ministerial advice, and a refusal to do so would bring the Crown into violent political controversy. If assent were refused to one Bill disliked by Conservatives, the sovereign would be constantly appealed to as regards other Bills, and would cause deep disappointment, whatever in any case his decision might be, to a large section of his people.

The difficulties of the position were increased by realisation that a powerful movement, favoured by Sir E. Carson and Mr. F. E. Smith and backed by many Conservatives, existed to secure rebellion and the establishment of a government in Ulster, and that many of the officers of the army in Ireland were not prepared to carry out measures to enforce acceptance of the Government of Ireland Bill if passed into law. A grave situation was created by the resignation of a large number of officers at the Curragh and by the weak concession made without Cabinet sanction by the Secretary of State for War, which seemed to pledge the ministry not to use armed forces to put down any resistance

[1] Spender, ii. 28-34. For Balfour's view see Dugdale, ii. 98-103.

to the decisions of Parliament regarding the future political position of Ulster. Discipline was for a time restored by the resignation of Colonel Seely and by the assumption of control of the War Office by the Premier, but the introduction at Larne by the Ulster leaders of munitions [1] to be used against the royal army led to a like effort by Irish Nationalists at Howth.[2] In both cases the British forces failed successfully to intervene, though in the latter case some loss of life took place in a struggle between the forces and a Dublin mob. The risk of civil war was undeniable and the King was fully entitled to demand that every effort to solve the impasse should be made. A conference held from July 21 to 24 failed to achieve accord. The ministry were prepared to allow counties to contract out of the new system for six years, thus ensuring that Parliament would have a fresh chance of decision after at least one general election before the system became effective therein. Permanent exclusion, if desired, might perhaps have been granted. But the Opposition realised that some counties would desire to be included, and the conference broke down on finding itself unable to agree on the treatment of Fermanagh and Tyrone wherein opinion was notoriously divided. The ministry then resolved to offer county option without inclusion at any fixed date, though with the right to seek inclusion, but even on this accord was not reached.[3] On the outbreak of war the ministry therefore had no option except to secure the royal assent under the Parliament Act to the original measure, passing however by the usual procedure with the assent of the Lords a Bill [4] to postpone

[1] Procured from Germany with singular disloyalty, and with the benevolent aid of the German Government: Haldane, *Autobiography*, p. 269.

[2] D. Gwynn, *Casement*, pp. 233 ff. (German rifles).

[3] Spender, *Lord Oxford*, ii. 55; Ullswater, *A Speaker's Commentaries*, ii. 163 f.

[4] 4 & 5 Geo. V. c. 88.

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operation of the new Act [1] until after the war, while it pledged itself to prepare an amending Act and not to countenance the use of force for the coercion of Ulster.

How unwise it would have been for the Crown to intervene against the ministry can be seen from the fact that the postponement of the operation of the Government of Ireland Act was one of the causes why Ireland, after a period of co-operation with the British effort to win the war, developed a rebellious attitude, which turned, after the failure of the Coalition Government to reach a satisfactory settlement of the issue by a conference in Ireland, into a determined effort to destroy British authority. Had George V deviated from the narrow and difficult path of constitutional monarchy, and had he gone beyond the right of advice and warning certainly inherent in the royal office, he would have raised a fundamental barrier between the Crown and the vast number of supporters of the ministerial policy of conciliation with Ireland. As it was, he lived to see civil war and widespread ruin, and in 1921 to employ his influence to induce his ministers to use his visit to Belfast to inaugurate the Parliament of Northern Ireland, created under the Government of Ireland Act, 1920, passed in the vain hope of winning back the allegiance of the rebels, as a bridge to secure negotiations with the Sinn Fein leaders. He had steadily refused suggestions from politicians and others disgusted by the atrocities and counter-atrocities of the civil war to disregard the objections of his ministers to any relaxation of their campaign against the rebels; he had declined in August 1920 [2] to intervene to pardon the Lord Mayor of Cork when on hunger-strike, but he felt able in 1921 [3] to give effect to the growing desire of

[1] 4 & 5 Geo. V. c. 90; repealed 10 & 11 Geo. V. c. 67, s. 76 (2).

[2] See Mr. Lloyd George, *The Times*, Aug. 27; Mr. Balfour, Aug. 31.

[3] Pakenham, *Peace by Ordeal*, pp. 76 f.; Mr. Lloyd George, House of Commons, July 29, 1921.

his country for the end of a deplorable struggle, and to urge on ministers steps for the opening of peace negotiations, whence issued the treaty of 1921 and the Constitution of the Irish Free State which left him sovereign in the State, until his death, and postponed the elimination of the Crown from all internal government until the abdication of Edward VIII in December 1936.

No case since has arisen to bring up the issue of dismissal. In 1931 the crisis in British finance caused by the international economic and financial position enjoined drastic measures of economy, if the credit of Britain and her financial stability were not to be overthrown. But the King's action was completely constitutional. His efforts were directed towards securing national effort to restore the position, and his support and initiative for the setting up of a National Government were conceived entirely on constitutional grounds. Whether Mr. MacDonald, who as head of the ministry was primarily responsible for its disastrous financial methods, should have accepted the Premiership was a matter for his decision, not for the King, who hoped by the appointment to create a ministry genuinely national.

The issue has, however, been raised whether the King might not properly have asked his ministers to take the opinion of the country on the issue of the abandonment of sanctions against Italy, in view of the fact that at the general election of 1935 they had pledged themselves, in consideration of the result of the Peace Ballot arranged by the League of Nations Union and others, to fidelity to the Covenant of the League of Nations. The like question arose in 1938 when the King was advised to accept the accord with Italy of April 16, in which recognition of the King of Italy as Emperor of Ethiopia was promised in complete disregard of the obligation of the Crown under Article 10 of the Covenant to preserve Ethiopia from aggres-

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sion and of its solemn undertaking under Article 20 not to enter into any agreement contrary to the terms of the League Covenant. It was argued that acceptance of the agreement was a definite blot on the royal honour, and the same issue was raised in September and October 1938 when Czechoslovakia was abandoned by Britain and France, and Mr. Chamberlain's influence was used to induce France deliberately to violate her categorical obligations under the Locarno Treaty of 1925, which had at the time been warmly approved by the British ministry and Crown. The attitude of the ministry to Spain was also adduced as contradicting British obligations and as ignoring the grave damage to British interests, through the immediate menace to Gibraltar and to the security of Britain and France in the Mediterranean, involved in the establishment of a Spanish Government under Italian influence. It was stressed that in the Spanish war with the United States the British Government had been prepared to resort to a blockade if necessary to compel Spain to desist from fortifications which might menace Gibraltar,[1] and that the danger from the powerful artillery mounted by General Franco was far greater than any risk of offence by the weak Spain of 1898–9. But it was clear that the Crown could not take so serious a step except on proof of backing throughout the country of opinions hostile to the attitude of the great majority of the House of Commons. To deny the possibility of the necessity of dismissal, even in the face of a Commons majority, would be unwise, but the risk of taking such a step must always be so great as to dissuade action.

The question of dismissal did indeed arise in 1878 under circumstances of interest.[2] The Queen was impressed by the failure of her ministers to assert the rights of the Crown

[1] *Letters of Queen Victoria*, 3 s. iii. 269 f.

[2] Monypenny and Buckle, ii. 1117 ff. (Feb. 9, 10, 1878).

against Russian aims on Constantinople and demanded that the ministry should fulfil express pledges given to her. Lord Beaconsfield defended his good faith, but pointed out that dismissal was the constitutional method of meeting wilful or even weak deception of failure of engagements. The ministry, with a majority in both houses and in view of the existing circumstances, could not honourably resign, but dismissal was possible, and the Queen would be able to find other adequate advisers in their place. The Queen naturally did not for a moment think of acting on this suggestion. Though the point at issue was failure of ministers towards the Crown, the analogy to 1936–8 is noteworthy, for political power clearly flows now from the people rather than the Crown.

5. *The King as Guardian of the Constitution*

The position of the Crown in regard to the constitution was for a long period not in dispute. The existence of the House of Lords with its great powers effectively negatived the idea of any revolutionary change. The Reform Act of 1832 had indeed been brought about by the threat to create peers, but it was by no means a revolutionary measure if regarded dispassionately. It only brought about that the people should be given the effective enjoyment of the right which in theory was theirs, that of being represented in the Commons by persons really chosen by themselves. The other changes in the following years were merely extensions of the franchise to classes which were manifestly more or less well suited to vote, and in 1867 and in 1884 there was no real contest over the new grants. Even in 1918, wholesale as was the change, it was one commended by a conference of party members [1] under the

[1] *Parl. Pap.* Cd. 8463.

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chairmanship of the Speaker, and its findings whether good or bad were manifestly the expression of the real will of the Commons and in accord with those of the electorate. It may be granted that the electorate was not consulted, but the principle of democratic government does not demand that there shall be delay in bringing into operation a clearly useful reform, which the people desire, in order that there may be an election which would enable them to give formal expression to that desire. The position in 1928 was certainly less satisfactory. The extension of the electorate had not been made a clear issue, and there was natural doubt in the Conservative party whether such a change was in itself desirable, and whether it should be carried out on the strength of a general election then becoming remote, or, if the policy were approved, whether it should not be made an item in the next electoral appeal. The Prime Minister's decision in its favour rested on his interpretation of his electoral address, and his Cabinet acquiesced, while the Liberal and Labour parties welcomed the scheme. In these circumstances the right of the Crown to assent could not be questioned.[1]

But, as shown elsewhere, in the case of the Parliament Bill the question of the royal assent had been most definitely raised, because that measure abolished the safeguard against rash constitutional change presented by the existence of a House of Lords, which could be counted upon to be hostile to any substantial changes in the framework of the constitution. The royal assent to the Bill was obtained only under very special circumstances, and it is possible that it might have been far more hard to obtain had the King had longer experience of office. In that case it seems to have been thought by Lord Esher[2] that he

[1] For Lord Birkenhead's protest see Birkenhead, ii. 291 f.

[2] *Journals*, iii. 133.

would not have consented to give the pledge of November 1910, but might have asked Mr. Balfour to form a ministry,[1] with what results it is impossible to conjecture. The sweeping away of the power of the Lords, however, is *un fait accompli*, and the question thus arises within what limits can the King serve to make good the function of delay with a view to ascertain the will of the people which the Lords exercised in 1893 against the Government of Ireland Bill, and in 1912–14 against the new measure promoted by Mr. Asquith.

There is also another aspect to the question. The Parliament Act, 1911, in limiting the powers of the Lords unquestionably provides a simple and not at all prolonged method of attaining the objects of the lower house. If this is so, can it be legitimate to resort to the process, threatened in 1832 and again in 1911, but never put in operation since 1712, when peers were created to secure acceptance of the Treaty of Utrecht, of the creation of peers to overcome forthwith resistance in the Lords to emergency reform proposals? Or would such action on the part of the King be contrary to the spirit of the constitution, as contained in the Parliament Act, and would it not be proper on the part of the Crown to insist that, if the ministry wished to pass proposals over the head of the Lords without waiting for the lapse of time provided for in the Act, it must secure authority to do so by dissolving and obtaining a specific mandate to this effect from the electorate? Or would it be sufficient that the ministry should show, not merely that it had a mandate for its measures, but that it had also asked for and received a specific mandate to secure its aims, not through the machinery of the Parliament Act but through direct

[1] Mr. Balfour would have done so: Dugdale, ii. 67. Cf. Chamberlain, *Politics from Inside*, pp. 206 ff.

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action on the personnel of the Lords ? The issues are real and serious, and they deserve full consideration.

The issue is not academic, because it is the view of many Labour party leaders that the policy of socialisation of industry and finance must be carried through, not piecemeal and gradually, but by a strong and decisive step. This would have to take the form of securing the passing of an Emergency Powers Act which would give the ministry unfettered discretion to proceed by Orders in Council, and under them to deal drastically with financiers and others who might seek to delay the operation of the Labour plan, and to cause financial difficulties which might result in the overthrow of the ministry. But could such a measure be obtained in face of opposition in the Lords ? Would it not be found necessary to secure from the Crown the creation of peers to overrule any objections by the upper chamber ? It would be wise for the party to make up its mind to refuse office if returned by a substantial majority, unless with a royal pledge — which might be kept secret or made public as might seem wiser — to create peers if called upon so to do.

The position of the Crown in such a case would clearly be very difficult, but the matter might in practice be much simplified, if the Labour party made it clear to the electorate that it put the destruction of resistance by the Lords as an essential part of its policy, and that it was asking a mandate for this purpose as fully as for its policy of socialisation. If it failed to take this step, it would be impossible to say that the party would have the right to expect the King to override the constitutional principle that the mode of securing the passage of an Act opposed by the Lords is the use of the simple form of procedure provided by the Parliament Act. In that case the King would, if asked to create peers, be under no obligation to

do so. He would be entitled to consider whether he would merely use all his influence with the ministry to induce it to respect the system established by the Act, accepting advice to the contrary if it were persisted in, or whether he would decline, leaving ministers to accept and ratify his refusal, or to resign, or to dissolve in order to obtain a mandate. The difficulties in the way of royal action are very real. It is quite clear that the King would be bitterly attacked in the election as having shown partisanship. Even if ministers dissolved, they could not be expected to remain silent on the reasons for their doing so, as Sir H. James[1] pointed out when it was a case of seeking to compel a Liberal Government to dissolve, and the King would be subjected to all the disadvantages of attack. It is quite fair to say that the disadvantages of such a position are so great that it might be justifiable for the sovereign to take advice rather than face them. But it is impossible to hold that he must so act; the demand for the creation of peers in the case assumed would be contrary to the spirit of the constitution and it would be possible that the demand did not represent the desire of the electorate, so that a dissolution under any auspices would return a majority against Labour.

The principle, it must be noted, applies equally to any proposal by a Conservative Government to destroy the settlement embodied in the Parliament Act by legislation not preceded by a clear electoral mandate. The King in such a case would be bound, if he were to desire to maintain the spirit of the constitution, to refuse assent to such proposed action, and to warn ministers that he must ask that the electors should pass judgment on so serious a violation of a great constitutional settlement as the Parliament Act. Those who contend that the King should act automatically

[1] *Letters of Queen Victoria*, 3 s. ii. 442-4.

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on the advice of ministers, if they press any course on him despite remonstrance, warning, and advice, agree that in such a case as this he should accept ministerial advice.

Another aspect of the situation is the attitude of the King to the giving of assent to a Bill which prolonged the duration of Parliament beyond the five years allowed in the Parliament Act. If there was general accord in the country, as there no doubt was in the Great War,[1] to prolongation, then the royal assent could be given without hesitation. But, if not, should the King assent? It would seem that in principle he should not. There is a further possible case. Suppose a ministry procures a measure which markedly alters in favour of one party the present electoral system, should it be accepted by the King except on the authority of a mandate?

The difficulty undoubtedly arises whether it would not always be possible for the argument to be adduced that there was not really a mandate, unless an election had been fought deliberately on that issue. Thus, it is pointed out, the King in 1910 was entitled to insist on the holding of an election to decide the fate of the Parliament Bill, despite the majority given at the first election of that year, which might be regarded as simply a mandate to pass the Finance Bill. It was discussed vehemently, as shown elsewhere, in 1912–14[2] whether the King should not insist on a fresh election on the Government of Ireland Act despite the Liberal claim that the electorate had voted in December 1910 in the full knowledge that the Parliament Act was chiefly a means to the end of granting over the heads of the Lords home rule to Ireland.

The answer to this difficulty is that it lies very much with a party to decide to put the issue to the electorate in

[1] 5 & 6 Geo. V. c. 100; 6 & 7 Geo. V. c. 44.

[2] See Chap. X. § 2 *post*.

such a way as to make it clear that it places the question in the front rank. It cannot complain if it allows the point to be commingled with many others, when the question is pressed whether it has duly consulted the people. It can make that clear by heading its list of essential aims by the issue of the Lords. If it does so, the King can have no ground to refuse advice.

There remains, however, the contention that the King must necessarily be on the side of Conservatism and capitalism, and cannot be trusted to act fairly as between proposals of the two parties, just as the House of Lords is a safeguard for the constitution only in so far as it would reject any Labour proposal, but not against Conservative derogations from constitutional rules. The King, it is pointed out, did not require the submission to the electors of the Bill to give equal suffrage in 1928 nor the introduction of tariff reform in 1932. But these instances are not very cogent. It is very doubtful if there was any substantial body of opinion in the country opposed to the Bill of 1928, and what is of greater importance, such opinion as there was was almost entirely Conservative. The King then had every reason to believe that an election would have been sheer waste of time. Nor was the position vitally different in 1932. The Government in 1931 asked for a very wide mandate, and it is impossible to believe that the King in 1932 could have asked for an election on the issue then raised. Nor again in 1936 was there any room for royal intervention to demand that the country should be consulted on rearmament; the electorate could give one reply only, as the King well knew.

Another case, in which the King did not claim, nor did Conservatives or Liberals seek reference to the people, is adduced, the abdication of 1936.[1] But the example has no

[1] See Chap. II. § 2 *ante*.

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cogency. The issue was not constitutional as between sections of the people; it was one for the King personally to decide, and his decision was in the best interests of his people and anticipated their decision. There is never any need to have an election when its result is certain: Fascists and Communists might have voted in favour of the right of the King to marry at will; they could not have carried a single seat in Scotland nor probably in England. No conclusion at all can be derived from this episode.

The weakness of the objections to the safeguarding of the constitution by royal intervention rests on the belief that the policy of the Labour party can only be effected by shock tactics; that the cohesion of the capitalist system is such that it requires a revolutionary blow to shatter it to pieces so effectively that it can never be restored. The people, it is presumed, must on some occasion be induced to give a majority on the strength of some cheerful prospect such as large increases of wages, reduction of hours of labour, cheaper food and other necessities, and pensions of adequate amount at an earlier age, and on the strength of this majority the King must be asked to destroy the House of Lords, without that issue having been clearly put before the electorate. In this form the proposition is open to argument, for the benefits of orderly progress may seem to many to outweigh the advantages of seeking to obtain by revolution, even if bloodless, a millennium.

6. *The King as the Symbol of Imperial Unity*

The growth of the autonomy of the Dominions does not fall for discussion here,[1] but there must be noted the fact that, since the Statute of Westminster, 1931, and the re-

[1] Keith, *The Sovereignty of the Dominions*, and *The Dominions as Sovereign States*.

solutions of the Imperial Conferences of 1926–37 the King has for all practical purposes formed the essential link of connection between the United Kingdom, with the Empire dependent thereon, and the self-governing Dominions, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Eire. Later no doubt India will be in like position to the Dominions, and gradually other territories, Southern Rhodesia, Burma, Ceylon, will join the Dominions, though there is always the possibility that Eire or the Union will secede from the Commonwealth, a possibility perhaps imprudently envisaged by the Dominions Secretary in December 1938. Eire has in fact taken steps to bring complete separation almost into existence, and is perhaps deterred only from carrying out the idea to the full by the consideration that to do so would terminate any chance of securing Northern Ireland. For the time being, therefore, the declaration of a republic is delayed, but it might be proceeded with if at any time it proved possible to force Britain to surrender Northern Ireland as the price of neutrality in war, an attitude more than once hinted at by Mr. De Valera.

The effect of this position of the King on his relations with ministers has been variously estimated. Mr. Balfour[1] undoubtedly believed that much power was added to the King, because British ministers could not venture to bring about strained relations which might lead to threats of abdication, for such pressure would be resented by the Dominions. This view seems unsound. No Dominion would be willing to modify substantially its attitude on any subject in order to meet royal wishes, and no Dominion would expect the British Government to yield on any vital issue. The rule of autonomy for each unit of the Empire has developed so effectively that it is impossible now to

[1] Cf. as early as 1901, Dugdale, i. 317.

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give credence to Mr. Balfour's contention. The value, which it has, really refers to the popularity of the King with the people of the United Kingdom, which would always make any action which might result in a threat of abdication risky; the Imperial aspect of the situation would count for little more.

But, if we accept this fact, the importance of the position of the King as the symbol of unity is not in the least diminished. It has indeed been suggested [1] that the value of the symbol can be exaggerated and that difficulties may arise, as they have with the Irish Free State and Eire, on the question of allegiance, for the British view is assuredly that the people of Eire are within the allegiance, despite the efforts of Mr. De Valera to make it clear that they are not. If the Kingship disappeared, it would be quite simple to arrange the relations of the units of the Empire on an agreed basis. This view, however, must be doubted. There would be very real difficulty in establishing the Commonwealth on a basis without the King; there are British alliances with Egypt and Iraq, both permanent in character, and a fairly clear alliance with France,[2] but there is not, nor can there ever be any real unity of feeling with these countries, as there is within the Empire. No doubt there are considerations of racial, linguistic, and historical character which would render relations with the Dominions closer than those of a mere alliance, but, if the tie of allegiance went, there would be a definite loss to the Commonwealth and to the world.

It was indeed because of the importance of the King as the bond of unity that the failure of Edward VIII was so deeply to be regretted. It is clear that his action

[1] H. J. Laski, *Parl. Govt.* pp. 439 ff.

[2] See Lord Halifax's formal declaration of solidarity, House of Lords, Feb. 23, 1939.

strongly aided the growth of republicanism in the Union of South Africa, and it gave Mr. De Valera the vantage ground for his elimination of the Crown from the internal affairs of Ireland.[1] Nor can it be doubted that a good deal of injury was done to the Crown among the Roman Catholics of Canada, and especially of Quebec. The decision of Their Majesties to visit Canada in May 1939[2] must have been in considerable measure prompted by the desire to repair by their presence the deep dissatisfaction caused in the Dominion by the action of the late King. The time indeed seems ripe for the carrying into effect of the project, banned by the nervous fears of Lord Derby, and to give the Dominion the style of Kingdom of which it is clearly worthy.

7. *The Relations between the Crown and Ministers*

Under William IV Earl Grey[3] had in his correspondence with the King developed clearly certain principles which fell to be observed by the sovereign as a constitutional monarch. He had shown that from this position there arose (1) the duty of the King not to take advice from persons other than his ministers without their approbation; (2) the obligation not to make statements on public affairs except on their advice; and (3) the obligation to accept loyally their advice when formally tendered and to afford them support so long as they were retained in office. In exactly the same spirit the Colonial Secretary[4] in 1846–7

[1] Constitution (Amendment No. 27) Act, 1936; Keith, *The King, the Constitution, the Empire, and Foreign Affairs, 1936–7*, pp. 56-8, 62 f., 77.

[2] It was suggested on March 14 and 15 that the King would take the Imperial Crown to Canada, and perhaps prorogue Parliament in person, or at least assent to some Bills, a unique action not actually envisaged in the British North America Act, 1867, but no doubt competent.

[3] Anson, *The Crown* (ed. Keith), i. 140 f.

[4] Kennedy, *Documents of the Canadian Const.* pp. 570 ff.

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inaugurated the practice of responsible government in the colonies by laying down the doctrine that a Governor should so conduct his relations with his ministers that he would not find difficulty in acting with equal cordiality with any other ministers whom he might find it desirable to call to office as a result of the expression of the will of the electorate. The Prince Consort clearly recognised the necessity that the Queen should not seem to belong to any party; only thus could the Crown be removed from attack of a dangerous character.[1]

In the earlier years of Queen Victoria these principles were on the whole accepted by the Queen, who until 1861 had the advantage of the advice of her husband and for part of the period of Baron Stockmar, though we need not take too seriously the claim that he acted as her guardian angel. Her controversies with Lord Palmerston[2] over foreign policy were certainly provoked by his wholesale disregard for the consideration due to her; he unquestionably too often failed to give her adequate time to consider the foreign despatches; he did not always make clear to her what he proposed to do in regard to the matters brought before her; he interpreted too widely the sanctions she gave; and on occasion he disposed of matters on his own responsibility without reference to her, excusing himself in case of reproach by insisting on the urgency of action. In substance no doubt Lord Palmerston could often make out a good case, and he was far too indispensable for the Premier to contemplate lightly his dismissal, while the culprit refused to be tempted to give up the Foreign Office by the offer of other preferment. Lord John Russell indeed sought

[1] Martin, *Prince Consort*, i. 110.

[2] Bell, *Palmerston*, ii. 29 ff., adopts the view that the Queen aimed at an illegitimate authority as virtual Premier, but this certainly exaggerates. Yet cf. Strachey, *Queen Victoria*, pp. 219 f., and Disraeli's conception; Monypenny and Buckle, ii. 117.

to save the position by the objectionable undertaking of supervising his colleague's draft despatches, before they went to the Queen, a plan not later followed, and quite correctly disapproved by Mr. Gladstone as unconstitutional.[1] At last the royal patience was ended, and Lord John Russell moved to sufficient wrath as spontaneously to demand the resignation of the culprit when it was proved that he had expressed approval of Louis Napoleon's *coup d'état* in defiance of the decision of the Cabinet not to adopt any definite position in that issue. Though Lord Palmerston revenged himself for his dismissal by securing the defeat of Lord John Russell on the Militia Bill shortly after, he never showed any desire to return to the Foreign Office, though in his ministries from 1855 to 1858 and 1859 to 1865 he controlled effectively foreign relations.

With other ministers the Queen remained on satisfactory terms. In the beginning of her reign she naturally fell under the spell of Lord Melbourne who stood in some degree in the place of a father, and in 1839[2] her reluctance to be parted from the ladies of the bedchamber, who had been chosen with his aid, led to her failure to secure Sir R. Peel as the successor to Lord Melbourne when the latter was driven to resign by the failure of his majority to give him effective backing in his effort to suspend the constitution of Jamaica, where a small oligarchy of slave-owners were determined to thwart the desire of Parliament to secure just treatment of the negro. But on the final resignation of Lord Melbourne in 1841 the Queen soon learned to like Sir R. Peel and to afford him effective support.[3] There seemed, indeed, some risk that she might be influenced by advice from Lord Melbourne with whom she remained in correspondence.

[1] *Letters*, 1 s. ii. 239 ff.

[2] *Ibid.* i. 155 ff.; 47 *Hansard*, 3 s. 985 ff.

[3] *Ibid.* i. 305 ff. gives Melbourne's sound advice as to the Queen's relations to the Prince Consort and Peel, and to the advisability of personal contact.

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Baron Stockmar [1] was apprehensive and Sir R. Peel insisted that he would resign if he were satisfied that the Queen was receiving advice from her late Premier. But Lord Melbourne showed due circumspection, and no friction ever in fact arose.

Between the Queen and Lord John Russell in 1846–52 relations were correct rather than cordial, especially as Lord Palmerston's vagaries intervened to cause lack of harmony. Nor did the Queen establish close touch with Lord Derby in 1852 or 1858–9. In 1852–5, however, she had a welcome Premier in Lord Aberdeen, and it was without enthusiasm that she exchanged him perforce for Lord Palmerston, though in 1855–8 no friction developed itself except in so far as her Premier seemed indifferent to the necessity of a large addition to the forces, especially in view of the Indian mutiny. In 1859–65 her dislike of the foreign policy of her Government became acute, and she exerted herself to secure through Lord Granville modifications in the Premier's standpoint as regards Italy, the United States, and Denmark. Really serious friction with her Premier began only in the Gladstonian administration of 1868–74, because domestic issues arose in which the Queen was not prepared to go as far as her chief adviser. Mr. Gladstone with the passage of time became more and more Liberal, and achieved touch with democratic sentiments, while the Queen settled to an attitude of ever-hardening Conservatism and hostility to new ideas. Nonetheless there was as yet no extreme hostility; she agreed both to abolish purchase in the army despite the resistance of the House of Lords, and to help in securing the disestablishment of the Irish Church in 1869.

The advent to power of Mr. Disraeli in 1874, and his subsequent close relations with the Queen, altered pro-

[1] *Letters*, 1 s. i. 325 ff.

foundly, as Lord Gladstone has shown, her attitude to Mr. Gladstone. Mr. Disraeli[1] accepted the position of exalting the Crown and insisting on its pre-eminence; he was anxious to enable the Queen to stand out as arbitress of Europe, and he secured for her the style of Empress in respect of her Indian dominions. Those who resisted the proposal[2] were long objects of social ostracism by the Queen. On the defeat of her Premier the Queen was most reluctant to put in his place his rival, and continued correspondence with her late minister even after she had been compelled to accept Mr. Gladstone in his place. Throughout the new ministry of 1880–85 the relations between Crown and Premier were wholly destitute of real cordiality, and so far was the Queen from prudence in her hostility that she endeavoured to embarrass her Prime Minister by objections to such trivial matters as Mr. L. Courtney's transfer to the Undersecretaryship at the Colonial Office, by sharply censuring his unpremeditated visit to Copenhagen while yachting, and by telegraphing *en clair* in bitter terms on the news of General Gordon's death, a *faux pas* which nearly brought about Mr. Gladstone's resignation. Lord Wolseley[3] she urged to opposition to the ministry's proposals for the evacuation of the Sudan, and denounced freely her ministry in correspondence with Lady Ely. When in 1886 the fall of the Salisbury ministry of 1885 was inevitable, she endeavoured to avoid sending for Mr. Gladstone,[4] and discussed with Lord Salisbury without her Premier's knowledge whether she should give him a dissolution.[5]

[1] Monypenny and Buckle, ii. 1323-46.

[2] The Liberal dislike was largely based on failure to consult: Fitzmaurice, *Granville*, ii. 159-63. The Queen admitted her failure in this regard; Monypenny and Buckle, *Disraeli*, ii. 803.

[3] *Letters of Queen Victoria*, 2 s. iii. 633.

[4] *Ibid.* 3 s. i. 26.

[5] *Ibid.* i. 116 f.

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In the ministry of 1892 to 1894 relations with the Premier became formal. The Queen made no pretence of confidence in him, and was well known to regard his policy of Home Rule with hostility. As has been seen, she endeavoured to obtain an opinion from Lord Salisbury to justify her dismissal of her Government if it refused to dissolve before attacking the House of Lords, and, though Lord Rosebery was her own selection as Premier, she was not less suspicious of his attitude on the reform of that body. With Lord Salisbury, on the other hand, her relations were correct; there is no evidence that they were cordial. Mr. J. Chamberlain, who had been her *bête noir* in his Liberal days, became an object of warm approval after his destruction of the unity of the Liberal party.

The reign of Edward VII marked a distinct move towards frank acceptance of the duty of co-operation with ministers of different types. But it would be impossible to say that the King ever attained the point of sympathy with the advanced democracy of some of his ministers. With Sir H. Campbell-Bannerman[1] he established cordial relations by reason of certain tastes in common, among others appreciation of life on the Continent. He never appreciated the merits of Mr. Lloyd George,[2] whose attacks on the House of Lords caused him dissatisfaction, and even Mr. L. Harcourt, otherwise a favourite, offended in this regard by denouncing the "black hand of the peerage". The invasion of the sphere of foreign affairs by Mr. George and Mr. Churchill called forth remonstrances shared in some measure by Sir E. Grey, who instructed the delinquents. Fortunately death saved the King from the embarrassment of coming into contact with further developments of a democracy foreign to his nature.

[1] Spender, ii. 47, 54, 174 (at Marienbad).
[2] Lee, *Edward VII*, ii. 455 f., 652 ff.

The reign of George V was marked by his ability to adapt himself to co-operation with men as different as Mr. Asquith and Mr. Lloyd George, as Mr. Bonar Law and Mr. Baldwin, while his relations throughout with Mr. MacDonald were markedly cordial. It was this fact, no doubt, that counted in the crisis of 1931, whence Mr. MacDonald emerged with a new lease of life from what had seemed to be certain to be a *débâcle* of the most pronounced type. The limitation of the number of officers of the household [1] required to change on the change of the ministry remains as a proof of the mutual regard between King and Premier. The contrast is interesting between their relations and those of Edward VII and Mr. Balfour.

The happy relations with ministers of George V were not repeated in the case of his son. The narrative by Mr. Baldwin of his relations with the King, when announcing his abdication, shows only too clearly that the King had never been in effective touch with his Premier, nor had personal intercourse been frequent. The result of this state of affairs, which had been long suspected, was that the King's assurance on his Welsh tour to the people of the distressed areas, that something would be done, was resented [2] in political circles as suggesting a personal initiative inconsistent with the royal obligation to say nothing on public issues save with the approval of his ministers. It can hardly be said that the occasion justified this view, but its currency explains the quite unfounded rumours that the King contemplated resistance and an appeal to the electorate against the refusal of ministers to approve marriage with Mrs. Simpson, even on the understanding that she would not acquire the rank of Queen. Naturally

[1] Contrast Sir H. Campbell-Bannerman's insistence on Lord Beauchamp as Lord Steward against the King's candidate: Lee, ii. 468 f.

[2] *The Times*, Dec. 8, 1936; Mackenzie, *The Windsor Tapestry*, p. 484.

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the renewal of cordiality between ministers and Crown under George VI was one of the many causes of the ready acceptance by the country of the change of sovereign.

The support due by the Crown to ministers requires from them the utmost candour in their relations with the sovereign. The principle was enunciated definitely in the case of Lord Palmerston in 1850, and by him accepted. It was its publication to the Commons in the debate on his compulsory demission of office in 1851 that wholly disconcerted [1] even so able a debater and deprived his defence of fire. But, while the principle is clear, its execution is far from easy. How far is the Premier bound to reveal to the Crown the early stages of his Government's projects? Even Lord Salisbury was reticent when he thought fit. He concealed wholly from his mistress his tentative negotiations through Lord Carnarvon with the Irish Nationalists,[2] though it was on the strength of these discussions that many votes were secured from Irishmen in the election of 1886, and such account as he did ultimately give, when the issue was raised in the Commons, was marked by the strictest economy in truth. The Queen did not find it easy to ascertain whither Mr. Gladstone's mind was tending, nor does it appear that he was unduly ready to give her full enlightenment. It must be remembered that for both the Irish situation offered problems hard to solve or even effectively to pose.

The Queen, however, raised a more fundamental question in 1894 [3] when she developed the theory that it was the duty of Lord Rosebery, not merely to disclose to her his policy regarding the House of Lords, but to obtain her sanction before promulgating it. Though Lord Salisbury

[1] Bell, *Palmerston*, ii. 54 f.

[2] Gladstone, *After Thirty Years*, pp. 387 ff. [3] *Letters*, 3 s. ii. 437 ff.

gave his approval of this doctrine, it is clear that it could not be accepted. No doubt, if it had been intended to introduce a Bill into the Commons, the Queen had the right to early discussion, but beyond this the matter cannot be carried. On the other hand, there is no doubt that on matters which are actually part of the governmental programme the Crown has the right to full and early information. Queen Victoria was normally kept fully *au fait*, but Edward VII was uneasily conscious that he was not treated in this regard as fairly as his mother had been.[1] Neither Mr. Brodrick nor Mr. Arnold Forster met his claims for military information in full measure, but Mr. Haldane was more satisfactory. Sir H. Campbell-Bannerman was never sufficiently communicative[2] even on the Education Bill, in respect of which the King was anxious to mediate, and the King was not much better pleased with Mr. Asquith's anxiety to spare him unnecessary business. Nor was he unjustified in protesting against the failure to inform him in good time of the agitation regarding the procession of the Host proposed in 1908[3] as an act of reparation for the Reformation; under the law, as it then stood, the proposal was in part illegal, and, under pressure from the Government, Cardinal Bourne agreed to modify it, but Lord Ripon, with the zeal of a convert to the Roman Catholic faith, insisted on resignation from the Cabinet. In foreign affairs, on the other hand, the King and ministry co-operated in the fullest degree.

In the case of George V the most serious failure of contact recorded was in regard to the events at the Curragh.[4] The King was allowed to learn of the episode from the press and took just exception to such treatment, for which

[1] Lee, *Edward VII*, ii. 200 ff.
[2] *Ibid.* ii. 460 ff. Mr. Balfour was equally at fault, ii. 49 ff.
[3] *Ibid.* ii. 661.
[4] Spender, *Lord Oxford*, ii. 47.

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no excuse was possible. The subsequent proceedings and the rules laid down to govern the duties of officers and men received his accord. On foreign issues, and later on matters affecting the war, he was in closest touch with his Government.

Formally a change in the mode of communication with the King may be noted. Queen Victoria from an early date was accustomed to receive from her Prime Minister a record of Cabinet decisions after each meeting and a letter recounting the proceedings of Parliament. A modification of the procedure was permitted only in exceptional circumstances. Thus the Queen permitted Mr. Gladstone to hand over the writing of the report on Parliament to Sir W. Harcourt in his last ministry, and Edward VII permitted Mr. Churchill, when Home Secretary, to perform a like duty.[1] Clearly this report was certain to become out of place with the introduction, not merely of newspaper reports at length, but of an early appearance of *Hansard*, and the practice of writing a letter was to some extent at least permitted to drop by George V.[2] On the other hand the Cabinet letter gave way, after the creation of a Cabinet secretariat, to the communication to the King of the minutes approved by the Premier, giving a more complete and effective record than that hitherto available to the sovereign.

Personal communications with ministers were restricted under Queen Victoria by her fondness for residence in the Isle of Wight or at Balmoral, and were largely confined to those with ministers-in-waiting or the Prime Minister. Edward VII[3] preferred personal contact, which was rendered easy by his preference for the capital when in England,

[1] Lee, *Edward VII*, ii. 46 f.

[2] Clynes, *Memoirs*, ii. 146, shows that in 1929–31 the letter was being sent, as the King raised points arising out of it. It is sent to George VI.

[3] Lee, ii. 49.

and the practice was continued by George V. The lack of close contact between ministers and Edward VIII has been noted; had such isolation not existed it is possible that abdication might have been avoided.[1]

8. *The Crown and the Opposition*

With the development of responsible government the Opposition assumed a new aspect. Instead of representing an influence hostile to the Crown and its chosen ministers, it became the natural instrument by which in the event of a change in the public feeling the Crown would be enabled to maintain effective contact with the electors and give effect to their will. Hence His Majesty's Opposition[2] has become a recognised element in public affairs, and the Cabinet has a rival ready to take its place in the shadow Cabinet, the rudiments of whose organisation can be traced back as far as Sir R. Peel, though the position of leader of the Opposition was not formally given full recognition until a salary was provided by the Ministers of the Crown Act, 1937, it being left to the Speaker in case of dispute to determine the recipient thereof.

It was obviously difficult to determine the exact relations between the Crown and the Opposition leaders. For the sovereign to be in close contact with them would be destructive of the possibility of confidential relations between the Crown and ministry. Hence it was recognised, after the termination of Lord Melbourne's close contact with the Queen, that consultation with Opposition leaders must be confined to those cases where such consultation was recommended by the Government, or where, owing to

[1] It seems dubious if Mr. Chamberlain is in close personal touch with the King; he paid no personal visit from before Christmas to Feb. 1, 1939.

[2] J. C. Hobhouse is said to have used the phrase before the Reform Bill; Lowell, *Govt. of England*, i. 451.

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the approaching resignation of the ministry, the Crown was under the obligation of finding new advisers. Of both these forms of action examples occurred in the Queen's reign. Mediation between contending points of view came to her as a valuable part of royal power, and in the case of the disestablishment of the Irish Church in 1869[1] and of the dispute between the houses as to the extension of the franchise and redistribution of seats in 1884–5,[2] her communications with the Opposition leaders played a real part in securing accord. The reason for her success, of course, was that on neither issue was there a vital difference of opinion, and on neither had she herself pronounced views. There was thus room for royal activity, and Mr. Gladstone's thanks were no doubt both sincere and not unmerited. On the Irish Home Rule issue, where her own feelings were deeply moved, she made no effort to reconcile contending views and she had no idea that Lord Salisbury and his colleagues had played with the idea of an Irish agreement before deciding that the policy was not one wisely to be followed.

The Queen was also clearly in the right in consulting elder statesmen when the question arose in 1851[3] of filling the place of Lord J. Russell, though in the long run it was found impossible to secure an alternative ministry and Lord J. Russell had to return to office. In 1852 she contemplated consulting both Lord Lansdowne and Lord Aberdeen, and in view of the illness of the former, ended by giving a commission to form a Government to Lord Aberdeen.[4] Her search for a ministry in 1855 and in 1858 and in 1859 was perfectly in order. Later the matter changed its aspect. When in 1880 she had to part with

[1] Davidson, *Tait*, ii. chap. xix.
[2] Gladstone, *After Thirty Years*, pp. 360-65.
[3] *Letters*, 1 s. ii. 288 ff.
[4] *Ibid.* ii. 413 ff.

Lord Beaconsfield, she was determined to keep in touch with him on the political actions of her new Government,[1] and in 1886 she was eager to induce Mr. Goschen to aid her to create a new alignment of forces in order to keep Mr Gladstone out of office.[2] Equally out of place were her efforts in 1893 and 1894 to secure aid from Lord Salisbury and his colleagues to drive Mr. Gladstone and Lord Rosebery from office.[3]

Edward VII in the main observed strictly constitutional proprieties, but in October 1909 [4] he seems to have obtained from Lord Cawdor an expression of views on the constitutional issue, without asking for the accord of his Premier in the proposed action. On the other hand, he duly secured Mr. Asquith's assent to discuss the situation with Lord Lansdowne and Mr. Balfour, though he found his efforts wasted, and his conversations showed him that there was no room for his playing the part of a successful mediator.[5] He had already met with disappointment in a like matter, his desire to secure accord on the question of the Education Bill of 1906 ; [6] he was able to persuade the Archbishop to consider a settlement by agreement, but failed to attain any real concessions such as might have brought about a settlement. No doubt his failure successfully to mediate was a source of deep disappointment to the sovereign, who had come by 1909 to recognise the dangers to European peace from the aggressive spirit shown by Austria in the annexation of Bosnia and Herzegovina.

George V followed in his father's footsteps in the effort to mediate. In 1911 respect for the dead King resulted in a genuine effort by conference [7] to achieve a settlement on

[1] Monypenny and Buckle, ii. 1414 ff.
[2] *Letters*, 3 s. i. 26.
[3] *Ibid.* 3 s. ii. 297 ff., 433 ff.
[4] Lee, *Edward VII*, ii. 667.
[5] *Ibid.* ii. 668.
[6] *Ibid.* ii. 455 ff.
[7] Spender, *Lord Oxford*, i. 285 ff.; Newton, *Lansdowne*, pp. 396 ff.; Dugdale, *Balfour*, ii. 60-63.

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the issue of the relations of the two houses of Parliament, but here again there was lacking on the part of the Conservatives any desire to conciliate, and equal failure marked the conference of July 1914 [1] by which the King hoped to achieve an accord on an issue which seemed otherwise certain to lead to civil war. It can hardly be said that either episode denotes a decline in the royal authority since 1885. The truth was that the issues at stake very largely outweighed those in which the Queen had successfully mediated, and that no royal goodwill could bridge the gulf between opinions held with deep conviction on either side. In 1916 again the royal desire [2] to secure an amicable settlement of the Cabinet crisis failed of success, but in 1931 [3] the King had the satisfaction of intervening successfully to bring about the creation of a National Government, though it soon failed to preserve the essentials of that condition.

In the course of his activities in the political troubles of the outset of his reign the King asserted the propriety of his being authorised by his Premier to elicit the views of the Opposition leaders.[4] Mr. Asquith gave way on this head with some doubt, but it seems impossible to dispute the constitutional propriety of the royal action. Where matters arise which may place the King in the difficult position of acting so as to offend the feelings of large bodies of his subjects, his right to ascertain the Opposition views seems beyond challenge. The alternative is merely that these views are communicated less effectively through the Private Secretary, or other member of the royal *entourage*. In the episode of 1931 it was by advice of the Premier that the King saw in succession the leaders of the Opposition. He was then more successful than in December 1916, when at Buckingham Palace he sought to secure accord between

[1] Dugdale, *Balfour*, ii. 53 ff.
[2] *Ibid.* ii. 272 ff.
[3] Clynes, *Memoirs*, ii. 194 ff.
[4] Spender, *Lord Oxford*, i. 305 ff.

Mr. Asquith and Mr. Lloyd George with the support of Mr. Bonar Law, Mr. Balfour, and Mr. Henderson.[1]

There remains to be noted a rather unique instance of attempts by members of the Opposition to determine the King to adopt a certain line of action if the occasion arose for him to summon an Opposition leader to office. On September 12, 1905,[2] Mr. Haldane, for himself and Sir E. Grey and Mr. Asquith, wrote to Lord Knollys with the intention of inducing the sovereign to ask Sir H. Campbell-Bannerman to go to the Lords if he accepted the Prime-Ministership. Lord Knollys promised to place the matter before the King, who acted in this manner, but not of course necessarily because of this *démarche*. It is impossible to acquit Mr. Haldane and his confreres of grave impropriety in their action as well as disloyalty to their leader. Lord Knollys, of course, was quite within his rights in the correspondence.

9. *Royal Appointments*

The normal practice under responsible government clearly demands that ministerial authority should be decisive as to all appointments, but there are obvious cases in which the Crown must be expected to have views, namely all those which concern those who represent the Crown either in foreign countries or in British territories overseas. As we have seen, Queen Victoria and Edward VII both manifested a lively interest in this subject, and, though foreign politics seem less to have interested George V, it need not be doubted that he also was concerned with the personal fitness of his envoys. In the choice of the Governor-General of India Queen Victoria and Edward VII alike were concerned; the former had strong doubts regarding Lord Elgin, the latter died in the course of a contest over the

[1] Spender, *Lord Oxford*, ii. 274. [2] Maurice, *Haldane, 1856–1915*, pp. 147 ff.

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appointment of Lord Kitchener, against which Lord Morley, for reasons good or bad, was determined; he took immediate advantage of the King's death to appoint Lord Hardinge.[1] Edward VII again was interested in military appointments, much as was his mother, but in her case that was chiefly confined to desire to press forward her son, the Duke of Connaught, while Edward VII was better acquainted with the merits of individual officers. Lord Wolseley at first was not greatly appreciated by the Queen, but later attained high favour, while the King kept Sir T. Kelly Kenny as Adjutant-General until the reorganisation in 1904. Yet he acted in entire concurrence with ministers in the removal of Sir Redvers Buller from office,[2] as a mark of disapproval of his unwise effort to explain in public his unfortunate suggestion of the possible surrender of the garrison of Ladysmith, and he remained impartial in the investigation of the dispute between Lord Charles Beresford and Sir John Fisher.[3] George V was a steady supporter of Sir D. Haig, after he assented to the recall from France of Sir John French, and much encouraged the commander-in-chief by his friendly regard.

Only, however, in the field of ecclesiastical appointments is there any evidence of a fixed purpose during Queen Victoria's reign, and this will be discussed later.[4]

10. *The Honours Prerogative*

The position of the King in regard to the grant of honours is necessarily distinctive, because the value of an

[1] Lee, *Edward VII*, ii. 710 f. Cf. Maurice, *Haldane, 1856–1915*, pp. 166, 260, 262 f.; Esher, *Journals*, ii. 8 (for the Prime Minister's offer).

[2] *Ibid.* ii. 83, 84.

[3] *Ibid.* ii. 598 ff.; Halévy, *Hist. 1905–15*, pp. 392-4.

[4] The office of poet laureate (pay £97 a year) was given by Lord Salisbury to A. Austin, and Edward VII allowed him to remain; Mr. Asquith appointed Mr. Bridges; Spender, i. 68.

honour is still in the mind of the public essentially connected with the idea that it emanates from, and is a token of, the personal goodwill of the sovereign. Hence the fact that, while it is wholly impossible for the King to judge of the merits of the great majority of those whose names are submitted, any objection which he might take to a name would evoke the most careful consideration by ministers,[1] while the highest honours are given only with his approval, based on personal knowledge.

The Orders of the Garter, the Thistle, and St. Patrick are appropriate for very high political service, such as that in the office of Prime Minister, to whom the Garter is regularly offered, and Sir A. Chamberlain owed his K.G. to the Locarno Pact of 1925; Lord Rosebery as a Scot was given the Thistle. Otherwise these Orders go readily to the high nobility: the Thistle was given to Earl Haig as the most outstanding Scotsman of his day, the Duke of Buccleuch preferring to wait. But the K.P. of Lord Pirrie [2] evoked dissatisfaction in Ireland; the King conceded it with reluctance, and the installation had to be private, as the other Knights were unwilling to attend a public ceremonial. The Bath is next in distinction.

The O.M. as inaugurated by Edward VII [3] was intended to be an honour virtually in the royal control; it does not appear that this understanding has been departed from, though no doubt the Prime Minister recommends. Queen Victoria established in 1896 the Royal Victorian Order as one to reward personal services, but in this case also the sovereign has on occasion given the distinction for services which are rather to the public, but which for some reason seemed best recognised in this way. The Royal Victorian Chain in the Queen's memory was created by Edward VII

[1] See Clynes, *Memoirs*, ii. 46-8, who admits rejection and suggestion.
[2] Lee, *Edward VII*, ii. 451 f. [3] *Ibid.* ii. 100.

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in 1902, and was conferred by his son on Lords Hardinge and Crewe in 1912, on Lords Derby and Cromer in 1925. The Companionship of Honour was added by George V in 1917, but seems to be less personal to the sovereign.[1]

Other honours were largely the outcome of the great extension of the fields of public service in the nineteenth century. In 1818 the Order of St. Michael and St. George was created and has come to be specially connected with services out of the United Kingdom or in respect of the Dominions and colonies; its office, significantly, is in the Colonial Office, not in the central Chancery of the Orders of Knighthood. In 1861 the Queen added the Order of the Star of India, in 1877 that of the Indian Empire. In 1902 Edward VII created the Imperial Service Order,[2] in 1917 George V the much more important Order of the British Empire, in view of the inadequacy of the existing orders to meet the demands for rewards for services in the time of war. The Distinguished Service Order was created by Queen Victoria in 1886[3] to meet the need for a distinctively military reward for those whose services were not considered to deserve the highest distinction of the Victoria Cross, created in 1856 "for valour". In 1911 the V.C. was opened by George V to the Indian army, and in 1920 extended to nurses and civilians engaged in military, naval, or air services. The V.C., though, of course, recommended by commanding officers, is always approved by the sovereign personally.

For honours not expressly made personal to the sovereign ministerial advice is always necessary; in the main the advice is directly that of the Prime Minister, whose approval is necessary even for the lists of service honours submitted

[1] He secured it for Delius; Clynes, ii. 47.

[2] Cf. Esher, *Journals*, ii. 157-9. For honours of women Asquith agreed with George V in 1911; *ibid.* ii. 50.

[3] Cf. the submission in Spender, *Campbell-Bannerman*, i. 108 f.

by the Foreign, Dominions, and Colonial Secretaries, the War and Air Ministries, and the Admiralty. It is necessary, of course, that there should be co-ordination of demands to restrict excess recommendations, and to apportion those, where there are limits of numbers as is the case with the various Orders. There is, of course, no limit to the numbers of peerages,[1] baronetcies, and knights batchelor, but these the Prime Minister especially is concerned with, though the knighthoods for colonial judges are submitted for his accord by the Colonial Secretary. A peerage for a member of the royal family, such as the dukedoms of Gloucester, Kent, and Windsor, must be based on the responsibility of the Prime Minister, though patently the motive power comes from the Crown. Though such matters are possible subjects for consideration in Cabinet, as Mr. Gladstone insisted[2] in his controversy with the Queen over a suitable reward for Lord Lansdowne's services in India, it is not usual to do so, though naturally in such a case as that there must be consultation between the departmental minister and the Prime Minister.

Inevitably a certain tendency exists for the ministry to take greater initiative as to honours. But Queen Victoria was not ready to act in any degree automatically; if she failed to obtain forthwith the Garter for Lord Lansdowne, she declined to hear of an extraordinary G.C.B. for her protégé, and, when Mr. Gladstone reminded her that he himself, after twenty-five years' service in Parliament and having been Chancellor of the Exchequer, had not resented the offer of such an honour, she attempted to belittle service as a political leader as compared with those rendered as a Viceroy, ignoring the fact that the Viceroy was no more

[1] Clynes, *Memoirs*, ii. 47, makes it clear that Lord Oxford's peerage was formally recommended by the ministry.

[2] *Letters of Queen Victoria*, 3 s. ii. 345 ff.

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than the representative of the Secretary of State for India in Council.[1] She refused to give peerages on Lord Russell's retirement in 1866,[2] but she yielded to Lord Derby's insistence in 1868,[3] and later established the rule that a retiring Prime Minister may recommend for honours, despite defeat. On the other hand, in 1868 [4] she declined to give peerages to Mr. Disraeli to strengthen his ministry in the electoral contest, though in 1880 she gave a peerage to Mrs. Bentinck simply to secure the interest of the Duke of Portland for her protégé. The issue of honours for her connections in foreign royal families caused her some trouble, and it was with great reluctance that she made William II not only an Admiral of the Fleet but also Colonel-in-Chief of the 1st Royals.[5] Her interest in India not merely led to the creation of two new Orders,[6] but to her insistence on the more generous distribution of these honours to Indians as compared with Europeans.

Edward VII was anxious to retain as full a measure of control over appointments as his mother, but he found himself unable to resist the insistence of Sir H. Campbell-Bannerman for sixteen peerages in six months ; the Liberal party had been ten years in the wilderness and it was inevitable that demands from its supporters for honours were numerous and vocal.[7] He accepted, as due to the status of the newly formed Union of South Africa, the grant, on his selection as first Governor-General, of a peerage to Mr. Gladstone, whose work as Home Secretary had not raised his administration,[8] but only reluctantly gave a peerage to the Governor-General of New Zealand.[9] On the other hand,

[1] *Letters*, 3 s. ii. 348 ff.
[2] *Ibid.* 2 s. i. 347.
[3] *Ibid.* i. 504 f.
[4] *Ibid.* i. 502 f.
[5] Spender, *Campbell-Bannerman*, i. 128 f.
[6] C.S.I. (1861), C.I.E. (1877).
[7] Lee, *Edward VII*, ii. 450 ff.
[8] *Ibid.* ii. 708.
[9] *Ibid.* He was not anxious for the Hon. Ivor Guest's peerage, ii. 697 n. 2.

none of his ministers would give an English earldom to allow Lord Curzon on return from India to sit in the Lords, the Conservatives because he had resigned in resentment of the decision on the position of the Commander-in-Chief, the Liberals because he was not their appointee. On one subject there was a serious conflict with ministers, the grant of the Garter to the Shah of Persia; the King conceded it only when threatened with a possible resignation of ministers, and the delay deprived the act of most of its value.[1] He was more ready than his mother to recognise services in the field of art; she refused in 1897 the Privy-Councillorship asked for Mr. Watts, while accepting *en bloc* the eleven awards to colonial Premiers on the occasion of her Diamond Jubilee celebrations, and only on the eve of his death was Lord Leighton given a peerage in 1896.[2] Edward VII's bounty would have covered C. A. Abbey and J. S. Sargent no less than H. von Herkomer and W. Q. Orchardson.[3]

The practice of the giving rather generously of honours on the occasion of a jubilee or coronation was observed by Edward VII, and a current rumour asserted that it was over a proposed grant of a peerage to a personal friend that Lord Salisbury resigned rather than take responsibility.[4] Serious difficulties, however, as to honours arose only under George V, especially after the creation of the Order of the British Empire. Persistent allegations, such as had been made less vehemently in the past, came to be made that honours, especially hereditary honours, were being purchased in return for contributions to party funds, and in special that Mr. Lloyd George's large political fund had received considerable amounts from this source.[5] A royal

[1] Lee, *Edward VII*, ii. 156 f.

[2] *Letters*, 3 s. ii. 85 f.

[3] Lee, *op. cit.* ii. 469. Disraeli offered Carlyle the G.C.B.; Monypenny and Buckle, ii. 695 ff.

[4] *Ibid.* ii. 158 n. 1.

[5] Keith, *The British Cabinet System*, pp. 544-8.

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commission[1] was appointed, which did not, as Mr. A. Henderson pointed out, probe very deeply; but, as it recommended that it should be made criminal to offer to procure honours for cash payments or to offer money to obtain honours, and as the Honours (Prevention of Abuses) Act, 1925, was duly accepted by both houses, the reality of the abuse was established though years elapsed before any prosecution took place. The procedure,[2] however, for obtaining honours by cash donations for charitable aims, was interestingly exposed to the public in an attempt to secure the repayment of a sum paid on account by one whose efforts had been disappointed. The commission did not disapprove political honours, though Mr. Henderson held that it would be better to abolish this possible source of corruption, but it recommended that the Prime Minister should set up a committee of three Privy Councillors to advise him regarding recommendations for political honours, their business being to ascertain whether any promise of pecuniary payments had been given by proposed recipients; the King was to be informed if the commission was opposed to the grant of any honour. It does not seem probable that the innovation has made any real difference; if payments are to be made, they would assuredly not be promised blatantly.

Against the grant of honours, as a rule there is no really strong feeling even in the Labour party,[3] which in 1924 was glad to be able to point out that the then existing law made it necessary that one Secretary of State and one Under-Secretary must be in the Lords. Three peerages were given then, and in 1929 the practice was extended

[1] *Parl. Pap.* Cmd. 1789. Cf. *Maundy-Gregory, In re*; *Trustee* v. *Norton*, [1935] Ch. 65.

[2] *Parkinson* v. *College of Ambulance*, [1925] 2 K.B.1.

[3] Cf. Clynes, *Memoirs*, ii. 48; for the Liberals, Spender, *Campbell-Bannerman*, ii. 359.

slightly to secure spokesmen in the upper house. As was to be expected, the new peers in two cases at least by 1937–8 had shed their adherence to the party. Service honours are so much a part of the established régime that their abolition would be a very grave breach with tradition; in the case of the Civil Service, through placing on the Permanent Secretary to the Treasury a special responsibility for co-ordination of recommendations, the suitability of awards has been considerably advanced. In the case of the Dominions,[1] however, there is a different outlook; the revelations of unsatisfactory awards produced in 1919 a determination that no honours should in future be recommended for bestowal by the Canadian Government, and it was desired to secure the termination of peerages already granted, though this request was ignored by the Imperial Government and Parliament. In the Conservative ministry of Mr. Bennett the recommendation for honours was renewed, but was hotly attacked and helped to the complete defeat in 1935 of that politician. In Eire no honour may be accepted by a citizen without the assent of the Government; in the Union of South Africa no honours are recommended, nor by Labour ministries in Australia and New Zealand. It must be noted that for all honours which are imperial the King must be advised by the British Government as well as by the Canadian Government concerned, which of course can advise the King to institute and confer local Orders at pleasure. But to have validity in the United Kingdom and the Empire alike, Orders, like medals, must have royal sanction on British advice. Edward VII emphatically declined to approve a medal for Hong Kong use only, though his mother had approved a medal limited to Ceylon.[2]

[1] Keith, *The Dominions as Sovereign States*, pp. 661-7.

[2] Lee, *Edward VII*, ii. 182.

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The Crown on British advice also recognises local chieftainship in the colonies, and Indian princes in India. All matters regarding their style, precedence, and salutes are so regulated, as are the ceremonial honours paid to foreign sovereigns, ambassadors, and missions. The King is also consulted personally regarding honours granted by foreign sovereigns and may concede recognition in the United Kingdom either conditionally or without reserve. Edward VII [1] at first was ready both to grant honours to officers coming on missions and to allow the acceptance of honours by British officers, but later returned to the more cautious attitude of his mother, who agreed with her ministers as to the disadvantages of a competition at foreign courts by military attachés for decorations, often of no worth, and in any case rendering it possible that those desiring them should not be sufficiently careful to place first their duty to their Government.

In one case a serious blunder took place under Edward VII. At Reval, on the instigation no doubt of Sir J. Fisher, he created the Czar an Admiral of the Fleet.[2] The annoyance of ministers was not concealed, the matter was in fact much more serious in view of the position of European affairs than the action of his mother in creating William II Colonel-in-Chief,[3] but there is no doubt that they were themselves to blame for letting him go to Reval without a minister in attendance. Sir E. Grey, for good or bad, had a marked disinclination to deal personally abroad with foreign ministers.

Precedence is regulated by the prerogative, apart from

[1] Lee, *Edwards VII*, ii. 101 f.

[2] *Ibid.* ii. 594; Spender, *Lord Oxford*, i. 249 f.

[3] Spender, *Campbell-Bannerman*, i. 128 f. For Edward VII's *faux pas* in appointing the Duke of Argyll to be Chancellor of the Order of St. Michael and St. George, see Lee, ii. 523. Mr. Lyttelton had reluctantly to agree *ex post facto*.

statutory precedence such as is given in the Lords by a statute of Henry VIII [1] whose prescriptions seem now to be neglected. The most important changes of late years are the placing of the Prime Minister next after the Archbishop of York, which Mr. Balfour [2] secured just before he retired to become effective on the taking of office by his successor, and the grant of precedence to the Speaker on the motion of Mr. Lowther in 1919.[3]

11. *The Prerogative of Mercy*

Prior to the advent of Queen Victoria to the throne, it was still the custom for the sovereign to consider in council the report sent by the recorder or judge at the Central Criminal Court on cases of prisoners sentenced to death, and to decide whether they should be executed.[4] This, of course, was the relic of an older period when there were hundreds of capital offences, and prisoners were often deserving of relaxation of the capital penalty. The duty was clearly unsuited for a young Queen and the practice was changed by statute, so that execution is carried out on the authority of the judge's sentence.

The action taken no doubt helped to establish the view that the issue of pardon should be left in the hands of the Home Secretary with neither royal interference nor intervention from Parliament. In the first case, the fact that pardons are given by sign-manual warrant involves the personal act of the King, while members of Parliament cannot help taking up matters with the Home Office, when urged to do so by influential constituents who petition the

[1] 31 Hen. VIII. c. 10, s. 8.

[2] Royal Warrant; *London Gazette*, Dec. 2, 1905; Dugdale, *Balfour*, i. 370.

[3] Order in Council, May 30, 1919; Ullswater, *A Speaker's Commentaries*, ii. 259 f. He ranks after the Lord President.

[4] 7 Will. IV. & 1 Vict. c. 77.

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sovereign for mercy. But, so far as is possible, responsibility is left to the minister personally, and attempts to press the issue in Parliament are not common. Hard cases such as those of "mercy" murders form the subject of questions in the Commons, but a wise discretion leaves the minister to decide, though in very serious cases the Cabinet may be asked to do so. There are no doubt difficulties in the position of the Home Secretary, and Mr. Clynes[1] in that office evidently felt that the burden of decision was too serious to be left to one man; but Mr. Joynson Hicks[2] was insistent that the Home Secretary should be left free to consider all aspects of the situation, the judge's advice, the views of the jury, and all facts brought to his notice, stressing that at the last moment the minister can make up his mind to grant a reprieve, if evidence should come before him; he notoriously reprieved, after refusing to do so, three young men found guilty of the murder of an old man, there turning out to be just a possibility of error. In the case of crimes by women, or instigated by women, as in the case of Mrs. Thompson and Bywaters, there would be grave inconveniences if the sovereign were left to decide, more especially if the Crown were worn by a lady.[3]

Absence of responsibility does not preclude the holding of definite views. Queen Victoria disliked commutation of sentences of men who murdered their wives, and consistently she doubted the reprieve of Mrs. Maybrick in 1889, though the Home Secretary showed that he had really no option;[4] her counsel, Sir C. Russell, always asserted his belief in her innocence. Edward VII disliked the reprieve of Rayner for the murder of Mr Whiteley, but the

[1] *Memoirs*, ii. 134 ff. He notes the royal interest.

[2] Taylor, pp. 182-4.

[3] Cf. the case of Mrs. Waddingham in 1936: Keith, *The King and the Imperial Crown*, p. 336.

[4] *Letters of Queen Victoria*, 3 s. i. 527.

action of the Home Secretary was actuated by the necessity of avoiding public resentment, for the murderer, very probably, without just cause had many sympathisers. He agreed both to the pardon of Mr. Lynch for high treason in the Boer War, but also to the conditions imposed which were removed only in 1907.[1] The decision not to reprieve Sir R. Casement, which must be regretted in retrospect, was due to the Cabinet; in view of the excessive numbers of death sentences carried out by the military authorities immediately after the rebellion in Ireland, the action of the Cabinet may have been unavoidable, but there is now no doubt that the severity shown was erroneous.

In oversea sentences the Crown does not interfere. Queen Victoria reluctantly acquiesced in leaving to Lord Lansdowne the decision as to the execution of the ringleader in the Manipur massacre of the Commissioner of Assam and others; though rather curiously under, it seems, the influence of her Indian Secretary at the time, she seems to have failed to appreciate the gravity of the crime.[2]

In substance the rules as to pardon have remained unchanged. A pardon can be given normally only to free an offender in cases of a public character; it does not apply to a recognisance to keep the peace towards an individual, nor can it stay an action, or even suit for penalties by a common informer, but by Acts of 1859 and 1875 power to remit in certain cases is given.[3] A pardon rehabilitates the person pardoned, and may remove a disqualification which mere serving a sentence would not do;[4] it renders it possible to sue for defamation on the score of the offence

[1] Lee, *Edward VII*, ii. 40 f.

[2] Keith, *The King and the Imperial Crown*, pp. 409 f.

[3] 22 Vict. c. 32; 38 & 39 Vict. c. 80; *Todd* v. *Robinson* (1884), 12 Q.B.D. 530; *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 354.

[4] *Hay* v. *Justices of London* (1890), 24 Q.B.D. 561.

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pardoned.[1] A pardon since 1827 need not be under the great seal, but by sign-manual warrant. It may be conditional or absolute. The Criminal Appeal Act, 1907, does not affect the prerogative, though it gives power to the Home Secretary to obtain the opinion of the court in any case save a capital one.

Reprieve can be granted by the judge or Home Secretary; the latter alone may commute a death sentence to imprisonment and reduce other sentences by remitting fines, altering the term of imprisonment, etc. The prisoner has no option but to accept the changed sentence, if within the legal authority of the Crown.[2]

A curious constitutional incident occurred in 1861 [3] in a prosecution for bribery, when a witness for the prosecution refused to answer a question on the ground that he might thus incriminate himself. The Attorney-General then offered a pardon under the great seal, which he accepted, but still declined to answer because the pardon would not be valid if he were impeached.[4] The court naturally did not take seriously this ingenious suggestion. An accomplice can, of course, be induced to give information by assuring him that he will not be prosecuted, an assurance which can always be made good by the Crown entering a *nolle prosequi* if a private prosecution should be brought.

12. *The Royal Influence on Policy*

(i) Internal Affairs

It is not easy to estimate the real effect of Queen Victoria's activities in the sphere of domestic politics, to

[1] Cf. *Leyman* v. *Latimer* (1878), 3 Ex. D. 352.
[2] Cf. Keith, *The Dominions as Sovereign States*, p. 414 n. 2.
[3] *R.* v. *Boyes*, 1 B. & S. 311. [4] 12 & 13 Will. III. c. 2, s. 3.

which reference has already been made. That she lent the weight of her influence to Conservatism of every kind is unquestioned, but that her support altered in substance any important issue may be doubted. Her greatest achievements were her services as mediator in the Irish Church and the Redistribution crises of 1869 and 1884, and it would be going too far to say that in either case a different result would have been attained without her aid. Her hostility to Irish Home Rule was great, and it was aggravated by her dislike, after her subjection to the influence of Lord Beaconsfield, for the greatest of her statesmen; but here again it may be questioned whether she affected in any substantial degree the process of events. The secession of Lord Hartington and his followers over Home Rule was wholly uninfluenced by consideration of royal wishes. Her objection to individual statesmen never effected anything of importance; Sir Charles Dilke was rendered impossible as a colleague by his implication in divorce proceedings.

Of Edward VII the same view must be recorded. He disliked unquestionably the advanced policy of some of his ministers, and still more the methods of publicity of Mr. Lloyd George. But his attitude towards the conflict between Lords and Commons cannot be said to have produced any substantial effect on either side. His failure to influence the leaders of the Opposition to moderation whether as regards the Education or other Bills or in the vital matter of the Finance Bill of 1909,[1] is rather a significant sign of the comparative weakness of the sovereign when issues of vital character are concerned. It is equally significant that, despite all his efforts, George V neither in 1910–11 nor in 1912–14 was able to secure concessions of important character from either of the contending sides.

[1] Cf. Dugdale, *Balfour*, ii. 57; Lee, *Edward VII*, ii. 668.

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Domestic issues, it may be held, are so strong and immediately felt by the political parties and their chiefs that royal intervention has slight chance of securing any result.

(ii) Foreign Affairs

Queen Victoria inherited a tradition of royal concern with foreign relations, which was preserved by her own inclination, by the interest in these issues taken by her husband, and by the advice of her uncle by marriage, King Leopold. The matrimonial alliances of her children and her grandchildren added with the passage of time to her opportunities of acquiring much confidential information as to the aims of the dynasties with which she was connected, and this fact was of special importance, because of the large part played during her lifetime by sovereigns in the direction of the foreign policy of their countries. She herself was naturally never in a position to conduct a personal policy such as her contemporary rulers could do or attempt to do, but at no time was she willing to be a mere instrument in the hands of ministers, and her quarrels with Lord Palmerston were largely due to the fact that he was so reluctant to take her into his confidence and so anxious to act on his own authority in external relations, to which must be added the fact that his own political outlook was a more liberal and democratic one than that of his mistress.

Mr. Canning had already insisted on negativing the claim of the sovereign to deal with foreign representatives without the presence of a minister, and since 1825 there had been no real possibility of the King exercising an independent policy as sovereign of Hanover. With the advent of the Queen to the throne the Crown of Hanover passed away to her uncle, and this possible source of difficulty was finally eliminated. King Leopold's advice made for friendly

relations towards France, and in 1840 the Queen strove to use his influence with his father-in-law, Louis-Philippe, to induce France to adopt a conciliatory attitude in regard to Mehemet Ali's position in Egypt. In 1844 her influence was on the side of moderation in regard to the expulsion of the British Consul, Mr. Pritchard, from Tahiti. The incident stirred deep feeling even in Sir R. Peel and might have threatened war, if less cautiously treated.[1] She shared with Lord Palmerston his indignation regarding the sordid and unpleasant affair[2] of the Spanish marriages, which drew from her the condemnation of the French King's action as beyond all belief shameful and so shabbily dishonest; it certainly ruined any possibility of cordiality. On the other hand, she was far from happy at his action in despatching Lord Minto on a mission of encouragement to Italian States desiring to establish some measure of internal freedom despite Austrian objections. She was equally lukewarm towards his efforts to support Liberalism in Portugal, and displeased by his inculcation of a more moderate policy on Spain which led to the dismissal of the British minister in 1848.[3] The policy of Lord Palmerston[4] in encouraging Piedmont in 1848–9 had little sympathy from her; with Ireland disloyal, it was in her view immoral to force Austria to give up her lawful possessions. The bitterness of feeling in Austria was shown by the failure to send an Archduke to announce the accession of Francis Joseph, and Prince Schwarzenberg refused to accept one of Lord Palmerston's notes as to Hungary and suggested that in return he would advise the British Government on its policy towards Canada. In return Lord Palmerston protested against the brutality of the suppression of the

[1] *Letters of Queen Victoria*, 1 s. ii. 20, 25; Bell, *Palmerston*, i. 352.

[2] Seton-Watson, *Britain in Europe*, pp. 243 ff., offers a defence of the French action.

[3] *Letters*, 1 s. ii. 175 ff.; Bell, *Palmerston*, i. 439 f.

[4] *Ibid.* ii. 180 ff.

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Hungarian rebellion, and intervened successfully to save from surrender by the Porte those refugees who succeeded in reaching Turkey, though Russia and Austria combined to demand extradition.

The Queen's lack of sympathy with Lord Palmerston's policy was heightened by several errors of judgment on his part; he permitted the passing of rifles into the hands of Sicilian rebels, and had to agree to apologise to the worthless Government at Naples for this breach of international comity. In the case of his violent championship of the claims of Don Pacifico [1] for reparation for wrongs inflicted by the Greek Government, he was highhanded in the extreme, and, after arranging a settlement with the French Ambassador, he failed to inform the British minister at Athens, with the result that reparation was forcibly exacted, and in indignation the French Ambassador left London. Lord Palmerston's attitude was censured by the House of Lords by 169 to 132 votes, but after a historic debate from June 24 to 29, 1850, Lord Palmerston, by stressing the maxim *civis Romanus sum*, won a resounding triumph by 310 to 264 votes. It was impossible to displace him after this effort, but the Queen insisted on communicating to him her demands that he must distinctly state what he proposed in any case, so that she could know to what she had given sanction; that a measure sanctioned must not be arbitrarily altered or modified on pain of the exercise of the right to dismiss; that she must be informed of what passed between him and foreign ministers prior to important decisions being taken; that she must receive the foreign despatches in good time and have draft despatches sent to her for approval in sufficient time for her to make herself familiar with their contents before despatch.[2] In September

[1] Seton-Watson, *Britain in Europe*, pp. 272 ff.; Bell, *Palmerston*, ii. 22-8.

[2] *Letters*, 1 s. ii. 264.

the Queen succeeded, with Lord John Russell's aid, in forcing Lord Palmerston to withdraw an inadequate note of apology to the Austrian Ambassador for the assault on the worthless General Haynau, when he was recognised in the city and set on by draymen of a city brewery.[1] But in October 1851 [2] it was only at the express request of the Cabinet that he declined to see Kossuth when the Hungarian patriot visited England *en route* to America, and such merit as he acquired by this obedience was dissipated by his accepting addresses from Radical deputations which stigmatised the Emperors Nicholas and Francis Joseph as "odious and detestable assassins". The Queen was deeply moved, but did not risk demanding the removal of Lord Palmerston, and the Premier made a defence for him on the score that colleagues had a discretion of utterance which might be misused, but could not be denied. But at this juncture Lord Palmerston ruined himself by departing from the Cabinet decision not to take any action in regard to Louis Napoleon's *coup d'état* of December 2, 1851, and expressing approval to the French Ambassador, thus placing Lord Normanby, the incapable British Ambassador at Paris, in a humiliating position when he conveyed the Cabinet decision to the French Government. His protests reached the Queen via Colonel Phipps of the royal household, and Lord J. Russell decided on dismissing the culprit, though offering him the Irish Viceroyalty as the reward of resignation, which he refused.[3]

The Queen then declared her right to approve the selection of a successor, and Lord John Russell agreed with her on Lord Granville, while a nominal offer was made to Lord Clarendon.[4] In reply to a request by the Queen for a

[1] *Letters*, 1 s. ii. 267, 329.
[2] *Ibid.* ii. 325 ff., 329; Bell, *Palmerston*, ii. 44 f.
[3] *Ibid.* ii. 334 f., 338 ff., 343.
[4] *Ibid.* ii. 346 f.; Fitzmaurice, *Granville*, i. 43 ff.

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statement of British foreign policy, some platitudes were duly produced by Lord Granville, and Lord Palmerston's defence of his action in the Commons on February 3, 1852, was feeble, though he stressed the fact that the Premier had held similar language to the French Ambassador on the same day as his alleged indiscretion. The production of the memorandum of August 1850 weakened his case, but his reticence was partly due to reluctance to turn the matter into a personal quarrel between himself and the Crown.

But the Crimean War was ultimately to compel the Queen to receive with equanimity the advent to power of Lord Palmerston as Premier. He had accepted the Home Secretaryship of the Aberdeen ministry, and an effort to force him out in December 1853 only led to his hasty re-admission, and the popularity of Prince Albert and the Queen was for a time at a low ebb, wild attacks being based on allegations of their pacifism. The Prince was alleged to have acted unconstitutionally, to have been committed to the tower, and to be on the verge of impeachment.[1] Though this position was but temporary and Lords Aberdeen and Derby in the Lords vindicated the actions of the Prince, the royal family had to exercise reserve, and only later, when war actually was being waged, did the Queen come into more cordial relations with Lord Palmerston. She shared the general desire that a British victory should match the success of Marshal Pelissier at the Malakoff, but acquiesced in peace when it was made clear that the Emperor was not prepared to lend further French aid.

In the negotiations over the liberation of Italy, the Queen was more sympathetic with Austria than her ministers, and with Lord Derby she wrangled over the

[1] Seton-Watson, *Britain in Europe*, p. 322.

intimation of neutrality in the speech from the throne in 1859. When Lord Palmerston succeeded Lord Derby, she was still less in touch with her Premier and Lord John Russell, his Foreign Secretary. In August she secured help from the Cabinet majority, through Lord Granville, to modify the attitude of her Premier,[1] and in January 1860 she deprecated, with the support of the majority, the idea of a formal alliance with France. In February she exchanged a distinctly acrid correspondence with Lord John Russell on the merits of Italian freedom;[2] her minister was impolite enough to point out that Italians were merely applying to the rulers the principles of the English revolution of 1688, by which power held by sovereigns might be forfeited by misconduct, and each nation had the right to determine its internal government. Fortunately for Italy, the Premier and his colleague, by a definite declaration on October 27, 1860, were able to deter Austria from intervention on behalf of the Pope or the King of the Two Sicilies, though their action was regarded with anxiety by the Queen and her husband.

The last intervention of Prince Albert[3] with her support was more valuable. It was he who suggested changes in the draft despatch regarding the *Trent* incident when a United States war vessel removed the envoys sent by the Confederate Government to Britain and France from a British mail vessel. The British view demanded redress for what was declared to be a breach of international law in terms unduly firm. They were revised so as to render it easy for the President to release the envoys and express regrets for their seizure. The Prince's premature death at the age of forty-two definitely affected the Queen's action

[1] Fitzmaurice, *Granville*, i. 349 ff.

[2] Bell, *Palmerston*, ii. 246-52, 264-7.

[3] Martin, *Prince Consort*, v. 422 ff.; Bell, *Palmerston*, ii. 294 ff.

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in foreign as in domestic affairs; thereafter royal influence was much more intermittent and was mainly exhibited, until the accession of Mr. Disraeli to power, in matters affecting her Germanic affiliations.

The Queen's attitude towards ministers was displayed most conspicuously in the matter of Denmark.[1] The steps taken by Prussia and Austria to deprive that country of Schleswig and Holstein evoked in her no indignation, and her efforts were directed to restraining "those two dreadful old men", as she styled her Premier and Foreign Secretary in their efforts to procure some relief for the country whence came her son's bride. In her efforts to move the Cabinet to share her views, she had as usual Lord Granville's aid, but the case was too clear to allow of much doubt. Napoleon had been alienated by British refusal to aid him in regard to the Poles in 1863 and Britain had no army to send to the Continent. The Queen, however, had no desire to see Prussia the mistress of the Duchies, and her disappointment was great when, in 1866, the failure of Austria defeated her hopes in this regard. In the Franco-Prussian war[2] issue she was at first dissuaded by Lord Clarendon from deprecating the candidature for the Spanish throne of Prince Leopold of Hohenzollern, but after Lord Clarendon's death she agreed, on the advice of his successor and the King of the Belgians, to write to the Count of Flanders to induce him to deprecate his brother-in-law's candidature. Her feelings, however, were at first decidedly hostile to France, where indeed every possible error was committed by the Emperor and his ministry alike, though Count Bismarck must bear the gravest share of responsibility. In September she endeavoured, though vainly, to induce the King of

[1] Fitzmaurice, *Granville*, i. 447 ff.; Seton-Watson, *Britain in Europe*, pp. 446 f.

[2] *Ibid.* ii. 30 ff.

Prussia to concede better terms. For many reasons Britain in the crisis was impotent.

But, under the influence of Mr. Disraeli, the Queen developed in the Eastern question of 1876–8 an activity which proved embarrassing to her Premier. Her dominating idea was the necessity of preserving Constantinople from Russian domination; abdication was threatened: "she cannot, as she before said, remain the sovereign of a country that is letting itself down to kiss the feet of the great barbarians".[1] Her feelings against Russia led her even to ascribe to that power responsibility for instigating the Bulgarian insurrection, and therefore for the savage cruelty displayed by the Turks in its repression. Her support was constantly given to Lord Beaconsfield against the opposition in the Cabinet, and she was only too glad when Lord Derby decided to resign.[2] Lord Carnarvon also protested to Mr. Gladstone against her assumption of authority and of dictation to the Cabinet. How far her threats of abdication were sincere it is hard to say, but in any case the royal threat was obviously unconstitutional in the circumstances in which it was made, unless it was merely a mode of emphasising the strength of her feeling in the matter, and was not intended to be understood as literal. She had made such a threat before in 1871[3] if ministers insisted on pressing her to stay after the prorogation of Parliament; but on May 17, 1885,[4] she wrote in a more proper spirit: "The Queen writes strongly, but she cannot resign if matters go ill, and her heart bleeds to see such short-sighted humiliating policy pursued". Abdication was contemplated by Edward VII only in time of anxiety and ill-

[1] See Seton-Watson, *Disraeli, Gladstone, and the Eastern Question*, pp. 198, 267, 314.

[2] Monypenny and Buckle, *Disraeli*, ii. 1100 ff., 1134 ff.

[3] Guedella, *The Queen and Mr. Gladstone*, i. 300.

[4] *Letters*, 2 s. iii. 646.

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health; it was not threatened by George V even in the throes of the conflict on the Government of Ireland Bill with the danger of civil war.[1]

The Queen was never again so energetically to take part in foreign affairs, but the later years of her life were troubled by the hostility shown to her daughter, the Empress Frederick, by her grandson, who succeeded to the throne in 1888 on his father's death, and whose quarrels with his uncle, the Prince of Wales, exercised a growing influence for the worse on relations with Germany. Her personal interest, however, was aroused in favour of Prince Alexander of Bulgaria [2] when, in 1886, Eastern Roumelia desired to throw in its lot with that State. The Prince, however, was driven out by Russian intrigue instigated by the Czar, who hated him, and the Queen found Lord Salisbury unable to move in his favour. The occasion is interesting mainly because Lord Salisbury gave curious reasons for British weakness in diplomacy. Secret service money was negligible — £15,000 [3] — and the Commons would not grant more. Diplomatic pay was low and only inferior men entered the service, while promotion by seniority precluded the advancement of the best qualified men. The absence of an effective army deprived British representations of weight. Policy had to be made intelligible to Parliament and concerted under the difficulty of explanation to fourteen to sixteen members of the Cabinet. More to the point was the obvious consideration that there was no unity in

[1] Spender, *Lord Oxford*, ii. 28.

[2] *Letters*, 3 s. i. 193 ff., 259 f.

[3] In 1939–40, £500,000. Yet in 1936–8 Foreign Office statements regarding Italian and German intervention in Spain, as explained by Signor Mussolini and Herr Hitler (June 6, 1939), were consistently wrong, and on March 9, 1939, Mr. Chamberlain authorised a statement to the press as to European conditions, which was absolutely falsified in four days by the German seizure of Czechoslovakia. The Foreign service is clearly no more efficient, though much more costly, than in 1886.

Bulgaria itself, that Britain had no allies to aid her in standing up for the Prince, and that he himself was determined, in view of the implacable hostility of the Czar, to abandon the attempt to rule. Lord R. Churchill certainly exaggerated her personal interest in asserting that his resignation was due to the Russian question, and that the Queen was prepared to go to war for a personal interest. Quite fairly she insisted that her interest was in the necessity of keeping Russia from control of Constantinople. In the same spirit she was anxious so far as possible to aid the Prince's successor, Ferdinand of Saxe-Coburg and Gotha, against both Russia and Turkey in 1893.

With Mr. Gladstone's ministry her chief trials arose over Egypt and the Sudan. Her indignation at the death of General Gordon led to a telegram of protest *en clair* which nearly resulted in the resignation of the Premier on the score of the grave impropriety of such action. Her subsequent efforts to secure that the Sudan should not be abandoned led to her urging Lord Wolseley to insist on retention in the face of the wishes of ministers, but the idea was untenable; France threatened to make trouble in Egypt if the British forces were locked up in the Sudan, and the Russian defeat of the Afghans at Penjdeh showed the folly of persisting in attacks on the dervishes when British interests in Asia were so dangerously at stake.[1] On the other hand, she was resolute and effective in support of British interests when menaced by William II. She expressed disapproval of his famous intervention on the occasion of the Jameson Raid in 1895, and in 1900 nipped in the bud any idea of his offer of mediation by telling him frankly that "my whole nation is with me in a fixed determination to see this war through without intervention.

[1] The Conservatives on taking office could have retained Dongola, but refused to do so; Holland, *Devonshire*, ii. 44.

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The time for, and the terms of, peace must be left to our decision, and my country, which is suffering from so heavy a sacrifice of precious lives, will resist all interference." [1]

Of Edward VII it is recorded that, when Prince of Wales, he told Lord Carrington that, when he became King, he would be his own Foreign Minister, and in fact his chief activity in the affairs of government lay in this direction. He was indeed in many ways a born diplomat; he loved foreign contacts and understood men of many races and types of mind; he had both social and political tact, and if he lacked broad intellectual grasp and had no lofty ideals, he had a sound sense of the needs of his country. That he ever had a personal policy, or that he planned and carried a policy of encirclement of Germany [2] is clearly absurd, though William II doubtless sincerely believed the allegations to this effect. We have Mr. Balfour's [3] testimony that he "never made an important suggestion of any sort on large questions of policy", and Lord Grey [4] expressly denied that British foreign policy was due to his initiative, instigation, and control; "he did not care for long and sustained discussion about large aspects of policy, though he brought strong common sense and good judgment to bear on any concrete matter of the moment". To this it must be added that he was unwearied in carrying out on behalf of ministers the effort to use personal contacts as a means of achieving British aims. Unquestionably his visit to Paris in 1903 served as an important factor in bringing about in 1904 the conclusion of the treaty with France which marked the reality of the Entente Cordiale. There was, of course, danger in these visits, for more was read into them than was really involved; that to Reval in 1908 [5]

[1] *Letters*, 3 s. iii. 509, 513.

[2] Baron Greindl, Morel, *Diplomacy Revealed*, pp. 54, 74 f.; Lee, *Edward VII*, ii. 346, 540 ff.

[3] Newton, *Lansdowne*, p. 293.

[4] *Twenty-five Years*, i. 204.

[5] Lee, *Edward VII*, ii. 586, 588-94.

in particular aroused unbased suppositions, and that to Francis Joseph at Ischl [1] in that year was marked by the deliberate silence of the Emperor on his decision to annex Bosnia and Herzegovina, a fact concealed also by Baron Aehrenthal from Sir E. Goschen. It is characteristic of the worthless character of the legends invented against him that the declaration of Bulgarian independence, concerted with Austria and sedulously concealed from the King, was ascribed to him by the Kaiser.[2] There was, of course, some risk in interviews not directly controlled by ministers, for Sir E. Grey never accompanied Edward VII overseas, though he had always a member of the Foreign Office or diplomatic staff beside him. Possibly he may, in June 1905,[3] have gone rather far in advising M. Delcassé not to yield to the pressure brought upon him by the timid Premier, M. Rouvier, to resign as a means of buying off German displeasure at his Moroccan policy ; but that is uncertain, and there is no doubt that neither he nor Lord Lansdowne ever held out any promise of an offensive and defensive alliance.

On special points he was quite ready to press views on his ministers, but they were all points of special interest to him personally. He used all his influence through the Government and personally to secure the peaceful separation of Norway from Sweden and the selection as the sovereign of the new State of his son-in-law, Prince Charles of Denmark.[4] He negatived firmly any idea of personal relations with Leopold of Belgium because of the iniquities of his personal régime in the Congo.[5] He declined to condone King Peter of Serbia's complicity in the murders of King Alexander and Queen Draga, and refused to be represented at his court until the regicides had been removed

[1] Lee, *Edward VII*, ii. 626 ff. [2] *Die grosse Politik*, XXVI. i. 73.

[3] Seton-Watson, *Britain in Europe*, p. 603 n.; Halévy, *Hist. 1905–15*, pp. 425 f.

Lee, *Edward VII*, ii. 315-26. [5] *Ibid.* ii. 274-7.

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from offices in which the British minister would have been condemned to enter into relations with those callous murderers.[1] On the issue of the grant of the Garter to the Shah of Persia he felt so strongly that it was only a clear intimation that Lord Lansdowne, having promised it, must resign if he persisted in refusal and the Cabinet might have to follow suit, that induced him to yield, and even then too late to undo the annoyance caused to that sovereign.[2] To the King of Siam it was refused outright. On the other hand, he shared nothing of William II's fear of the yellow peril, and willingly accepted the Japanese alliance of 1902 which enormously improved British security in the Far East; he gave the Emperor of Japan the Garter and forbade the playing of *The Mikado* during the ceremonial visit to Britain of Prince Fushimi, much to the annoyance of its author. He risked unpopularity with Labour and some Liberal opinion by establishing closer relations with the Czar in furtherance of the policy of political friendship which took shape in the treaty of 1907, and gave his cordial support to his ministers in overriding the objections of the Government of India to the rather cavalier treatment meted out to the Amir of Afghanistan.[3] In the same spirit he frowned on the Indian Government's desire to maintain the conditions imposed by Colonel Younghusband after the successful Tibet expedition, which would have kept Tibet under British control, in disregard of pledges given to Russia.[4]

In two issues the King and his mother saw eye to eye. Queen Victoria was very reluctant to part with British territory, and it was with considerable difficulty that she brought herself to sacrifice Heligoland[5] in return for

[1] Lee, *Edward VII*, ii. 270-73.
[2] Newton, *Lansdowne*, pp. 236-40.
[3] Lee, *Edward VII*, ii. 570 f.
[4] *Ibid.* ii. 369 ff.
[5] Seton-Watson, *Britain in Europe*, pp. 567 f.

Zanzibar and other African concessions by Germany. She naturally feared that Gibraltar might be the next object of demand, but Lord Salisbury astutely won his way by suggesting that the alternative was the necessity of revising British alliances, which would mean the evacuation of Egypt. Satisfied on this head, she took exception to Lord Salisbury's further doctrine that the cession should be made dependent on the approval of Parliament. This view was strongly shared by Mr. Gladstone, who insisted with historical backing that every kind of colony, with representative government and without, had been ceded by virtue of the prerogative alone. But the view of Lord Salisbury prevailed, and it was destined to be raised again over the Anglo-French treaty of 1904. Edward VII denied hotly that the cession of the Îles de Los to France demanded an Act of Parliament, and he acquiesced in the insistence of his ministers with no good grace.[1] There was, of course, no real surrender of royal authority involved; in any event the King must act on ministerial advice; but there was a definite admission that the prerogative no longer could be interpreted to cover cession of territory, and there is no doubt that the new doctrine was sound. The Queen's fears for Gibraltar were not realised, but it is noteworthy that, in the war between Spain and the United States, the mere threat of danger to Gibraltar from the erection of batteries in its vicinity moved Lord Salisbury to readiness to action against Spain, and induced the Queen to send a letter of courteous advice to the Queen Regent of Spain. Not until the Spanish civil war of 1936–9 was the issue again raised, and it is a significant token of the changed position of Britain that the ministry was unable to take any steps to secure the removal of the heavy guns brought up to threaten Gibraltar and the anchorage, while the intention

[1] Lee, *Edward VII*, ii. 251-3.

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to recover Gibraltar later was plainly expressed by the rebel leader.[1]

The other issue, in which the Queen's attitude was taken as a model by the King, was interest in diplomatic appointments. On the instigation of her daughter, whose interest in Britain never wearied and who was always anxious to promote good relations between the countries, she secured in 1864 and in 1870 the removal of Sir A. Buchanan and Lord A. Loftus from the post of minister at Berlin.[2] She fought hard to keep Sir H. Layard in office, but the Liberal Government's case for removing him from Constantinople was complete; not only had he shown himself hostile to the Premier, but in various ways he had lost the confidence of the ministry, and the concession made was that Sir E. Goschen should go on a special mission, thus disguising his removal.[3] She defended Sir R. Morier in so far as his unpopularity was due to the fact that he took the side of the Crown Princess in her difficulties at the German Court.

Edward VII was equally interested in the personnel of the service, and while the Queen knew its members in the main through letters and reports, received from the Foreign Office or sent direct, her son was personally familiar with the leaders of the service and eager to advance those he thought deserving, such as Sir A. Herbert and Sir R. Rodd. He declined to prolong the services at Vienna of Sir F. Plunkett, and secured the post for Sir E. Goschen, who later on reluctantly at his bidding accepted the thankless office of Ambassador at Berlin, when the pro-German, Sir F. Lascelles, was finally relieved of that office.[4]

[1] Keith, *The King, the Constitution, the Empire, and Foreign Affairs, 1936–7*, pp. 142, 171, 177, 180.

[2] *Letters*, 2 s. i. 204, 206, 243; ii. 80, 85.

[3] *Ibid.* iii. 92-4; Fitzmaurice, *Granville*, ii. 199 f.

[4] Lee, *Edward VII*, ii. 182, 618-20.

It has been suggested [1] that the power of the Crown declined as regards foreign affairs during Edward VII's reign, and that in particular the power to initiate or obstruct a policy passed away. It is difficult to accept this doctrine. The Crown, it may fairly be held, never had any real power to initiate or obstruct; it could only work with ministers, and such authority as it could exercise was advisory in character. The authority exercised by the Queen in 1878 [2] was, when all is said and done, merely the expression of a policy which had been formed by her Premier, and her admonitions and threats of abdication were doubtless largely meant to impress on the Cabinet the duty of agreement with the Premier's projects. If, as is possible, she was slightly carried away by her success and endeavoured to force her opinions beyond the limits which he desired, it is certain that she capitulated at once when he intimated that, if she did not approve his policy, the ministry would not resign, but might constitutionally be dismissed.[3]

No doubt the sovereign has appeared less prominently in later times. George V showed none of his father's desire to take a personal part in diplomacy, for which he clearly had no taste, and his visits to Paris and Berlin were not marked by personal activity in diplomacy. Of historical interest is his warning, in a personal interview, to Prince Henry of Prussia that British neutrality in the event of an attack on France could not be relied upon; unluckily the warning was neglected. No clearer indication of British action was possible; it was not until the actual invasion of Belgium in August 1914 that the Cabinet was sufficiently united to allow of an ultimatum to Germany. The outbreak

[1] *Cambridge Hist. of British Foreign Policy*, iii. 615.
[2] Monypenny and Buckle, *Disraeli*, ii. 1115 ff.
[3] *Ibid.* ii. 1118 (Feb. 10, 1878).

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of war cut off the possibility of personal diplomacy, even if it had been desired by the King, and the post-war world left few sovereigns of sufficient importance to render personal relations of any consequence.

One sign, however, of the growing divorce between the Crown and the conduct of foreign affairs was revealed in the negotiations of 1935 for the possible settlement of the Ethiopian issue. It was proposed that a strip of Somaliland might be given to Ethiopia in consideration of surrender of certain rights to Italy. It seems clear that the proposal was to have been made effective without recourse to Parliament, ignoring the doctrine which forbade the cession of territory without Parliamentary sanction and which had been respected as regards the surrender of Jubaland to Italy, and of the Dindings to Johore. It is doubtful also if the ministry had taken the proper course of obtaining royal assent for the project before announcing it to the Commons.[1]

Under George V's successors the process of diminution of the royal authority appears to have been in progress. The surrender of Ethiopia by the cessation of sanctions in July 1936 appears to have been resolved upon with no more than formal royal acceptance, and in the proceedings in September 1938 regarding the dismemberment of Czechoslovakia the Prime Minister appears to have acted first and told the King *ex post facto*. It was noteworthy that in his declarations on September 28, October 3 and 6, no mention was made of the royal name or of consultation of the sovereign, or even of the fact that royal sanction for the visit to Berchtesgaden had been solicited. It is further clear that the King was debarred by the *modus operandi* adopted from exercising any control over the

[1] Keith, *Current Imperial and International Problems, 1935–6*, pp. 131, 139 ff.

policy of the Prime Minister, and reduced to the position of approving *ex post facto* matters conducted without his aid. Unquestionably the resort to personal diplomacy by the Prime Minister involves not merely the curtailment of the authority of the Cabinet, but in a very marked degree that of the sovereign. Nor is it possible to ignore the form of the Munich treaty of September 29,[1] and of the accompanying declaration between the Premier and Herr Hitler of September 30; in a matter intended to express the solemn determination of the peoples of Britain and Germany to eschew war as a means of settling their disputes, the sovereign rather than the Premier should have been the signatory, or at least signature should have been in his name.

The Anglo-Italian agreement of 1938,[2] which ended the controversy over Ethiopia by providing for the acceptance by Britain of the position *de jure* as Emperor of Ethiopia of the King of Italy, was followed by the due accrediting to Italy of the British Ambassador in the new style of the King. This involved the deliberate violation of the Covenant of the League of Nations, for Article 10 required the Crown to protect against external aggression the territorial integrity and sovereignty of Ethiopia, and Article 20 imposed a solemn undertaking not to enter into any compact inconsistent with the terms of the Covenant. Equal violation, of course, was involved in the Munich agreement regarding Czechoslovakia. But it was recognised that it was clearly impossible for the King to oppose any objection in either case, in view of the fact that the Premier still commanded the full support of the House of Commons. For a sovereign to dismiss a ministry in such

[1] *Parl. Pap.* Cmd. 5848. It is remarkable that no royal authority is alluded to in this document.

[2] *Ibid.* Cmd. 5726; made operative Nov. 16; Cmd. 5923.

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conditions, amid international dangers, would plainly be out of the question, and this fact certainly tends indefinitely to reduce the extent of royal authority in foreign affairs and to hand over power to the Cabinet.

In the case of the recognition of General Franco as *de jure* the Government of Spain there was abundant time to obtain the assent of the King in advance, and it clearly seems to have been obtained. On the other hand, it is equally clear, from the declaration made by M. Daladier in the French Parliament on February 24, that the British Government had notified him of its decision to recognise General Franco, and it is natural that Mr. Attlee should, on February 27, have accused Mr. Chamberlain, who on that date had denied in the Commons that any decision had been taken, of "misleading the House in a way no Prime Minister has ever done before". It is not indeed clear why the Prime Minister did not follow the procedure set on May 24, 1927, when Mr. Baldwin informed the Commons that his Government would sever diplomatic relations with the Soviet Government unless on May 26, the day for which a debate had been arranged, the Commons disapproved. When it was an issue of recognising the destruction by a totalitarian leader, whose victories had been achieved by Italian and German aid, of a democratic régime, it is clear that the formal procedure, by first obtaining the assent of the Commons, should have been followed before the King acted.

(iii) Imperial Affairs

For Queen Victoria Imperial issues in the main presented comparatively few difficulties. The decision arrived at in 1840–48, to act on the advice of Lord Durham and to create responsible government in Canada, contrasted sharply with the views of William IV, who had resisted

bitterly any idea of relaxing the control of the Crown over overseas territories. But the actual authority exercised by the Crown had no importance in her eyes, and she accepted readily the further decision which created the Dominion of Canada and in 1900 the Commonwealth of Australia. For expansion of authority as such she showed little interest, though annexation was accepted as bringing benefits to the natives of New Guinea. On the other hand, in 1897, by the grant of membership of the Privy Council to the colonial premiers assembled for her silver jubilee celebrations, she recognised the gradual development of the colonies to autonomous communities.

In India, on the other hand, her interest was from the outset more marked. Mr. Disraeli gave her the title of Empress,[1] which might well have been enjoyed from the moment when, on the extinction of the Mogal Empire after the mutiny, the Crown asserted the direct government of India. The new style helped to bring her into relations of personal character with the Indian princes. The principles which she inculcated combined just and generous treatment of the people of India within her territories and respect for the position of the Native States, to whose rulers with her sanction were granted sanads ensuring that the States could not lapse to the Crown merely for failure of direct heirs. The personal allegiance due by the princes was asserted in the case of the deposition after full trial of the Gaekwar of Baroda (1873–5) and the execution of the murderer of the Commissioner of Assam in Manipur in 1891; it is a signal example of the constitutional rules affecting the sovereign[2] that, though she was anxious to show clemency to the chief culprit in that affair, arising out of the rebellion against the ruler of the State, she did

[1] Monypenny and Buckle, *Disraeli*, ii. 779 ff.

[2] *Letters*, 3 s. ii. 55 ff.; Newton, *Lansdowne*, pp. 81 ff.

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not attempt to overrule the decision of the Viceroy, who felt that it was impossible to grant pardon in that instance.

In Imperial affairs, colonial and Indian alike, the Queen insisted on receiving important papers and on having decisions of larger issues submitted for her approval, though she made no effort to follow these questions with the care given to foreign affairs.

The attitude of the Queen was closely followed by Edward VII. He showed concern for the fate of the Dutch republics whose conquest was nominally completed in the last year of his mother's life, but he accepted with some hesitation and doubt the decision of his Liberal ministers to grant full responsible government to the Transvaal and the Orange River Colony,[1] and he more warmly welcomed the union of the colonies under the South Africa Act, 1909. Greater doubt was felt by him regarding Indian policy. The proposal under the Minto-Morley reforms to introduce an Indian into the Council of the Governor-General was accepted by him only with great hesitation on the recommendation of the Cabinet, and with a formal record of his uneasiness.[2] Nor could he persuade Lord Morley to sanction the appointment as Viceroy of Lord Kitchener, though he had upheld, on the advice of Mr. Brodrick, the latter in his controversy with Lord Curzon on the vexed issue of the position of the Commander-in-Chief, *vis-à-vis* the Governor-General and Council.[3] In the same spirit of constitutional duty he declined to overrule his ministers in favour of Lord Curzon's earnest plea that the celebration of his coronation at the Delhi Durbar should be marked by announcement of remission of taxation in accordance with Hindu practice.

To George V fell the duty of accepting vital changes in

[1] Lee, *Edward VII*, ii. 480 f.
[2] *Ibid.* ii. 384 ff.
[3] *Ibid.* ii. 375 ff.

the relations of the Dominions with the United Kingdom. The Great War resulted in the recognition of the Dominions as distinct members of the League of Nations and as possessed thus of a certain legal personality in the eyes of international law. By the Imperial Conferences of 1926–37 this personality was steadily developed; the distinct international status of each Dominion except Newfoundland was recognised, and its right to accredit and receive diplomatic envoys. In the legal sphere full authority to effect such action was accorded by the Statute of Westminster, 1931, which abolished the supremacy of Imperial legislation and indicated that for changes of the succession to the Crown the action of the Parliaments of the Dominions must be as necessary as that of the British Parliament. The passing of the Statute led to legislation in the Union of South Africa to make clear the autonomous status of the Union by the Status of the Union and the Royal Executive Functions and Seals Acts of 1934, and the doctrine was thus proclaimed in the Union that the Crown is divisible; that the Dominions have the right to secede without British co-operation; and that the Dominions are able to remain neutral in a British war and to secure recognition of that neutrality from foreign powers.

The new position was carried further on the abdication of Edward VIII. The Irish Free State eliminated the Crown from all connection with its internal government, recognising George VI merely for purposes of the conclusion of treaties and the accrediting of envoys,[1] and this position was repeated and emphasised in the Constitution of Eire of 1937. Nonetheless the United Kingdom and the Dominions agreed to recognise Eire as still a member of the British Commonwealth of Nations. The Union of South Africa

[1] Executive Authority (External Relations) Act, 1936; Keith, *The King, the Constitution, the Empire, and Foreign Affairs, 1936–7*, pp. 31, 56 f.

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asserted that the abdication proved the separate character of the Crowns of Britain and of the Union, but settled for the time being the succession on George VI and his heirs according to the line of descent of the British Crown. The single Crown of Edward VII has thus been converted into the distinct Crowns of Britain and each of the Dominions, though the distinction is less insisted upon in Australia and New Zealand than in the other Dominions.

The King is in each Dominion advised, with complete autonomy, by his ministers, though in the main action is taken for him by the Governor-General, who is now appointed and dismissed, as was the Governor-General of the Free State in 1932, on the initiative of the ministry. Even in international relations in the Union the Governor-General can act. George V realised the difficulties that must arise from placing on him the duty of accepting advice separately from each Dominion, but he yielded to the advice of the British Government and accepted the obligation. It is, however, clear that in the case of Dominion advice the sovereign has no chance of dissent, nor has he the opportunity to advise and warn after discussion which appertains to him in Britain. How far he could accept conflicting advice from different parts of the Commonwealth remains to be decided. It is, however, plain that he may be required by one unit to recognise a foreign State while another unit holds back. Thus the recognition by the King of the King of Italy as *de jure* Emperor of Ethiopia was first given by Eire, and later was approved by the Union of South Africa and the Commonwealth of Australia, but not at the time by the other Dominions, though such assent must inevitably follow in such a case. General Franco was likewise first recognised *de jure* by Eire. To proclaim war for one unit, while maintaining neutrality for another, might be possible, but, if Britain were at war,

neutrality by a Dominion [1] would almost inevitably involve secession.

Less violent changes marked the reign of George V in India. A great scheme of responsible government on a limited basis was introduced with royal assent under the Montagu-Chelmsford reform scheme by the Government of India Act, 1919, but a much more important step was marked by the Government of India Act, 1935, which opened up the prospect of a federal India in which the provinces and the States would be united. George V accepted the diminution of the immediate authority over the Indian States so far as they may accept federation involved in the new constitution, and the scheme of provincial responsible government took effect under George VI, federation, however, being still delayed.[2]

(iv) Defence

In the field of defence royal influence naturally diminished under a Queen, but Victoria was determined to uphold to the full her royal prerogative, and she had the advantage that, for a prolonged period after the disappearance from the scene of the Duke of Wellington, she had the advice of the Duke of Cambridge, who ultimately became Commander-in-Chief. There was substance in her criticisms of the failures of the ministry in the Crimean War, and in her anxiety regarding the sufficiency of the forces in the crisis of the Indian Mutiny. Similar difficulties presented themselves in later times, even under Lord Beaconsfield, and later the garrison in Egypt aroused her disquiet, leading to an addition to the forces when the attitude of

[1] On Feb. 16, 1939, Mr. De Valera asserted that *de facto* in war Irish neutrality would not be accepted by a foreign State, and so Eire must be ready to resist attack, and to secure her power to export to Britain.

[2] Keith, *Constitutional History of India* (2nd ed., 1937).

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Abbas II induced Lord Cromer to press the ministry for further troops.

On the constitutional side an issue of serious character presented itself when the government of India was assumed directly by the Crown in 1858. The East India Company had maintained an army of its own in addition to royal forces proper, and the Queen warned Lord Derby that she could not consent to the maintenance of a distinct European Indian army. She took high ground; the creation of such a force would endanger the maintenance of India, the dependence of the Indian Empire on the United Kingdom, and the throne itself. The force would be beyond the constitutional control of the Crown and of Parliament, and would be hostile to the regular army. The Indian Council would acquire a dangerous patronage and authority. It is not surprising that Lord Derby felt that this intimation put him in a false position; he would be fettered in his communications with colleagues by knowledge of the fact that the Queen would not approve a solution maintaining a distinct army, and in the circumstances he hinted at resignation. The Queen recognised that she had carried matters rather far, and the issue was solved by a settlement which gave effect to her objections to interference with the direct connection between the Crown and the European army in India.[1]

A more important issue was solved in 1871. The Government was anxious to terminate the system of sale of army commissions, which was clearly detrimental to the highest efficiency, but difficulties were raised in the House of Lords. It was decided,[2] therefore, to revoke the warrant which under an Act of 1809 permitted purchase

[1] Keith, *Constitutional History of India*, p. 188.

[2] *Letters*, 2 s. ii. 152-4; Morley, *Gladstone*, ii. 363. Disraeli denounced the use of the prerogative, an error of law often since repeated; Monypenny and Buckle, ii. 481.

of commissions, thus ensuring that the Lords would agree to legislation needed to protect the position of those who had purchased commissions at illegal prices. The Queen secured a formal minute of advice from the Cabinet, but showed herself perfectly ready to help in a useful reform, and this attitude ensured that, when complaints arose of the treatment of officers under the new system, she was able to secure the appointment of a commission to enquire into the grievances.

On army reform, however, she thought with her Commander-in-Chief. Mr. Cardwell's reforms she disliked, and urged that he be made Speaker; Mr. Childers equally displeased her, and Sir H. Campbell-Bannerman was accepted in his place. But her new minister was to carry out a reform to her specially distasteful, the removal from office of the Duke of Cambridge.[1] She had deplored the report of the Hartington Commission, which recommended the abolition of the post on the ground that an essential part of the prerogative was the right of free communication with a non-political officer of high rank, and it was a triumph of tact on the part of the minister that, on the eve of the fall of the Liberal Government, he induced the Queen to persuade her cousin to retire without even the pension he desired.

The Queen held strong views on the duty of ministers to support officers in the field, and to give them a free hand. In the case of Lord Wolseley in the Sudan, she was influenced mainly by the political advantage of destroying the forces of the Mahdi,[2] but in that of Lord Roberts in the South African War she was moved by the belief that it was proper for the civil Government to defer to the opinions of the man on the spot. It was pointed out by

[1] Spender, *Campbell-Bannerman*, i. 147-54.

[2] *Letters*, 2 s. iii. 633 ff.; Gladstone, *After Thirty Years*, pp. 243-62.

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Lord Salisbury that this doctrine could not be given full effect.[1] The ministry must be held liable by the electorate, and, if it was responsible, it must control in the long run the commanders in the field, a doctrine clearly sound. On the other hand, she rightly disapproved the publication of the despatches on the Spion Kop disaster.[2] It remains uncertain how Lord Lansdowne received the impression from a Cabinet discussion that publication was approved, perhaps a case of the early inaccuracy in recording results.

In minor matters the Queen insisted rightly on the duty of consultation. She disapproved Lord Lansdowne's action in changing regimental names without her sanction, controlled carefully the issue of medals, disapproving even of Lord Dalhousie's action, when India was still in the hands of the East India Company, in authorising the grant of one for Indian services, and she firmly asserted her right to communicate her congratulations to successful generals, whom she was anxious, with the assent of her ministers, to reward.

Edward VII took over unimpaired these minor prerogatives, and insisted upon them, while in details of equipment and dress he developed a greater interest than his mother. But the distinctive feature of his reign was the deep personal interest which he displayed in the development of the new War Office organisation, and in the creation of the Territorial Force under Mr. Haldane's reform scheme.[3] Not only did he address the Lord-Lieutenants, who became the heads of the country associations, charged with duties in respect of the forces, but he personally presented colours to many units. He exercised freely his right to study criticisms of the scheme, and to

[1] *Letters*, 3 s. iii. 525. Balfour denied the Queen's right to be consulted before orders were sent to Buller: Dugdale, i. 296.

[2] Newton, *Lansdowne*, pp. 182 ff.

[3] Lee, *Edward VII*, ii. 494 ff.

ask his minister to answer the objections brought by Lord Roberts among others; but in the main he accepted as satisfactory the views of his Government, and the creation of an expeditionary force in view of the obligations which had grown up towards France under the military conversations initiated under Lord Lansdowne, and continued under the Liberal Government. He recognised fully his duty to accept ministerial advice if persisted in against his own judgment; thus he yielded to Lord Salisbury's insistence on appointing a Royal Commission on the South African War,[1] though he thought it unwise; to the refusal of Mr. Arnold Forster when he declined to give a special salute to his brother as Inspector-General,[2] and to the negation of his own desire for fixing entry into the Guards at age eighteen and a half in lieu of nineteen.

To George V came the unhappy experience of incipient mutiny in the army among the officers at the Curragh in 1914,[3] to be followed by the naval mutiny at Invergordon in 1931,[4] both carried out by men who protested their acceptance of complete loyalty to the Crown but regarded their action as directed against the Government, a distinction without validity. But in neither case was active intervention by the King required. He assented, however, after full consideration, to the decision to remove Sir J. French from the command in France with the usual consolation of a peerage.[5] He also discussed fully with Mr. Asquith, Lord Kitchener, Mr. Balfour, and Sir E. Grey the issue of conscription, which he deemed necessary.[6]

[1] Lee, *Edward VII*, ii. 91 f.

[2] *Ibid.* ii. 199: "the Secretary of State for War is as obstinate as a mule".

[3] Spender, *Lord Oxford*, ii. 41 ff.

[4] K. Edwards, *The Mutiny at Invergordon*.

[5] Esher, *Journals*, iii. 280-88, 290-93. Queen Victoria was only told *ex post facto* of Lord Roberts' appointment to supersede Sir R. Buller: Dugdale, *Balfour*, i. 295 ff.; *Letters*, 3 s. iii. 439.

[6] Spender, *Lord Oxford*, ii. 211 f.

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But throughout he accepted the rôle of homologating the decisions of his War Cabinet.

The connection of the Crown with the navy has never been so close as with the army, since the brief period when the Duke of Clarence was permitted by his brother to act as Lord High Admiral. Queen Victoria did not care for the sea, and the chief constitutional issue of her reign was one of a point of form, touching on the relation of the sovereign to the Lords Commissioners of the Admiralty. The Queen contended that she enjoyed precedence in command, honour, and dignity, and that she could not be under the orders of any Admiral. Lord Halifax insisted that the authority of the Crown could be exercised only by those who held a due delegation therefrom, and the Prince of Wales had not by mere birth the royal rights of command. The point at issue, the firing of the evening gun from the royal yacht or the ship of the Admiral in command, was compromised, but it is noteworthy that Colonel Ponsonby for the Queen virtually admitted that she could not even in person give commands to the captains of her own war vessels. The constitutional rights of the Crown must be exercised through the duly constituted constitutional authorities.[1]

Edward VII was deeply concerned with the fleet as a necessary means of reply to the growing menace of German shipbuilding, and he approved of Sir J. Fisher's plan of the construction of Dreadnoughts, which in the long run served rather to exacerbate than to minimise the struggle for priority.[2] His support of Sir J. Fisher was steady and fair, but he was emphatic in condemning the folly with which the latter developed plans for attacking the German fleet without declaration of war. He concurred in the policy,

[1] Ponsonby, *Sidelights on Queen Victoria*, pp. 1-45.
[2] Lee, *Edward VII*, ii. 330 f.

deprecated from the Foreign Office standpoint by Sir A. Hardinge,[1] which concentrated naval force in European waters, and he [2] approved the decision given against Lord C. Beresford in his dispute with Sir J. Fisher on the soundness of his naval plans.[3]

Of the deep interest taken throughout his life by George V in the navy, in which he had served a practical apprenticeship, there is no doubt, and the fact renders it the more remarkable that of the few incidents recorded of his personal action in these issues one should be the failure of the First Lord and of the First Sea Lord alike to inform him of the intention of the Admiralty to create the new rank of Lieutenant-Commander, without first obtaining his reasoned assent.[4] It should be recorded to his credit that, despite family feeling, he raised no difficulty to the decision, which displaced Prince Louis of Battenberg from the First Sea Lordship of the Admiralty on the outbreak of war. His claims to be First Lord had been overruled in 1911 by Mr. Lloyd George's opposition on the score that public feeling would resent a German in that position ; unluckily, despite his ability and loyalty, this prejudice proved fatal in 1914, without, so far as can be seen, any advantage to the State.[5]

13. *The Royal Secretariat*

It is curious that there lingered, even after the accession of Queen Victoria, a distrust of the influence which might be brought to bear on the sovereign by a private secretary recognised as such. George III had for years persisted in writing all his letters with his own hand, but, when the Prince Regent frankly employed a secretary, there was

[1] Lee, *Edward VII*, ii. 331-3.
[2] *Ibid.* ii. 596 ff.
[3] *Ibid.* ii. 598 ff.
[4] Fitzroy, *Memoirs*, ii. 540 (March 9, 1914).
[5] Esher, *Journals*, iii. 100, 193.

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anxiety, and in Parliament it had to be explained that he was quite incapable of receiving the royal commands in the constitutional sense of the words or of carrying them into effect; in short, he was not a means of expressing the official will of the sovereign.[1] George III's assistant, Sir H. Taylor, became private secretary to William IV, and unquestionably exercised a considerable amount of influence on a monarch of distinctly limited intellectual capacity. Queen Victoria found at first a private secretary for all practical purposes in Lord Melbourne; when he resigned, there was Prince Albert ready to step into his place, and the Prince had the aid, first, of the amiable and talented George Anson,[2] and later of General Grey from 1849 to 1861. For the next six years there was no formal appointment of a private secretary, though Sir C. Phipps and General Grey did the work. In 1867 the latter was given the office, which he conducted until 1870 with much distinction. His long experience enabled him to exert a measure of influence on the Queen which could not be expected from his successor Sir Henry Ponsonby, whose excellent qualities won approval from Lord Beaconsfield and Mr. Gladstone alike. Sir Arthur Bigge succeeded for the rest of the Queen's reign, while under Edward VII Lord Knollys[3] acted. On the accession of George V, Sir A. Bigge, who was created Lord Stamfordham, resumed his former place, and on his death Sir Clive (later Lord) Wigram took up the work. In 1936 he gave way to Sir A. Hardinge, but acted for a time on the accession of George VI, thereafter becoming a permanent Lord-in-Waiting and a standing adviser in political matters of the King.

The office of private secretary is one of great responsi-

[1] 32 *Hansard*, 1 s. 339.

[2] *Letters*, 1 s. i. 206; ii. 36, 46, 67.

[3] He had been his secretary since 1870; Lee, *Edward VII*, ii. 55.

bility [1] in the practical as opposed to the technical sense of the word. It is his duty and that of his staff to aid the sovereign in the serious matter of disposing of the business which comes to the King from ministers, and in dealing with the multifarious communications which are sent to the King, and which have to be answered or transferred to other departments for action. Through him much information of varied kind reaches the King, and undoubtedly serious harm might be done by a secretary who was a keen partisan. But it is not proved nor at all probable that any of the private secretaries have failed in the duty of fair-mindedness. No one could expect that a private secretary would be anxious to see the passing of the Parliament Bill or of the Government of Ireland Bill. It is, however, difficult to expect such a standard from the whole of the royal *entourage*, and it is definitely alleged [2] that the King during the Irish crisis was influenced by a military member of his staff who was an ardent supporter of Ulster, and was prepared to abandon the royal service to take part in resistance to royal authority there. It is this consideration which has suggested the placing on a Civil Service basis of the palace staff. It is no doubt possible that it was the numerous changes on the accession of Edward VIII which weakened the pressure on that sovereign to walk circumspectly, and such changes would be rendered minimal on the adoption of the Civil Service tradition. But the matter seems of no pressing importance, though it may be a reform which should materialise in due course.

The private secretary forms the medium through whom

[1] See, *e.g.*, Lord Knollys' action in 1905, Maurice, *Haldane, 1856–1915*, pp. 151 ff.; Sir A. Bigge, Chamberlain, *Politics from Inside*, pp. 326, 347, 617, 626.

[2] H. J. Laski, *Parl. Govt.* pp. 438 f.; Esher, *Sunday Times*, Jan. 30, 1938.

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the Dominion Governments conduct their direct relations with the King, in the sense that communications from the Prime Minister to the King must be dealt with by him, and through him arrangements are made for the reception of Dominion ministers or High Commissioners in audience. It would fall to him, in the event of the failure of a Dominion Government to apprise the British Government of any communication of importance to the sovereign on external affairs, to secure that the Foreign Office and the Prime Minister should duly be notified.

Mention may be made of two semi-official advisers. The Baron Stockmar [1] was ever ready during a long stay in England to act as mentor to Prince Albert and the Queen; the style of Queen Victoria's Guardian Angel is doubtless an exaggeration, and it is historically interesting that he framed the terms of the rules for Lord Palmerston's guidance as Foreign Secretary in 1850. Viscount Esher was of very different character; his contact with the sovereign arose from his service as Secretary to H.M. Office of Works (1895–1902). He might have held high ministerial office, for he was offered in 1903, no doubt by the desire of the King, the Secretaryship for War,[2] while in 1908 the Viceroyalty of India was suggested. But he preferred the rôle of adviser without responsibility, holding, however, a permanent membership of the Committee of Imperial Defence. His *Journals and Letters* reveal both his knowledge, derived from his office of Keeper of the King's Archives, and his elaborate studies of constitutional pre-

[1] P. Crabitès, *Victoria's Guardian Angel.* See P. Emden, *Behind the Throne*, pp. 21-89.

[2] H. J. Laski, *Parl. Govt.* p. 417, ascribes this offer to Mr. Asquith, but Esher, *Journals*, iv. 308 f., shows it was Mr. Balfour. Laski, pp. 400 ff., is rather severe on his deferential attitude to Edward VII. Contrast Lee, *Edward VII*, ii. 58. Sir E. Cassel was useful in international finance. Ambassadors and Governors-General regularly correspond with the King, and his staff keep him *au fait* with defence questions.

cedents and the character of his advice, which was no doubt disinterested, if not always wise. The King evidently found some difficulty in reconciling his changes of attitude on the Irish Home Rule issue. His care of the archives now rests in the hands of Lord Wigram.

PART III

THE CABINET AND ITS FUNCTIONS

CHAPTER IV

THE CABINET AND THE PRIVY COUNCIL

1. *The Prime Minister and his Colleagues*

THE temperament of Lord Melbourne effectively negatived any idea of his seeking to control his Cabinet in their work. He had hardly emerged from the state of things when legislation was scarcely demanded from a Cabinet, and when administration sufficed. Sir R. Peel, on the other hand, established for himself a complete ascendancy in his ministry, making himself familiar with the work of all the great departments, a process no doubt much easier then than later, and facilitated by the fact that there were few men of ability comparable to his.[1] Needless to say, Lord John Russell did not attempt to vie with him, nor would it have been possible had he so desired. He had to contend throughout his ministries with so vehement a personality as that of Lord Palmerston. The latter in his turn, while he had the loyal services of Lord John Russell, had Mr. Gladstone to remind him of the wishes of the more advanced members of his following, but the matter never went so far as to bring about a breach, even when they contended over economies in the naval estimates.

Lord Beaconsfield was by no means an ideal Prime Minister, and Cabinet divisions were far from few; small as was his Cabinet, in the difficulties of his eastern policy

[1] Rosebery, *Miscellanies*, i. 197; Gladstone, *Gleanings*, i. 242 ff.

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he could record that there were as many as seven views,[1] and he made adroit use of his sovereign to further those opinions which he espoused, though he sought to give the impression that they emanated from her wisdom. He secured her aid in bringing about the retirement of Lord Derby from the Cabinet.[2] But normally he supported the policy of the head of each department; thus he refused to recall Sir B. Frere because Sir M. Hicks Beach defended him,[3] and he allowed Lord Cranbrook to have his way regarding the Afghan campaign against other Cabinet views.[4] It is not surprising that this should have been the case; the Premier and the Queen had inevitably greater influence with any individual minister than with the Cabinet as a whole.

Lord Salisbury weakened his own chance of acting as the controller of his Cabinet by his love of carrying on the business of the Foreign Office, which meant inevitably that he had neither time nor inclination to undertake interference in the affairs of other departments.[5] He was essentially permeated by the spirit of the avoidance of any needless legislative activity; it is characteristic that he did not in the slightest like the Education Bill of 1902, and would much rather have left the issue alone. He was thus in outlook very different from Mr. Gladstone with his ever-growing conviction of the necessity of legislative activity to meet the emergent needs of a country which was gradually growing more democratic and which called for the remedy, first, of political, and later of social and economic abuses. In his ministry of 1880–85 he was

[1] Monypenny and Buckle, ii. 1066 f., 1073 f.

[2] *Ibid.* ii. 999 ff.

[3] *Ibid.* ii. 1333. Yet he surrendered to Hardy on the Burials Bill in 1877, ii. 1033 ff.

[4] Balfour, *Chapters of Autobiography*, p. 114.

[5] Lady G. Cecil, iii. 167 ff.

confronted with the opposition of the Radical Mr. Chamberlain to his Whig colleagues, and had to play the part of mediator, keeping together by personal effort men of wholly different outlook. In 1892–4 a new difficulty confronted him, for he had to face the new Imperialism, which was in favour of extension of British authority in Uganda and East Africa, and which ultimately defeated his efforts to reduce the defence estimates and drove him to accelerate his resignation of office.

Sir H. Campbell-Bannerman was one of those few men whose performance is superior to anticipation.[1] The effort to control business in detail would have been beyond his strength, which, as it was, soon failed under the pressure of governmental business and public speaking, added to the anxiety over the fatal illness of his wife. But he was a successful manager of a not too easy Cabinet, and the men who had endeavoured to secure his removal from the Commons were to find him the most helpful of their colleagues. Moreover, to him belongs the credit of forcing through the master stroke of the grant of responsible government to the Transvaal and the Orange River Colony in the teeth of the unanimous denunciations of Mr. Balfour and Lord Milner supported by the whole weight of the Conservative party.

Mr. Asquith as his successor was decidedly successful in the period prior to the Great War. His position was very difficult, for the constitutional struggle was an extremely arduous one, and it was fortunate for the ministry that he established very cordial relations with the King. The rivalry of Mr. Lloyd George was unhappily early displayed, and it came to a head in the crisis of war conditions with which Mr. George felt himself the only man fitted to combat. His own success in the leadership can hardly be said to have

[1] Spender, *Campbell-Bannerman*, ii. 398 ff.

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been conspicuous so far as results in the war were concerned. But his term of office, no doubt, helped towards the aggrandisement of the position of Premier. His colleagues in the War Cabinet were not men who commanded any wide public reputation, and the one who might have rivalled him preferred to act as his faithful subordinate and to serve as the means of liaison between Cabinet and the Commons. Mr. Bonar Law's self-effacement was one of many curious traits of an interesting but not very easily intelligible character.[1] Mr. Lloyd George's insistence on his control of foreign policy was natural enough, but it led him, after the war was over, to commit serious errors of judgment. He concluded the Treaty of Versailles with the aid, when he wanted it, of Lord Balfour, who insisted on making way thereafter for Lord Curzon, and the latter was treated with marked lack of consideration by his chief. His private Secretariat was used in dealing with foreign issues to an extent inconsistent with the rights of the Foreign Secretary, who was left ignorant even of important decisions until they had become known to the press. It was no doubt this consideration that ensured Lord Curzon's desertion of his leader in October 1922.[2]

Mr. Bonar Law was gravely ill through most of his short tenure of the Premiership, a fact which explains his consent to be overruled on the disastrous decision to accept Mr. Baldwin's unwise settlement of the issue of the war debt to the United States. Mr. Baldwin was not eager to control his colleagues in their departmental work; his chief ability lay in his power to secure the support of the Commons by persuasive speeches, setting forth common-sense conclusions. This failure of control resulted, no doubt, in the

[1] Taylor, *The Strange Case of Andrew Bonar Law.*

[2] Spender, *Great Britain*, pp. 630 ff.; Dugdale, *Balfour*, ii. 289 ff.; Nicolson, *Curzon*, pp. 213 f., 278.

acceptance by the Cabinet of the terms regarding Ethiopia arranged by Sir S. Hoare and M. Laval, who had tied the hands of France by a secret agreement in January 1935 in which he promised Signor Mussolini a freedom of action towards Ethiopia incompatible with the obligations of France under the League of Nations. Although Mr. Baldwin, bowing to the expressed opinion of the country which affected the House of Commons, withdrew the approval of the Cabinet and accepted the resignation of Sir S. Hoare, for the moment, the mischief had been done as effectively as by his former settlement of the United States debt, and the way was laid open for the virtual destruction of the League of Nations, the exclusion of France from any control of events in eastern Europe, the destruction of the independence of Czechoslovakia, and the wholesale persecution of the Jews in central and eastern Europe. This result was delayed for a time by the skill of Mr. Eden, who succeeded Sir S. Hoare as Foreign Secretary, but Mr. N. Chamberlain in June 1936, by a public expression of his views in favour of capitulation to Italy, forced the probably willing hands of the Premier and brought about the cessation of sanctions.[1] On becoming Premier Mr. Chamberlain continued to control foreign policy, and Mr. Eden resigned with Lord Cranborne, his Under-Secretary; this meant the complete control of foreign policy by Mr. Chamberlain, the decision to conclude an agreement with Italy recognising the conquest of Ethiopia, thus deliberately violating the Covenant of the League of Nations, Articles 10 and 20, the surrender to German demands at Berchtesgaden and Munich, and the dismemberment of Czechoslovakia, which immediately became a vassal State. The putting in force of the Italian agreement followed, though a settlement in Spain which had been

[1] Keith, *Current Imperial and International Problems, 1935–36*, pp. 188 ff.

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declared to be an essential condition thereof had not been reached, and Italy was notoriously maintaining strong forces of trained aviators and other troops in Spain, while General Franco's forces persisted in bombing British merchant vessels.

Mr. Chamberlain and Mr. Baldwin alike seem to have adopted the view that with them alone rested the right to dissolve Parliament and that the right did not appertain to the Cabinet only as a whole. This implies, of course, a great increase in the power of the Premier, and renders quite inadequate the idea that he is merely a *primus inter pares* or even *stellas inter luna minores*.[1] The same position of primacy was evidently desired by Mr. R. MacDonald, who in 1924 insisted on being his own Foreign Secretary, and who in 1929–31 so interfered in foreign affairs as to render Mr. Henderson, the holder of the Foreign Office seals, discontented. The manner in which in 1931 Mr. MacDonald emerged from the discussions of the fate of the ministry suggests that he felt entitled to throw overboard his former colleagues at discretion, and negatives any idea that he cared to recognise their equality of status with him.[2]

It is easy to understand this attitude on the part of the Premier. It is largely based on the fact that the country votes for persons rather than programmes, for Lord Palmerston in 1857 and 1865, for Mr. Disraeli, for Mr. Gladstone, for Mr. MacDonald in 1929 and 1931, for Mr. Baldwin in 1935. The prestige of the Premier is naturally enhanced by his control, through the central office, of the party funds which are used for the support of the large numbers of candidates who cannot pay their own expenses, and whose constituencies are not willing to pay, and by his command of honours, of places in the

[1] Gardiner, *Harcourt*, ii. 612.

[2] Cf. Clynes, *Memoirs*, ii. 194 ff.; Snowden, *Autobiography*, ii. 950 ff.

ministry, and of many appointments of high value. In these circumstances it is inevitable that he stands out as the essential element of the Government, and Mr. Chamberlain showed amazing appreciation of dramatic effect when his return from Munich on September 30, 1938, was announced by him as bringing peace with honour for our time, and an agreement with Herr Hitler was announced as a means of preventing any future war with Germany.

The functions of the Prime Minister include the formation and control of his Cabinet, at which he presides, and the discussions of which he can in considerable measure direct; the chairmanship of the Committee of Imperial Defence, which ensures that he has first-hand information of vital issues of defence and of the finance therewith connected, now an issue of paramount importance; and a share, under Mr. Chamberlain amounting to complete domination, of the policy of the Foreign Office. He settles, whenever possible, differences between departments, approves important departmental decisions where Cabinet reference is not needed, controls important Civil Service appointments and the grant of honours. He leads the Commons; the fate of Mr. Lloyd George suggests that a Premier who will not do so is certain to lose that hold of the Commons which is essential for retention of power; he determines the allocation of time, thus settling the fate of private members' Bills, intervenes to deal in debate with all great issues, while, as party head, he watches with interest and aids promising adherents. Party loyalty is demanded from him; Mr. Lloyd George and Mr. Churchill, like Sir R. Peel, suffered gravely from their action in dividing their parties. He is the essential bond between the Crown and the Cabinet, and his chairmanship of the Imperial Conference at its rare meetings and his direct communications with Dominion Premiers compel him to

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be the chief interpreter of the British side of relations with the Dominions. In emergency, decisions may be taken by him alone, as when Mr. Disraeli brought off the purchase of the Suez Canal shares.[1]

Success in the conduct of these functions so as to avoid Cabinet splits is not easy. Lord Palmerston's dismissal in 1851 was only the end of continued friction with Lord John Russell and the Queen; Lord Derby resigned after prolonged crises with Lord Beaconsfield and his sovereign;[2] Lord Curzon turned against Mr. Lloyd George in 1922 after enduring repeated humiliations at his hands; Mr. Eden resigned because he feared that his chief's surrenders were endangering the safety of his country, and were preventing a united resistance by Britain to unjust demands by the totalitarian States. But Lord Lansdowne and Sir E. Grey co-operated successfully with Mr. Balfour and Sir H. Campbell-Bannerman and Mr. Asquith, while Lord Halifax assisted Mr. Chamberlain loyally.

In time of war the Prime Minister is necessarily entitled to take an active interest in all issues of first-class importance, but in the Crimean War Lord Panmure effectively asserted his rights even against Lord Palmerston. Mr. Asquith loyally defended Lord Kitchener in the Cabinet against the assaults of Mr. Lloyd George, who after the formation of the War Cabinet naturally assumed very wide authority; it was at his instance that Sir W. Robertson was removed from the post of Chief of the Imperial General Staff, but he did not venture to supersede Sir D. Haig, as Mr. Asquith had superseded Sir J. French, and had secured the retirement of Sir J. Jackson from the Admiralty.

[1] Monypenny and Buckle, ii. 779 ff.

[2] For his first resignation see Monypenny and Buckle, *Disraeli*, ii. 1072 ff., for the second, 1112 ff.

It rests with the Prime Minister to control the composition of his Cabinet by securing the removal or resignation of ministers who fail to meet with general acceptance. Lord Palmerston in 1851 was asked by Lord John Russell, who later regretted his precipitancy, to resign, though an offer of other employment was made. But Mr. Gladstone was most reluctant to move against Mr. Ayrton, despite his unpopularity as head of the Office of Works with the Queen, and only grave errors as to financial transactions at the Post Office induced him in 1873 to remove Mr. R. Lowe from the Chancellorship of the Exchequer to the Home Office, to secure the resignation of Mr. Monsell from the Post Office, and to make Mr. Ayrton Judge Advocate-General under conditions excluding access to the Queen.[1] In 1903 Mr. Balfour had recourse to a certain amount of dissimulation [2] in concealing from his free-trade colleagues the resignation of Mr. Chamberlain and thus inducing them to resign; his hope to keep the Duke of Devonshire was, however, vain, the Duke feeling that he could not separate himself from his friends. In 1922 Mr. Montagu's decision to publish without Cabinet consultation a protest by the Government of India against the terms of the Treaty of Sèvres as affecting Turkey led to his enforced resignation.[3] The usual time to jettison a minister who is not a success is on a change of Premier, when a Government of like character is formed. Thus Mr. Disraeli dropped Mr. Walpole in 1868;[4] Mr. Asquith, Lord Elgin in 1908;[5] Mr. Baldwin, Lord Londonderry and Lord Sankey in

[1] Keith, *The British Cabinet System*, pp. 104, 106.

[2] His attempt to blame the Duke of Devonshire is jesuitical; Dugdale, i. 360.

[3] He alleged that "Cabinet responsibility was a joke" (Cambridge, March 11, 1922). Spender, *Lord Oxford*, ii. 337. Cf. Nicolson, *Curzon*, pp. 267 f.

[4] He is said to have insisted on refusing office: Monypenny and Buckle, ii. 326.

[5] Spender, *Lord Oxford*, i. 198.

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1935. In other cases a reconstruction of ministry after an election is possible; thus Mr. Chaplin and Sir M. White Ridley were jettisoned in 1900; Lord James of Hereford in 1902 avoided a like fate by resignation.

In other cases ministers who have incurred unpopularity may save the Cabinet from defending them by resignation; Colonel Seely in 1914 resigned on the Curragh incident, Mr. A. Chamberlain — rather needlessly — on the Mesopotamian fiasco in 1917; Sir S. Hoare on his agreement with M. Laval in 1935. Lord Swinton's resignation in 1938 was motived by the desire to allow the ministry to place a member of the Commons in the Air Ministry, there being a wide feeling that, when the business of the ministry was so seriously attacked, there should be a spokesman in the Commons to answer; the expedient of placing Earl Winterton in that capacity had failed naturally to meet the case.

Where ministers find themselves unable to agree to the actions of the Cabinet, resignation is the proper course; it should be intimated to the sovereign through the Prime Minister,[1] and Lord R. Churchill[2] incurred severe disapproval through failure to take this course.

2. *The Working of the Cabinet*

The increase of the size of the Cabinet from 1841, when Sir R. Peel was content with thirteen, has been the inevitable concomitant of the growth of social legislation and of Imperial responsibilities and of defence necessities, and the minimum number is probably twenty or twenty-one.

The functions of the Cabinet include the determination of the legislative programme, since no ministry without a programme can hope to retain public confidence in an age

[1] *E.g.* Mr. Thomas in 1936, Mr. Eden and Mr. Duff Cooper in 1938.

[2] *Letters of Queen Victoria*, 3 s. i. 232 f.

when State regulation is demanded on all sides. It controls in matters of importance the action of the executive on the principles which Parliament expects. It works for the co-ordination and delimitation of the efforts of the departments, and all changes of importance in the constitution of departmental machinery should be approved by it, as was the re-constitution of the War Office in 1904 and of the Air Council in 1938.

The obligation of consulting the Cabinet before committing it by action is incumbent, not merely on the ordinary member, but also on the Premier himself. There are, however, cases of violation of this obligation. Mr. Gladstone seems to have decided to fight the election of 1874 on a proposal to get rid of the income tax which he himself devised, and in 1882 he accepted against a Cabinet decision a proposed committee of enquiry on the negotiations with Mr. Parnell.[1] Sir H. Campbell-Bannerman accepted in the Commons the preference of many members for the wholesale exemption of trade unions from liability as compared with the limited scope of his own governmental Bill, and allowed domestic servants to be included in the scheme of workmen's compensation.[2] Mr. Lloyd George naturally decided issues with a high hand, and announced his plan for an Imperial War Conference to Parliament before obtaining the assent of the War Cabinet. Mr. Baldwin took his own decisions [3] to stand out for protection in 1923, and to adopt female suffrage in his election address of 1924, though Lord Brentford has borne in the public eye responsibility for forcing that policy on his colleagues.

Difficulty has arisen chiefly from the issue of foreign

[1] Gwynn and Tuckwell, *Dilke*, i. 489.
[2] Spender, ii. 278 ff.
[3] Plymouth, Oct. 25, 1923; Spender, *Great Britain*, pp. 645-7.

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policy. The circulation of despatches on this head has always marked the proceedings of the Cabinet, but equally Foreign Secretaries like Lord Palmerston and Lord Salisbury have preferred to take their colleagues as little as is inevitable into their confidence. Nonetheless it was by the necessity of informing them how things were going that Lord Granville was able to play his part in the Cabinet of 1859–65 of bringing to bear on the Premier and Lord John Russell the moderating influence of the Queen against too bold a policy as regards Italy [1] or the fate of Denmark. Lord Salisbury, while approving the principle of Lord Beaconsfield [2] in transacting as much foreign business as possible with the Queen alone, still insisted that he must deal with questions raised in Cabinet on his despatches or those received.[3] Sir W. Harcourt insisted on the rights of the Cabinet to see Foreign Office despatches under Lord Rosebery's ministry. It is clear also that for the most part, under the Liberal ministry of 1905–14, there was no deliberate secrecy, though admittedly the adoption of the plan in 1906, of continuing military conversations with the French military experts, was not brought by the Premier or Sir E. Grey before their colleagues as a whole.[4] In 1912 full disclosure was made, and a formal definition of the practice was arrived at, though it seems strange that the Cabinet did not realise that it was creating a position in which in the event of war France could not properly be denied immediate assistance.[5] The reason probably is that the ministry, deeply engaged in political troubles as regards Ireland, had insufficient time to consider issues not immediately urgent.

From the scope of Cabinet discussions certain issues

[1] Fitzmaurice, i. 349 ff., 359 f.

[2] *Letters of Queen Victoria*, 3 s. i. 45, 48.

[3] *Ibid.* i. 211.

[4] Grey, *Twenty-five Years*, i. 74 ff.; Spender, *Campbell-Bannerman*, ii. 248-59.

[5] Spender, *Lord Oxford*, ii. 70-74.

are usually excluded. The budget is revealed at the last moment, with inconvenient results in 1937 when the National Defence Contribution scheme was a fiasco, presumably because it had not been intelligently criticised before Mr. Chamberlain brought it before the Commons. The deplorable disclosure of a budget secret in 1936 by Mr. J. H. Thomas explains in part the doctrine of reticence. Pardons are seldom considered in Cabinet, but the case of Sir R. Casement was deliberated upon.[1] Nor does the Cabinet interfere as a rule regarding prosecutions, which are left to the Director of Public Prosecutions to control. There is no reason, however, why the Cabinet should not be consulted on issues of general policy, for instance as regards prosecutions for sedition or treason. The Campbell case in 1924, which involved serious discredit to the ministry, had this effect mainly because it appeared that the prosecution, properly undertaken, had been interfered with at the instigation of a section of the Labour party which was eager for closer relations with Russia than were consistent with the best interests of the country.[2] Appointments may come before the Cabinet, as in the case of the Viceroy of India under Mr. Gladstone and Mr. Asquith,[3] and the selection of the Duke of Kent for Australia presumably was accepted in Cabinet.

The addition to the Council of the Governor-General of India of an Indian lawyer was decided by the Cabinet because it was not approved by the King.[4]

Collective responsibility is essential; ministers must stand and fall together; the Irish experiment of extern

[1] Bell, *Randall Davidson*, ii. 786 ff.

[2] 177 *H.C. Deb.* 5 s. 581 ff.; Clynes, *Memoirs*, ii. 61 f. For Mr. Thomas's case (1936), 313 *H.C. Deb.* 39.

[3] *Letters of Queen Victoria*, 2 s. iii. 271; 3 s. ii. 349; Oxford, *Fifty Years of Parliament*, ii. 194.

[4] Lee, *Edward VII*, ii. 384 ff.

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ministers, responsible only for the departments, worked poorly, and had disappeared in practice before it disappeared from the Constitution of Eire. Lord John Russell resigned in 1855 because he would not join in resisting Mr. Roebuck's demand for enquiry into the state of affairs in the Crimea, Mr. Forster in 1882 because he did not approve the Kilmainham Treaty with Mr. Parnell, the opponents of Home Rule in 1886, the advocates of Free Trade in 1903, and Lord Morley and Mr. Burns in 1914 because they could not support the war. Sir J. Simon [1] resigned in the war period because he could not accept conscription.

It is sometimes possible to make matters open questions. This happened in 1831–4 regarding the corn laws, and as late as 1841 we find Lord Melbourne opposed to the destruction of protection, but accepting the necessity of unity as paramount. In 1873 the issue of the county franchise was left open; in 1905 Mr. Arnold Forster was allowed to put before the Commons an army scheme which had not been accepted by the Cabinet.[2] Female suffrage so divided parties that the ministry of Mr. Asquith left it open, and it did not become a governmental policy until 1917–18, while the complete equalisation of the franchise was only accepted in 1928. The attempt in the ministry of 1931–2 to allow of Liberal ministers remaining in the ministry, while free to express by speech and vote their opposition to protective duties, was apparently promoted by Lord Hailsham [3] as a device to avoid the resignation of that element in the Coalition. It was plainly open to severe criticism. If ministers did not agree with their colleagues they would be better to stand aside and allow room for those who would readily accept the new policy.

[1] Spender, *Lord Oxford*, ii. 208. [2] Lee, *Edward VII*, ii. 197 ff.
[3] 83 *H.L. Deb.* 5 s. 551 f.; Snowden, *Autobiography*, ii. 1010 ff.

It was true that the dissidents were too feeble to affect the strength of the Government, but the innovation was unsound, and was an attempt to preserve the appearance of agreement on fundamentals, when no such agreement existed. In fact the ministers who remained felt bound to retire eight months later when the Ottawa agreement bound Britain definitely to a system of Imperial preferences, which excluded any idea of an approach to free trade. Whether the result of the new policy was to interpose great difficulties to European settlement and formed a factor in the rise of extreme nationalism in Germany and elsewhere must remain undecided, but the Liberal ministers clearly could not honourably have retained their seats if they held that conviction.

The principle of unanimity denies the right of ministers to announce policies not approved by the Cabinet. Lord Palmerston rebuked Mr. Gladstone, he Mr. Chamberlain, who invented, however, the right of ministers to advocate future ideals through the National Liberal Federation; so under Mr. Balfour he started a propaganda for protection which ended in resignation in order to secure a perfectly free hand to press a policy which his Premier dared not accept. Sir E. Grey, with royal approval, instructed Mr. Lloyd George and Mr. Churchill in the necessity of caution in expressing opinions on foreign policy.[1] Mr. Chamberlain's famous pronouncements in 1899 on the desirability of a German alliance had been made with the acquiescence of the Premier and Mr. Balfour, who were not unwilling to experiment in that direction. Mr. Lloyd George's famous speech on the Agadir crisis was approved by the Premier and Foreign Secretary, but his "Knock-out Blow" in 1916 was his own. Mr. N. Chamberlain's denunciation of sanctions as Midsummer madness was

[1] Lee, *Edward VII*, ii. 654 f.

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taken so amicably in June 1936 by Mr. Baldwin that the suspicion that it was a deliberate *ballon d'essai* is natural. Mr. Eden accepted responsibility for the policy of abandoning Ethiopia in disregard of the League Covenant, but on February 20, 1938, he left the ministry on the ground that he did not approve either of the time or the substance of Mr. Chamberlain's negotiations with Italy; his distrust was shown to be justified by the annexation of Austria by Germany in March, followed in September by the surrender of British resistance to Germany over Czechoslovakia.

Minor ministers at one time [1] were allowed a greater laxity of conduct. In addition to Sir C. Dilke, Mr. Fawcett and Mr. L. Courtney were permitted to evade voting against an amendment in favour of female suffrage under Mr. Gladstone's régime.[2] An interesting event happened on March 18, 1938, when a newly appointed junior minister gave a pledge to his audience that the Premier would not give any guarantee to Czechoslovakia. The Premier reproved him mildly, but no doubt without regret at his successful demonstration in favour of his own policy of abandoning Czechoslovakia. An interesting episode in December 1938 showed a curious revolt of junior against senior ministers. Lords Strathcona and Dufferin and Mr. Hudson were reported to have protested to the Premier against the inactivity in preparation against war dangers of Mr. Hore Belisha, Earl Winterton, and Sir T. Inskip. The expected resignations of the juniors did not appear in January, but instead a statement that the noble lords had expressed regret and would remain in their offices. Later Lord Strathcona disappeared, but Mr. Hudson's resignation was refused.

[1] Queen Victoria (June 26, 1856) asked her Premier to make it clear to junior members that they must not vote against the National Gallery proposal of the Government.

[2] Gwynn and Tuckwell, *Dilke*, ii. 9.

As regards private members' Bills not taken up by the ministry voting is left free, but it was noted with some surprise in 1938 that the Caledonian Power Bill, which had been blessed by Sir T. Inskip, was opposed by ministers who voted in the English majority, which foiled the scheme to confer a benefit on a singularly poor Scottish area. There were also left free the votes on the revised Prayer Book of the Church of England sent up from the Church Assembly in 1927 and 1928. On both occasions Sir W. Joynson-Hicks was the most effective speaker against the measure, which his Premier approved.

Voting is resorted to when necessary, though some ministers have disliked it as ungentlemanly, as did the precise Lord Granville, but Mr. Gladstone carried in 1881 the motion to arrest Mr. Dillon by his casting vote.[1] There were divisions on the Education Bill of 1901, and Mr. Gladstone was outvoted in 1894 on defence expenditure, and resigned. Mr. Bonar Law did not resign when outvoted on the United States debt settlement, but lived to regret that he did not do so. Mr. Asquith piloted the naval estimates of 1914[2] through by the device of preventing a premature decision, so that they were accepted after debate at fourteen Cabinet meetings. Mr. Eden was decisively in a minority in February 1938, and so was Mr. Duff Cooper in October, when he resigned on the issue of the Premier's surrender at discretion to the dictation of Herr Hitler.

There is, of course, nothing surprising in the fact that ministers who find themselves in a minority on any issue do not resign. The essence of party politics is the acceptance of a general set of principles with the recognition that it must often be necessary to accept resolutions on quite

[1] Morley, *Gladstone*, iii. 5

[2] Churchill, *World Crisis, 1911–14*, pp. 171 ff.; Spender, *Lord Oxford*, ii. 75-7.

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important points which one does not like. Anyone who is not prepared to do so must realise that he has not the proper temperament for public life or that he has chosen the wrong party, and must adhere to the Opposition if he desires a continuance of political usefulness. To leave one's party is always hard, and there are material disadvantages which no prudent man will overlook, or be allowed by his relatives and friends to forget. Lord John Russell's defection in 1855 rendered him unacceptable as a Premier, until the death of Lord Palmerston left him the only natural choice in 1865. Lord Derby passed from Lord Beaconsfield to Mr. Gladstone, but played no great part in political life. Lord R. Churchill's resignation, when defeated in efforts to reduce defence estimates, meant his disappearance as a political force. Mr. Montagu, when the Cabinet preferred the views of Lord Curzon, ended his political career. Mr. Eden's position is peculiar, for, though leaving the Cabinet to preach national unity, he refused either in Britain or in the United States to criticise in detail the position of the Premier, leaving the door wide open for future co-operation with the ministry.

The principle of unity renders Coalition Cabinets rather unhappy affairs. The ministry of all the talents of Lord Aberdeen drifted into war and failed to carry on that war effectively; if we are told by Mr. Gladstone[1] that it worked smoothly, then it must have been because it evaded realities and left ministers to go their own way. The Coalition of 1915–16 was certainly of little merit in its actions; its formation was unhappy, induced as it was by intrigues in which Sir J. French and Sir H. Wilson shared, and by the untrustworthy character of Lord Fisher, whose connection with Mr. Churchill at the Admiralty was a disaster of no small magnitude, for his vagaries involved the transfer from

[1] *E.H.R.* ii. 288.

that office of his chief. The delay of the ministry in making up its mind on the Dardanelles issue [1] sealed the fate of that bold attempt. In the ministry of 1916–18 and in that of 1918–22 there was no real element of a true coalition; the intrigues of 1916 deprived the Government of all whose principles were truly Liberal. In the same way the National Government from 1932 was virtually a Conservative Government, though some Liberal Nationals and National Labour members retained these names.

It is of course natural that issues should be discussed between members of the Cabinet without necessarily referring them to the Cabinet as a whole. Disputes between departments usually are taken up by ministers in the first instance with their colleagues, and only if there is a complete disagreement is there recourse to the Cabinet for decision. Or it may be desired to keep matters as far as possible within the hands of a small group. Lord John Russell and Lord Palmerston ran foreign issues largely on their own discretion in 1859–65; Lord Beaconsfield, Lord Salisbury, and Lord Cairns concerted the measures to safeguard Constantinople and imposed them on Lord Derby with the royal assent.[2] Mr. Chamberlain replied to Sir A. Milner's efforts to commit the Government to a policy of a possible war in South Africa, consulting only Mr. Balfour, the Chancellor of the Exchequer, the Duke of Devonshire, and the heads of the War Office and Admiralty.[3] Mr. Balfour and Mr. Chamberlain were in touch on foreign policy, especially in regard to the Anglo-German accord of 1898, towards the partition of the Portuguese colonies. The despatch to Antwerp of the naval brigade was decided on

[1] Spender, *Lord Oxford*, ii. 179 ff.

[2] Lady G. Cecil, *Salisbury*, ii. 209.

[3] Garvin, *Chamberlain*, ii. 365. On the secret agreement with Germany, Aug. 30, 1898, see Dugdale, *Balfour*, i. 264 ff., 292; on that of Oct. 14, 1899, with Portugal, Seton-Watson, *Britain in Europe*, pp. 582-4.

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in the absence of the Premier by Sir E. Grey, Mr. Churchill, and Lord Kitchener,[1] and some ministers later, with ratification by Cabinet assent, decided on the hasty mission by which Lord Kitchener prevented Sir J. French from a disastrous retreat. The War Cabinet was a development of the Inner Cabinet theory, and in 1929–31 the Prime Minister, Mr. Thomas, Mr. Henderson, Mr. Snowden, and Mr. Clynes seem to have served in that capacity for the Labour ministry. The idea reappeared in 1938 when the term was freely used of the Prime Minister with Lord Halifax, Sir J. Simon, and Sir S. Hoare acting together in regard to foreign affairs. They would seem rather to have constituted a Cabinet committee on foreign affairs.[2]

The unity of the Cabinet should, in theory, be preserved *vis-à-vis* the King. As it was long ago laid down by Lord Liverpool when an attempt was made by the King to obtain distinct opinions of the members of the Cabinet on foreign policy, the Cabinet must give advice as such, not as a congeries of members.[3] Mr. Gladstone[4] insisted on the doctrine that differences of view should not be revealed; the Premier should not seek to advance his own influence or to work against the Cabinet, and he went so far as to stigmatise such action, or the pursuit of aims not shared by his colleagues, as an act of treachery and baseness. But this view runs counter to practice in general, and it represents, like the practice of Lord Palmerston, the attitude of a man who felt that his

[1] Spender, *Lord Oxford*, ii. 125; cf. Churchill, *World Crisis, 1911–14*, pp. 217 ff.

[2] The Cabinet left to the Premier and Lord Halifax the decision as to recognition of General Franco as *de jure* the Spanish Government: Mr. Chamberlain, House of Commons, Feb. 27, 28, 1939. Lord Halifax was evidently wholly ignorant of the danger to Czechoslovakia on the eve of the incorporation of that State in Germany.

[3] Stapleton, *George Canning*, pp. 418 ff.

[4] *Gleanings*, i. 74.

sovereign was quite capable of using differences in the Cabinet to strengthen her personal influence on political issues. In fact, however, most Prime Ministers have frankly informed the Crown of differences in their ranks. Lord Melbourne was so intimate with the Queen that this was only to be expected, but Lord John Russell, Mr. Disraeli,[1] and even Lord Salisbury [2] were far from reticent, and Mr. Balfour had no option but to be more or less frank, for he had to secure acceptance of the resignations of three leading free-trade ministers, followed by that of the Duke of Devonshire, as well as that of Mr. Chamberlain.[3] Sir H. Campbell-Bannerman seems to have been less expansive, but Mr. Asquith was not reticent [4] when the issue arose in 1909 of Cabinet differences on the navy estimates. There is not much later evidence, but it is recorded that George V was on one occasion able to appeal to Mr. Henderson against a proposal which he had intended to submit to the Cabinet by pointing out that the King's view had the support of the Prime Minister.[5]

For other ministers to reveal differences is open to considerable difficulty, as, if the Premier is silent, it involves disloyalty to him at least in some degree. Lord Granville [6] was a very bad offender in this way in the ministry of 1859–65, Lord Rosebery [7] a minor offender on Imperial issues while as Premier he frankly admitted his difficulties with his Cabinet; and even Lord Morley seems to have so acted. It is difficult not to feel that, save in very exceptional circumstances, the practice is dangerous.

[1] See, *e.g.*, Monypenny and Buckle, ii. 1091.
[2] *E.g.* as to Greece, *Letters of Queen Victoria*, 3 s. iii. 133.
[3] Holland, *Devonshire*, ii. 340 ff.
[4] Lee, *Edward VII*, ii. 678 ff.
[5] Laski, *Parl. Govt.* pp. 422 f.
[6] Fitzmaurice, i. 349 ff. (Italian policy), 459 (Denmark).
[7] *Letters*, 3 s. ii. 455.

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The desirability of Cabinet unity naturally involves the fact that unity should seem to be existent, and this renders it essential that secrecy as to Cabinet differences should be preserved. It is, of course, different when a minister determines to resign because of Cabinet differences. He cannot be expected to be silent, and the rule has prevailed, since Lord Melbourne's time at least, that he shall obtain through the Prime Minister the royal permission to make a statement of the grounds of his resignation. Lord Derby was duly allowed in 1878 to do so, but the Queen insisted that disclosures should be restricted to that occasion, no doubt because they told against her favourite minister.[1] In contrast, in 1886 she allowed Mr. Chamberlain the widest latitude, no doubt because it would embarrass Mr. Gladstone, whose policy she was determined to overthrow,[2] and in 1888 she objected effectively to Mr. Gladstone revealing a memorandum of 1882 regarding the release of Irish prisoners, though that would have vindicated his conduct from a false charge. Mr. Montagu's apologia in 1922 was bitter, but no doubt deserved; Mr. Eden's in 1938 of almost excessive moderation, rendering it hard to be certain why he had thought resignation essential; that of Mr. Duff Cooper on October 3, 1938, more categoric and therefore more intelligible. The widest disclosures were those of 1931, where the contestants alleged facts remarkably hard to reconcile, and suggesting either defective memory or that the vaunted improvement of records of Cabinet proceedings has not been successful in making it clear to ministers what in fact was decided at the meetings of that body.

One aspect of the situation is difficult. How far can

[1] Monypenny and Buckle, *Disraeli*, ii. 1149 f.; *Letters of Queen Victoria*, 2 s. ii. 631 ff.

[2] *Letters*, 3 s. i. 100 ff.

ministers use Cabinet material in publications, and what limits are there to such use by non-ministers of documents which come into their hands? A minister, of course, is bound by his oath as Privy Councillor not to reveal what passed therein, and by his duty to the King not to reveal his confidential advice. He is also subject to the Official Secrets Acts, 1911 and 1920, which apply to non-ministers. There is no use ignoring the fact that publication usually at a fairly late date of such material has been far from rare, and both Mr. Churchill and Mr. Lloyd George published great numbers of interesting documents in their accounts of the war, and of the peace that followed. Many lesser men have used such information,[1] and it was therefore rather surprising when Mr. Edgar Lansbury was fined for publishing a memorandum of his father, when a Cabinet minister, on unemployment.[2] At the same time his father stated that he had no intention of complying with a request to return to the Cabinet secretariat all documents issued thence to him when a minister, it having been decided apparently to recall such documents as having been issued only *ad hoc.* The position is very difficult. It seems impossible to attempt to prosecute ex-ministers for indiscreet revelations of what they themselves said or advised in Cabinet. On the other hand, it is said that the records of one Cabinet are kept secret even from a successor, and this may be admitted to be sound in principle, for it would be unfair that an incoming ministry should be able to learn the secret proceedings of a predecessor. The matter is full of difficulties, though obviously discretion is essential, and very little sympathy was felt for an author who, in giving his account of British dealings with Greece, published a number of plainly very

[1] Cf. *e.g.*, Dugdale, *Balfour*, i. 235 ff.

[2] Anson, *The Crown* (ed. Keith), ii. 122.

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confidential documents explaining the British diplomacy, without first obtaining the assent of the Foreign Office. From the pamphlets on matters bearing on the making of peace, which the Foreign Office and Admiralty, in an unexplained and rather absurd rivalry at the public cost, issued through the Stationery Office, all that was based on confidential information was so carefully removed as to diminish substantially their interest.

3. *Cabinet Procedure*

Prior to the Great War, Cabinet procedure retained a certain simplicity. The Premier decided on agenda, no doubt often at the request of colleagues who could send round memoranda; he guided the proceedings and recorded results in a letter to the King, which was recorded by his private secretary; the Foreign Secretary reported any important happenings and answered questions arising out of the papers circulated. No doubt there was much informality, and some doubt as to results. It was not easy, in a Cabinet so divided as Lord Beaconfield's, on the Turkish issue to secure a clear-cut result;[1] Lord Hartington had to ask Mr. Gladstone what was the decision which brought about Mr. Bright's resignation,[2] and Lord Lansdowne annoyed his sovereign by publishing the Spion Kop despatches on what he understood to be a decision of the Cabinet.[3] Note-taking was banned by Lord Beaconsfield, Lord Salisbury, and Mr. Asquith alike,[4] and only on very formal occasions, as when army purchase was abolished, or

[1] For Lord Salisbury's false statements on Cabinet proceedings as against Lord Derby, see Monypenny and Buckle, *Disraeli*, ii. 1145 ff.; for controversy in Dec. 1877, ii. 107 f.; Nov. 1876, ii. 966 ff.

[2] 86 *H.C. Deb.* 5 s. 529.

[3] *Letters of Queen Victoria*, 3 s. iii. 541 f.

[4] Oxford, *Fifty Years of Parliament*, ii. 197.

a naval base acquired in the Mediterranean in 1878, or the assurance was asked for from the King regarding creation of peers in 1910, were formal minutes submitted.

In time of war this system proved inadequate. There had already been created a secretariat for the Committee of Imperial Defence; the War Council of November 1914 adopted its services, and so did the Dardanelles Committee which in November 1915 reappeared as a War Committee. In 1916 the War Cabinet followed suit. The plan was followed after the war. For a time its activities were partly mischievous, for Mr. Lloyd George controlled part of it as an extended private secretariat, and its activities in foreign affairs were denounced hotly even by Sir H. Wilson. The idea of abolishing the secretariat, which was in the mind of Mr. Bonar Law, was dropped, and instead its value was enhanced by its drastic reduction and the elimination of mischievous elements. The secretariat now issues the agenda as determined by the Prime Minister, circulates memoranda supplied by ministers, notes for circulation conclusions arrived at by the Cabinet or its committees, and records these conclusions. There is no longer kept a full account of the discussions, but only the substance of documents submitted, and of statements made, a summary of the arguments, and the conclusions. The conclusions go to each Cabinet minister from the Prime Minister, and ministers not in the Cabinet receive extracts of such matters as the Premier deems it proper that they should know. This *modus operandi* takes away any appearance of dictation to departments. It lies similarly with each minister to give the suitable directions to implement the Cabinet findings, and to interpret them, with the right to refer to the Premier or Cabinet in case of doubt. The conclusions go also to the King in place of the formal report given formerly by the Premier. As before, the summons to a Cabinet goes from

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the Secretary; Sir M. Hankey in that position combined with it the secretaryship to the Committee of Imperial Defence and Clerk of the Privy Council. In 1938, on his retirement, the combination of posts ended, but the Secretary to the Cabinet became head of a secretariat which includes these offices and the Economic Advisory Council.[1]

The procedure involves due consideration of all schemes in their financial aspects by the Chancellor of the Exchequer before discussion in Cabinet, while, where matters falling under ministers not in the Cabinet are concerned, proper care is taken to secure that their views are known. Foreign Office business remains as ever on the agenda, and definite decisions on clear-cut issues are rendered easier. This process is aided by the fact that the Cabinet are willing, if desirable, to hear experts, including of course ministerial or professional representatives of departments. It would be an error to suppose that this procedure was a complete innovation during the war. It had always been possible for outsiders to be summoned to give their views; this was the case, for instance, with Lord Onslow as Under-Secretary when Mr. J. Chamberlain was in South Africa. But the practice was greatly enlarged during the existence of the War Cabinet,[2] for that body was naturally dependent on the constant assistance of the heads of the defence departments who were excluded from its ranks, and in addition was willing to listen to all kinds of professional advice. But these advisers are not part of the Cabinet, and it was an irregularity when Lord Cawdor, appointed First Lord of the Admiralty, attended a Cabinet before he had been sworn of the Privy Council.[3]

The Cabinet works largely by committees, for any issue

[1] For the advantages of the presence of a Secretary, see Esher, *Journals*, iv. 304 f.

[2] *Parl. Pap.* Cd. 9005, p. 1.

[3] Anson, *The Crown* (ed. Keith), i. 123.

may be referred to a special committee *ad hoc*, and naturally this plan was largely made use of during the war, especially as in these committees it is easy to associate persons, whether ministers or not, with special technical knowledge. A special Finance Committee was set up in 1919 to aid the Chancellor of the Exchequer to deal with the wholly anomalous position created by the necessity of reducing all war activities to a normal basis, and to produce a budget to meet the altered circumstances.[1] The war saw also the creation of a Home Affairs Committee, which provided for discussion and decision of issues which affected internal government primarily and with which the War Cabinet was ill-fitted to deal. Since the war its functions are said to be restricted to the consideration at the beginning of the session, with the aid of the Chief Whip, what Bills out of the many desired by departments can most wisely be brought forward, and to the examination in their technical aspect, with the aid of the Parliamentary counsel, of formal points in Bills, such as the form of delegation of authority, method of enforcement, and so on. This committee may receive on drafting points the aid of the law officers, and it serves to secure some approximation of views on disputed points, which can thus be adjusted without the trouble of a Cabinet discussion. It cannot, however, be truthfully said that the drafting of governmental Bills reaches any very great accuracy; the Regency Bill of 1937 purported to ascribe to an equal number of persons, including the future Regent, the decision as to whether the King was under incapacity to perform his duties.

The advantages of the committee system are patent, and to some extent they offer room for useful service by ministers without portfolio, though it may be noted that Lord Eustace Percy found no scope for useful work in that

[1] 120 *H.C. Deb.* 5 s. 744 f.

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capacity, and so resigned office. Normally, they secure some clarification at least of issues. The records, fuller than in the case of the Cabinet itself, are kept by the secretariat of the Cabinet with, on suitable occasions, a secretary from any department mainly concerned in the subject matter of the committee.

For economic matters Mr. Baldwin, on the analogy of the most important of Cabinet committees, that on Imperial Defence, which is discussed elsewhere, invented a Committee of Civil Research, which was to be composed of himself and such other persons as he might think fit. It was a flexible instrument for any special or general survey, but it does not appear to have been developed by the ministry. Mr. MacDonald replaced it by an Economic Advisory Council[1] to include the Premier as chairman, the Chancellor of the Exchequer, the President of the Board of Trade, the Minister of Agriculture and Fisheries, the Dominions Secretary, and such other persons as he might summon. The new body was constituted with leading experts such as Sir J. Stamp, Mr. Bevin, Professor Pigou, and Mr. Cole in its membership, and authority was given for certain researches, some carried out by sub-committees with experts added, as in the case of locust control, while two standing committees were appointed to deal with economic information and scientific research. Since 1931 there is no record of any major work undertaken, still less of the use of the Council for purposes of survey of British economic conditions with a view to the evolution of a planned economy, as in totalitarian States.

It is clear that the existence of a Council of this kind cannot be very effective, for it amounts to little more than a standing Royal Commission without the immediate definition of some specific function. Moreover, the tasks

[1] *Parl. Pap.* Cmd. 3478 (1930); 308 *H.C. Deb.* 5 s. 1594.

before a Government are intimately bound up with the possibility of their execution as part of governmental policy, and this involves essentially the aid of governmental departments. This consideration tells heavily against the kindred idea of Sir W. Beveridge[1] in favour of an Economic General Staff, composed of permanent officials free from departmental duties and thus available to plan on a definite basis, and with sufficient status to compel the Cabinet to pay close attention to its findings. The conception seems to rest on an erroneous view of the services of the Imperial General Staff, or indeed the Committee of Imperial Defence. That body does not plan defence *in vacuo*; it works out what should be done on the basis of definite objectives of foreign policy, and its technical findings, which must be co-ordinated with those of the Navy and Air Staffs through the Chiefs of Staff Committee, still require further consideration in the light of the cost of their recommendations, and their repercussions on social and economic questions. An Economic General Staff would apparently be expected to work out principles of economic doctrine which would command the attention of the ministry by their obvious authority. But unfortunately there are no economic doctrines of this kind for any body to elucidate and enunciate. The principles of political economy can be made of commanding authority only if they are based on abstractions from reality, and such principles would afford no real guidance for a ministry. It can only make up an economic policy by determining what are its essential principles; the economics of a totalitarian State are very different from those of a democratic capitalistic State or of a communist State, and no Economic General Staff can evade this fact. If all that is meant is that the ministry should, after determining the main lines of its policy,

[1] See H. J. Laski, *Parl. Govt.* pp. 267 ff.

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refer to experts for their advice as to working them out, the plan of Mr. Baldwin certainly seems adequate.

For purposes of industrial and scientific research there is available the elaborate organisation nominally under a committee of the Privy Council, of which the President of the Council is the head, which forms the Department of Scientific and Industrial Research, created on December 15, 1916. Provision is made for building, chemical, food, forest products, fuel, radio, road, and water pollution research; and the Geological Survey and the National Physical Laboratory form part of the undertaking.[1]

4. *The War Cabinet and Cabinet Reform*

The War Cabinet came into being under curious circumstances. The war in 1914 resulted in the transformation in November 1914 of the Committee of Imperial Defence into a War Council, in which sat the Premier, the heads of the Treasury, War Office, India Office, Admiralty and Foreign Office, and Mr. Balfour, who had already been associated with the Committee of Imperial Defence for specific purposes. Lord Haldane and Sir A. Wilson were added in 1915. But the Cabinet retained control of the war objectives, the raising of men, the production of munitions, and finance, while not as a rule seeking to interfere in military details.[2] On the other hand, it decided the policy of the Dardanelles expedition, and tried by a Munitions Committee to solve that problem, which later was attempted by Mr. Lloyd George as Minister of Munitions.

The danger to the ministry from intrigues by Sir J. French, and the conviction of Conservative leaders that their services were necessary to prevent disaster, led to the

[1] See Chap. XIV. § 5, *post.*

[2] Spender, *Lord Oxford*, i. 119 ff.; Oxford, *Memories and Reflections*, ii. 87 f.

first Coalition,[1] under which, in June 1915, the War Council became the Dardanelles Committee, which was overweighted, by the galaxy of ministerial talent from both sides of the Coalition, and which delayed decisions so long as to ruin all chance of success for that enterprise. In November 1915 the Committee was renamed the War Committee, but its procedure dissatisfied Mr. Lloyd George, who planned to replace it by a small Council from which he desired to exclude the Premier, though the latter would have the findings reported to him, and could secure reconsideration by the Cabinet as a whole. A variant of this plan was for a time approved by the Premier, which would have created the committee with himself as an essential member. This plan failed, owing to intrigues; apparently the Conservatives desired to rid themselves of Mr. George, but ended, through his superior tactics and the support of Mr. Bonar Law, in securing for him the place of Premier.[2] He proceeded to depart entirely from his earlier policy, which stressed the absolute necessity of relieving the Prime Minister of the duty of conducting the war and the rest of the Government at the same time, and created a War Cabinet, which was to be in supreme control of affairs, and from which all departmental ministers were excluded with the exception of Mr. Bonar Law, who as leader of the Commons and Chancellor of the Exchequer was to keep the new body in touch with Parliament. It is not too much to say that it was through Mr. Law that the machinery worked at all.

The Cabinet[3] set up numerous committees with varying personnel to advise it, and these created sub-committees, while the Foreign Secretary, First Sea Lord, and Chief of the Imperial General Staff were in constant attendance. It

[1] Spender, ii. 164 ff. [2] Spender, ii. 245 ff.

[3] See *Parl. Pap.* Cd. 9005; Cmd. 325, reports for 1917 and 1918.

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was also necessary to secure frequently the presence of the heads of the War Office and the Admiralty, from control of which Mr. Balfour was wisely removed, though Lord Carson proved no better as a departmental head. It seems clear that it was from the first overburdened with work for which its members were not well suited; that its decisions on war measures were not particularly wise nor fortunate; that its diplomacy was successful like Sir E. Grey's only in so far as it was supported by strength; that its efforts to raise men were complex and largely ill-directed, with the result that many indispensable men were made to serve in the trenches, while untrained youths of military age earned large wages at home; and that in regard to munitions and supplies of all kinds there was appalling waste of money. No efforts were made even to induce workers earning high wages to save for the lean times which must ensue, and so unevenly were sacrifices distributed that the news of the Armistice, with its end to the slaughter of those at the front, was greeted with regret in many areas where armament workers were enjoying an unnatural and exaggerated prosperity. Whether any other body would have done better cannot be said, but it is fair to deduce from Mr. Duff Cooper's *Haig*, Sir W. Robertson's *Soldiers and Statesmen*, and even Sir H. Wilson's *Diaries*, that the Premier's interventions in the conduct of war, with the effort to win impossible successes on any front[1] save that which was vital, were all of considerable public disadvantage.

One service of importance was rendered by Mr. Lloyd George, though the War Cabinet scheme was not essential to it. The Prime Ministers of the Dominions were invited in 1917 and 1918 to sit on the Cabinet as the Imperial War Cabinet, and thus to share in the decisions made regarding the use of the naval and military forces which they had

[1] Spender, *Great Britain*, pp. 507, 528 f., 536, 542 f., 548 f.

placed at the disposal of the British Government. In other issues they acted simply in the way of an ordinary Imperial Conference, decisions being subject to homologation by their Cabinets and Parliaments, but as the direct control of the defence forces rested with British authorities, agreements reached in Cabinet had immediate effect given to them. This innovation was productive at Paris of the British Empire Delegation acting as a unit, and at the same time the distinct representation of the great Dominions at the Conference, and later their separate places on the League of Nations.

It cannot be said that the experiment really threw much light on the principles of Cabinet construction. The idea that the Cabinet was an example of men detached from immediate cares sitting to think out principles, was remote from reality in practice. The members were usually immersed in detailed considerations. Moreover, there was the disadvantage that the ministers of the distinct departments had no responsibility at all for the conduct of affairs generally, and each felt obliged to press departmental claims with remorseless energy, lest his department should suffer from greater heed being paid to the more resonant demands. A further difficulty was that the heads of the defence departments plainly should have been in the Cabinet, and the anomalous position created by the direct contact between the heads of the technical branches of the War Office and the Admiralty and the Cabinet did not make for great harmony.

At any rate the idea of continuing the plan after the war was over was as indefensible as the absurd proposition made to Mr. A. Chamberlain [1] that he should be Chancellor of the

[1] *Down the Years*, pp. 139 ff. The Cabinet until Oct. 1919 contained only Mr. Lloyd George, Earl Curzon, Mr. Bonar Law, Mr. A. Chamberlain, and Mr. G. N. Barnes.

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Exchequer, but not in the Cabinet. Yet it had already become necessary to set up a special committee of the ministers outside the Cabinet to deal with the co-ordination of home affairs, which were drifting into chaos under the existing régime. The public disapproved strongly the retention of an arrangement, only excused by war, in peace, and the Parliament of 1918 saw a very imperfect co-ordination of the ministry and the majority in the Commons.

The suggestion of the Haldane Committee in favour of the future organisation of the Cabinet on the principle of setting aside a number of ministers free from departmental duties who can think out problems, detached from the burden of day-to-day administration, is a singular example of blindness to realities. The political conditions which bring men into high office and place them in a position to enter such a Cabinet are not in the slightest those of thinking out problems in abstract. Men succeed because they are skilled Parliamentarians, and normally sound administrators, accustomed to despatch efficiently the work of their departments. They have no real ambition to be released from the work of a ministry. Nor, if they had, would the system work. The departments would *ex hypothesi* be given to men of inferior capabilities, who would resent their inferior position, and, instead of a Cabinet being a comparatively united body, there would be the thinking Cabinet of super-men and the inferior ministers who carried out their behests, and resented bitterly their humble position in the public eye. It is curious that Lord Haldane [1] had not the common sense to realise that his one great achievement, the creation of the Territorial Army and the Expeditionary Force, was rendered possible simply because he immersed himself as Secretary of State in the whole business of army reorganisation with all the energy of a

[1] Maurice, *Haldane, 1856–1915*, chaps. ix.-x.

highly trained mind, and that, except as Secretary of State, he would never have mastered the issues effectively enough to undertake successfully the carrying through of a great undertaking. There is not the slightest reason to suppose that the War Cabinet would not have done better if it had consisted of the ministers immediately concerned with the war and foreign affairs, and had acted as a committee of the Cabinet, as was the original proposal for which Mr. George pleaded so eloquently, but which he cast aside when it became a matter of his personal power.

The reduction of the size of the ministry might be effected by placing defence under one minister, a proposal discussed elsewhere, and by setting up one ministry to care for trade, agriculture, fisheries, labour, and transport. But here again we have the perfectly obvious fact that such a minister would be almost certain to stress one part of his field at the cost of others, and that the reduction to one voice of the representation of these interests would weaken the heed due to them in the Cabinet. The truth is that the supposition that the Cabinet is too big is probably a delusion, and that with the committee system in operation, and with a useful secretariat to help the orderly conduct of business, it is as effective and sensible an instrument of government as is likely to be devised, apart from the fact that it has all the prestige of tradition and that able men still eagerly strive to attain membership.

There is, of course, the further difficulty that a Cabinet of a small number of super-men would almost certainly be ineffective,[1] as was the Liberal Cabinet of Lord Rosebery when Mr. Gladstone's authority had ceased to exercise its sway. It is undoubtedly probable that the most effective Cabinet is one in which a small number of unusually able

[1] Cf. the failure of Lord Aberdeen's ministry in foreign policy; Seton-Watson, *Britain in Europe*, pp. 305 ff.

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men have beside them a number of efficient men of second-rate intelligence, but with experience and ability to carry on the affairs of a department with the aid, but not under the domination, of the Civil servants. It is men of the type of Mr. Akers Douglas, Mr. Bridgeman, or Mr. W. Long who help to run a ministry.[1] Moreover, such men lessen the strain which would rest on the members of a small Cabinet.

5. *The Privy Council*

The Privy Council by the beginning of Queen Victoria's reign had ceased as such to be an advisory body. Membership had become necessary for Cabinet ministers, who should be sworn of the Council before acting in Cabinet, and it was accorded as an honour to persons who had never been ministers. It had already become usual to appoint to the Council the Archbishops, and the Bishop of London, and, as the use of the Council for judicial purposes became specialised in the form of the Judicial Committee, there were appointed to it the Lords Justices of Appeal, the Lords of Appeal in Ordinary, the Master of the Rolls, the Lord Chief Justice, and the President of the Probate, Divorce, and Admiralty Division of the High Court. Ambassadors are now usually sworn of the Council, while since the precedent set in 1897 Dominion Premiers are regularly offered membership; General Hertzog and Mr. De Valera have refused. The Speaker of the House of Commons is normally offered membership. Junior ministers are not rarely thus honoured, and from time to time the honour has been conferred for eminence in spheres outside politics.

Members are recommended by the Prime Minister, and appointment is accompanied by taking the oath of allegiance and the ancient oath of the Privy Council, which is

[1] Cf. H. J. Laski, *Parl. Govt.* pp. 287 ff.

of importance in that it binds those who take it to secrecy regarding matters transacted in Council. Removal may be carried out by the sovereign striking out the name on the roll, but the last removal was effected by the less personal act of an Order in Council.[1] The Crown is very reluctant to remove; neither Mr. Rhodes after the Jameson raid [2] nor Mr. Thomas after the Budget Disclosure Inquiry was removed.

The Privy Council serves for the making of Orders in Council,[3] whether prerogative or statutory, as above mentioned. During the reign of Queen Victoria it was found convenient to entrust to the Privy Council acting through a Committee various functions, which later were handed over to departments. The Board of Trade had ceased to be a working committee by the end of the Napoleonic wars. The functions assigned regarding public health to the Council were augmented in 1858 by the transfer of this part of the work of the Poor Law Board, but they were handed over in 1871 [4] to the newly created Local Government Board. Powers to deal with the ravages of the Colorado beetle and other noxious insects were given in 1877,[5] and were followed by authority in respect of the contagious diseases of animals, but these went in 1889 [6] to the newly created Board, now Ministry, of Agriculture.

The connection of the Council with education was longer. A Committee was set up in 1839 to consider the application of the small sums voted by Parliament to aid education, and its work fell soon into the hands of the

[1] Sir E. Speyer in 1921; A. Fitzroy, *Memoirs*, ii. 768, 770. He had been naturalised and his membership was vainly attacked; *R.* v. *Speyer*, [1916] 2 K.B. 858; 4 & 5 Geo. V. c. 17, s. 3 (2).

[2] Mr. Chamberlain's complicity therein is unhappily not disproved; cf. Spender, *Campbell-Bannerman*, i. 198 ff.; Gardiner, *Harcourt*, ii. 436.

[3] No person attends unless summoned, save by accident as in Lord Milner's case, Dec. 11, 1916.

[4] 34 & 35 Vict. c. 70.

[5] 40 & 41 Vict. c. 68.

[6] 52 & 53 Vict. c. 30.

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President of the Council and the Vice-President appointed to aid him with regard to this work. The Committee seems to have met only as a rule to confirm the decisions arrived at by these officials. But Lord G. Hamilton records one occasion when, as Vice President, he appealed successfully to the Prime Minister, who presided at the Committee meeting which he called and passed his estimates.[1] Not until 1899 [2] was a Board of Education with an independent President substituted for the Committee.

Mention has been made above of one function now controlled by the Lord President.[3] It is interesting to note that in 1914–15 it was given the duty of dealing with the issue of export trade licences pending the development of more elaborate arrangements for the work.[4]

Other matters are formal. The Privy Council as a whole is once summoned in each reign, on the occasion of the royal accession. In it takes place the ceremony of the handing over the seals of office by one outgoing ministry, and the transfer to another. In it the President of the Council is declared, and before it a bishop makes homage for the temporalities of his see.[5]

Advisory functions still belong to the committees of the Council, which differ from meetings of the Council in the essential fact that the sovereign cannot constitutionally [6] be present thereat. Of these the committee which deals with matters relating to Jersey and Guernsey is of long historical lineage, and is a prerogative committee pure and simple. The committee which deals with matters

[1] Lord G. Hamilton, *Parl. Reminiscences*, i. 152 ff.

[2] 62 & 63 Vict. c. 33, s. 2.

[3] See p. 200, *ante*.

[4] Fitzroy, *Memoirs*, ii. 813 f.

[5] Sheriffs are pricked by the King in Council (*e.g.* March 9, 1939); they are selected in the King's Bench Division, the Chancellor of the Exchequer presiding over judges and Privy Councillors; Anson, *The Crown* (ed. Keith), i. 194.

[6] 175 *Hansard*, 3 s. 251.

affecting the baronetage is also a prerogative committee. On the other hand, those for the Universities of Oxford and Cambridge [1] and for the Scottish Universities [2] are provided for by statute, as is that which deals with applications for the grant of charters to municipal corporations.[3] Statutes of the Universities of London and Durham are referred to the Universities Committee for Oxford and Cambridge.[4] The Committee for Scientific and Industrial Research is a prerogative Committee. The Judicial Committee is statutory and its functions will be described below.[5]

A new power [6] was accorded by the Government of India Act, 1935, and the Government of Burma Act, 1935, arising out of questions affecting the sufficiency of degrees in medicine granted in either territory to justify inclusion in the British Medical Register. The Copyright Act, 1911, gave to the Privy Council power to grant licences in certain cases for the reproduction of copyright works. The Council has also certain powers regarding architects, dentists, medical practitioners, and veterinary surgeons, and approves the by-laws of the Pharmaceutical Society,[7] but its powers under the Midwives Acts, 1902–18, have been transferred to the Minister of Health. It is required to deal with issues as to the confirmation of schemes under the Cathedrals Measure, and in the exercise of its judicial power it deals with schemes[8] for the union of benefices and schemes in relation to endowed schools.

[1] 40 & 41 Vict. c. 48, s. 44; 13 & 14 Geo. V. c. 33, s. 10, sch. (45)-(56).

[2] 52 & 53 Vict. c. 55, s. 9.

[3] 23 & 24 Geo. V. c. 51, ss. 129 (2), 130.

[4] 16 & 17 Geo. V. c. 46; 25 & 26 Geo. V. c. 29.

[5] See Chap. XXI. § 3 (ii.).

[6] Appeal already lay from the refusal of the General Medical Council to recognise a diploma; 49 & 50 Vict. c. 48, s. 13.

[7] Pharmacy Act, 1852, s. 2.

[8] *Benefices of Great Massingham and Little Massingham, In re*, [1931] A.C. 328; *Union of the Benefices of Westoe and South Shields, St. Hilda, Durham County, In re* (1939), 55 T.L.R. 349.

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The power of the Council to commit offenders, or of its committees,[1] or individual members, has long ceased to be of constitutional importance; all the Councillors are now put on every county commission of justices of the peace together with the judges and the law officers.

[1] *Seven Bishops' Case* (1688), 12 St. Tr. 183.

CHAPTER V

THE CABINET AND PARLIAMENT

1. *The Control of the Cabinet by the Commons*

THE early years of the reign of Victoria were a period when the Commons had become in a real measure independent of control by the Crown or by private individuals. They were after the Reform Act, 1832, elected by constituencies which were composed of substantial voters who were ready to give to their representatives a considerable latitude of action. Mr. Bagehot's views are those of an acute observer in 1867 and the House of Commons in his eyes is the centre of political power. The electors confide in the superior knowledge and political judgment of those whom they select to represent them; they are not returned to vote for a particular Prime Minister, but to exercise in the spirit of Burke their best judgment on the issues presented to them, whether in the field of administration or of legislation, promoted either by the Government or by private members. Hence it was not at all uncommon for constituencies to return the sitting member without a contest or to adopt a new member in the event of death or resignation of the sitting member without a struggle. In 1859, 101 constituencies were contested; in 1865, 204; but after the Reform Act of 1867 the situation changed, and 352 were contested in 1880.

In the earlier epoch the freedom of the Commons exhibited itself in the lack of party stringency. There were

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groupings of no great cohesion, and ministries were unstable, and might fall, though small majorities alone were cast against them. Sir R. Peel defeated Lord Melbourne in 1841 by a vote, while Lord J. Russell in 1852 was worsted by a majority of nine; Lord Derby in that year lost by nineteen. The vital Finance Bill in 1866 passed second reading by five votes; later, ministers suffered defeat by eleven. On issues not regarded as vital there was complacency in accepting defeats. In 1850 the Russell ministry was defeated in twelve divisions, next year in thirteen; Lord Aberdeen acquiesced in fifteen defeats in each of the years 1853 and 1854, and Lord Palmerston in the like number in 1856. The Commons turned out Lord Aberdeen in 1855, inflicted a severe defeat on Lord Palmerston in 1857, and, despite the appeal to the people which followed and the Premier's triumph thereat, it turned him out in 1858. All this freedom was shortly to disappear with the reform of the franchise and the appearance of two great party leaders, Mr. Disraeli and Mr. Gladstone, with a vital appeal to the enlarged electorate. From this period dates definitely the tendency for the electors to vote for persons rather than policies. It was not, of course, new; Lord Palmerston had won a victory in 1857 for his personality, not for his Chinese policy, and the election of 1865 was really a verdict for his popular figure. Lord Salisbury by 1895 had attained the position of an impressive and venerable figure, while in 1900 the energy and apparent victory in South Africa of Mr. Chamberlain secured his party the victory. In 1906 the defeat of Mr. Balfour was largely due to his confused if ingenious tactics in 1903–5 and the suspicion that he must have done something not quite right, or the Duke of Devonshire would not have resigned office. Mr. Asquith's personality counted largely in 1910, that of Mr. Lloyd George decisively in 1918, and it was lack

of personal appeal in Mr. Baldwin which cost him victory in 1929, and the belief that he had done something remarkable for national unity which gave Mr. R. MacDonald victory in 1931. On the other hand, by 1935 Mr. MacDonald's star had set, and the disaster which met his effort even to retain his own seat showed how wise it was that the contest was fought under the aegis of Mr. Baldwin.

Even more remarkable was the evidence in 1938 of the force of personality in the support given to Mr. Chamberlain as regards his attitude towards Italy, and the German acquisition of Austria in March and of much of Czechoslovakia in October; his claim of peace with honour, unlike that of Lord Beaconsfield in 1878, may have been open to grave doubt, but for the moment at least his personal popularity was such that he could have dissolved with the assurance of success.

It is easy to understand that under these circumstances there is no real probability of actual control of the Cabinet by the Commons as in the period before 1867. What is left is the power of criticism of the ministry, and this is carried out in increasing measure by the Opposition only, though on occasion governmental supporters may raise minor issues.

The modes of criticism are varied. The right to propose amendments on Bills affects the stability of a Government only in the rarest cases, but it is normal for the Opposition to maintain a steady criticism of the administrative measures of the Government. The use of questions for this purpose became commoner from about 1850, by the 'seventies a thousand questions a year were normal, and by the end of the century the number had increased to five thousand, and with the longer sessions of modern Parliaments the increase continues. Though ministers can refuse to answer questions if not in the public interest, it is not

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easy to do so without raising doubts in the minds of the public. Supplementary questions are controlled by the Speaker but often are especially damaging. On the other hand, questions are often put by supporters to elicit information of advantage to the ministry.

As questions are not followed by debate a practice arose in 1877 of bringing on a debate when the reply given to a question had not been satisfactory by moving the adjournment of the house.[1] On such a motion any topic might be discussed, and, whereas from 1873–7 of thirty-one such motions only three were not withdrawn, from 1877 to 1882 only eighteen out of sixty-four were withdrawn and twelve were pushed to a division. The abuse of the practice resulted in changes in the Standing Orders in 1882, which prevented discussion of anything save the motion for adjournment if it were made when the house was engaged in the business of the day, while it was only permitted to move the adjournment before taking up the business of the day by leave of the house unless forty members rose in their places to support it, or ten members rise and the house grants leave on a division. Moreover, the motion can be made only for the purpose of discussing a "definite matter of urgent public importance", and the Speaker has by his interpretation distinctly limited the scope of these terms, motions being disallowed freely, if there is any other means of dealing with the issue. A further safeguard for the Government was provided in 1902, when the time for the debate was put off until the evening sitting, giving the ministry time to prepare its case and thus to avoid the disadvantages arising from surprise. Another which was employed wholesale in 1904, when Mr. Balfour was anxious to keep his ministry from defeat, is the use of the rule that a motion may not be concerned with a matter which is

[1] Lowell, *Govt. of England*, i. 333 ff.

already down for consideration by the house, so that the mere existence of the possibility of a motion, however unlikely to come on for discussion, could prevent a motion on the adjournment.[1]

It is possible also to deal with alleged errors of the Government by raising the question on the motion for adjournment at the close of the day's work, but a motion so late at night on which there is no division is not effective. Motions are, however, possible on the adjournment for the Easter and Whitsunday holidays.

Private members' motions afford another means of attack on the ministry, but the number of days allotted is slight and the chance of success in the ballot is small in any case. Such motions came into prominence in 1904–5 during the period of Mr. Balfour's manœuvres to avoid defeat, for he was reduced on March 22 and 28, 1905,[2] to the expedient of absenting himself from debates and divisions affecting the position of his Government on the fiscal issue. His excuse was that the matter should not be discussed on party lines and could not, in the absence of a mandate, be disposed of by the existing Parliament. The result, however, of this policy was further to discredit a weakened ministry. As a rule such motions are not carried against the opposition of the Government, but this is not a universal rule, and in 1938 a proposal to try the abolition of capital punishment for an experimental period was passed. The ministry, however, made no attempt to embody the proposal in its Bill to amend the criminal system.

Attacks on the ministry may also be brought during the discussion of the address proposed to be returned to the Speech from the Throne. Normally defeat on such an

[1] The Speaker now has to consider the likelihood of a matter coming on in ruling out a motion on the ground of anticipation; Standing Order No. 9.

[2] Lowell, *Govt. of England*, i. 339 ff.

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issue would be fatal, as in 1924, when Mr. Baldwin's Government met defeat. But in 1894 [1] the Liberal Government acquiesced in a defeat arising out of the opposition of certain of its own supporters to its failure to take up the challenge of the House of Lords in the rejection of the Government of Ireland Bill in 1893. In 1886, however, the fall of Lord Salisbury was due to Mr. Jesse Collings' amendment in favour of the policy popularly summed up as " three acres and a cow ".

Prior to 1882 a wider power of attack was exercised. Whenever supply was to be dealt with, it had to be moved that the Speaker do leave the chair, and on that motion any subject not requiring a substantive motion and not being a detail properly to be discussed in the committee, could be debated on the motion or on an amendment thereof. In 1882 this procedure was abolished as regards Monday or Thursday, and, as Tuesdays and Wednesdays were reserved for private members, the old freedom was confined to Friday, and that was taken away in 1896. What was left was only that on first going into committee on the army, navy, and civil estimates, there might be a discussion relative to the estimates in the branch of supply to be taken up. The amendment on which a vote is taken in these cases must now be chosen by ballot, and great topics have at times been in this way handled, such as disarmament. The limitation of possibilities of discussion is shown by the fact that, prior to 1882, defeats on these occasions were not unknown, but ceased after 1891. Debate was still possible on going into committee on the East India accounts, but the general lack of interest prevented this right proving of any importance as a means of criticising the ministry.

[1] Labouchere carried an amendment for the creation of 500 peers; Ullswater, *A Speaker's Commentaries*, i. 241.

As regards discussions in supply, the idea of control of expenditure was slow in dying. The Select Committee on Procedure in Supply in 1888 could still solemnly assert that the debates were an effective means of criticising the administration and of controlling expenditure; no doubt reductions were rare, but future extravagance was prevented. In 1896 [1] Mr. Balfour faced the fact that it was an ancient superstition to suggest that any attempt was made to secure economies; members really desired to press for increases in future estimates. The debates instead allowed of criticism, and for that purpose it was desirable to give to the Opposition the choice of votes to be put down for discussion in order that they might direct their attacks on the points in which they thought they might serve best the public interests. Though discussion is limited in scope by the subject matter of the votes, there is greater freedom on the defence estimates, as the grants made in their case, as opposed to the civil estimates, can with Treasury consent be used for other purposes; it is also possible on the vote for a minister's salary to cover a wide range of points. Reductions alone can be moved, and seldom are moved for the real purpose of effecting economy; it was not for that that an appropriation for a statue of Cromwell was objected to in 1895. Successful votes are few; the best known is that to reduce the salary of the Secretary of State for War in 1895 [2] because of shortage of cordite, which was the occasion, but not the cause, of the fall of the Liberal Government. In 1904 [3] the grant for National Education in Ireland was by a like snap vote cut by £100, the ministry not troubling to have the decision reversed; in 1905 [4] the appropriation for the Irish Land Commission was reduced by £100, but the

[1] 37 *Hansard*, 4 s. 727 ff. [2] Spender, *Campbell-Bannerman*, i. 154 ff.
[3] 131 *Hansard*, 4 s. 1141-50. [4] 149 *Hansard*, 4 s. 1486 ff.

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ministry, after deliberation, decided to ignore the defeat, though this action was far from popular and brought a good deal of discredit on the Government.

A wide opportunity of criticism is necessarily afforded by the debate on the budget proposals of the Government, which may wander over the financial policy of the Government at large. On the Consolidated Fund and Appropriation Bills the debate may deal on second and third readings with the administrative conduct of those to whom grants are authorised; such amendments are normally withdrawn after discussion, as was done with one moved on the second reading of the Consolidated Fund (No. 1) Bill, 1903, raising the issue of native labour in South Africa.

In order to create a measure of real control over estimates the experiment was made in 1912–14 of setting up a Select Committee. Its operations were not a marked success. It was urged that there was danger that its action might encroach on the proper functions of the executive and diminish its sense of responsibility. Further, the Committee could clearly not criticise elements in the estimates based on policy, and this tended to prevent useful control. Since the estimates were only placed before the Committee after approval in whole or large measure by the House of Commons, its report could at best merely affect the preparation of estimates for next year. The Committee had not the aid of an independent officer like the Comptroller and Auditor-General to aid it in criticism. It is not, therefore, surprising that, after examination of the subject by the Select Committee on National Expenditure in 1918, it was decided to substitute merely a Select Committee which examines two or three sets of estimates every year. It is given the aid of a Treasury official, but that only affords official advice.

But the worst thing of all is that it is impossible to induce the Commons to take seriously the reports of the Committee, so lacking is the House in interest on economy of any kind, despite the obvious fact that extravagance diminishes the resources of the State for useful ends.

Equally without effect is the criticism offered by the Committee on Public Accounts, which is appointed annually to consider the appropriation accounts presented by the Comptroller and Auditor-General with his report. The Committee examines the justification for expenditure in excess of the estimates or otherwise in any way irregular; it comments on unauthorised expenditure, and extravagance or unbusiness-like methods in matters of semi-commercial character. The value of these criticisms is of course greatly lessened by the fact that the accounts are those for the preceding year and that they only come to the Committee after the examination of the Audit Department, and therefore are decidedly out of date when the report is issued and that the House of Commons steadily refuses to take any notice of the reports.[1] This is due to the fact that the Opposition is as little anxious for economy as the Government, and hopes one day to be in power and to enjoy immunity from any serious worry over such minor issues. The real value is different; it lies in the fact that the report strengthens the Treasury in its control of the departments, though it must be admitted that the Treasury often criticises the report in its turn, and refrains from enjoining the rules suggested by the Committee.

The Opposition can demand a discussion of a vote of no confidence and by custom the ministry must allow discussion, though no doubt it might refuse if such votes were repeated without intervening incidents to justify

[1] A proposal for assigning a day to discuss the report has been made, in vain.

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them. In 1938–9 this demand was more often made than was normal, but the series of untoward incidents all affecting gravely the prospects of European peace excused such action. It cannot, of course, be said to be a very effective means of procedure, for it does not allow of the isolation of particular aspects of policy in any adequate way, and the issue becomes simply one of turning out the Government; hence in 1938–9 the Government remained unaffected by the attacks made, just as in 1904, despite the grave divisions among the supporters of the Government, a vote of no confidence was rejected by 288 to 210. This state of affairs is, of course, inevitable under the present party system, which renders the members of the party compelled to support the Cabinet through thick and thin, whatever the issue may be, unless they are prepared to sever themselves from their party allegiance.

2. *The Control of the Cabinet over the Commons*

(i) Modes of Control

While the control of the Commons over the Cabinet has steadily declined, that of the Cabinet over the Commons has grown ever greater. This applies not merely in the field of administration, which has always been specifically the affair of the Cabinet, but also in that of legislation. The time was beginning to be distant even at the outset of Queen Victoria's reign, when legislation was not regarded as the province of the executive, but the increased interest in all social issues which marked the passage of time rendered the part played by the executive in initiating legislation more and more essential. When such matters have to be dealt with, private members are without the knowledge of the administrative, technical, and financial difficulties to be met in any measure which is satisfactory,

and they therefore leave them perforce to the ministry, which has the advantage of skilled experts in drafting. It is significant that it was from 1869 that the employment of Parliamentary counsel became regular, for it was about that date that it was generally recognised that an essential part of the functions of the ministry was the production of a programme of legislation. The necessity of governmental initiative has naturally been increased by the development of the practice of concluding international conventions on all kinds of economic and social topics, a practice accelerated by the creation of the Labour Organisation under the treaties of peace. No private member could properly have endeavoured to promote legislation on the safety of life at sea, on the employment of women, young persons, and children, or on whaling. It has been noted with justice that the legislature itself has recorded the propriety of the legislative initiative of the executive when it placed on the judges the duty, if they felt that any amendments of the law of procedure were desired, of reporting the issue to a Secretary of State, not to Parliament.

Technically this pre-eminence of the Cabinet is expressed in its control over the greater part of the time of the House of Commons. The rules as to business have been varied from time to time, Tuesday and Wednesday evenings and Friday being for a long time allocated to private members' business, while the present system gives Wednesdays up to Easter for private members' motions, and Fridays up to Easter, the first four thereafter, and the third to sixth after Whitsunday, for their Bills. Moreover, if there is sufficient pressure of work, even this slender allocation of time may suffer reduction. It is clear that the chance of securing the final disposal of any Bill introduced by a private member is very slight if the Government is

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not willing to find time for its final stages; the Matrimonial Causes Act of 1937 secured adoption simply because, in view of its wide popularity, the ministry allocated to it some governmental time when it would normally have fallen to the ground. The practice of reserving time for the Government dates from 1811, and already in the decade from 1878 to 1887 Government business had precedence on the average in 83 per cent of the sittings, in the next decade in 84½ per cent, and under the rules of 1902 and 1906, as under those now in force, the proportion is in practice not very different. The number of private members' Bills passed has tended to diminish, but there is much of chance in the nature of the Bills which happen to be brought forward. Measures which only the Government can effectively deal with, such as compensation to workers for injuries, are hopeless and waste time which might be better given to more promising measures.

The Cabinet also controls the amendments which can be accepted to their measures, and with the passage of time the control of ministers has become more and more close. Not that amendments are rejected; if plausible, and especially if put forward by the supporters of the Government, they will receive close scrutiny, and, even if not deemed acceptable as they stand, they may be dealt with by the moving on the report stage by the minister of a revised version. But a ministry practically never allows a serious variation to be carried against it, if it is a majority Government; the inability of the Labour ministries of 1924 and 1929–31 to force its own opinions was far from acceptable to it. Ministers again decide whether their Bills will go to committees or be dealt with by committee of the whole House, in which case their retention of control is more complete.

The causes of the power of the Cabinet to determine the

votes of members are elsewhere described.[1] It remains to consider the spheres of administration wherein the Cabinet has the widest authority. Their attitude in these matters differs in important points from that in regard to legislation. In the latter their followers and the Opposition have the power to discuss and to suggest amendments; but, where administration is concerned, the ministry can come forward with *un fait accompli* and demand from the Commons homologation of what has been done, with a clear implication that, if approval is withheld, the ministry will either resign or dissolve, alternatives from which most members are certain to shrink.

(ii) Foreign Affairs

The range of freedom of action is widest undoubtedly in the field of foreign affairs, which are a matter of prerogative, and were left to the royal discretion long after in other matters the Commons had gained more and more authority. Nor is it clear that the authority of the Commons has grown sensibly greater with the passage of time. Importance no doubt has been attached to the practice, first initiated in 1890 in the case of Heligoland,[2] which insists that the cession of British territory demands the approval of Parliament. But it can hardly be said that this formal change really adds to the power of the Commons. The cession is presented in such a form that the approval of Parliament cannot be refused; the right to amend which is in considerable measure still a characteristic of the Commons is precluded by the fact that amendment would vitiate the accord reached with the foreign power concerned and that there is thus no real choice but to agree. Thus when the

[1] See Chap. XI. § 3.

[2] 53 & 54 Vict. c. 32. Contrast Gladstone, 347 *Hansard*, 3 s. 764. For the French treaty of 1904 see Lee, *Edward VII*, ii. 251-3; 135 *Hansard*, 4 s. 502.

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Treaty of Versailles was concluded in 1919 it was decided by the ministry that power must be given to the King in Council to give it full effect, and the assent of the Commons was asked, involving the approval of the treaty to which effect was to be given. Yet obviously it was impossible to suppose that anything therein contained could be altered. The terms had been settled with great effort in conjunction with the other powers engaged in the war ; for good or bad Parliament could only homologate, and the Parliaments of the rest of the Empire were in like case. So in 1925, when Italy was given Jubaland as a settlement of her claims to consideration in respect of colonial territory, the Commons had no alternative but to agree to the Bill embodying the treaty. Apart from any other consideration, to seek to reject or amend treaties would mean that the legislature desired to trespass on the sphere of executive power, and the general opinion of parties still deprecates in principle such action.

The Labour party indeed in 1924 [1] determined that the practice then in vogue, of ratifying without legislation such treaties as did not require alteration of the law, was open to objection, in so far as no steps were taken to acquaint the Commons with the terms of the instruments. It adopted, therefore, the plan of laying all treaties on the table of the House for twenty-one days before ratification. The practice, however, was not deemed necessary by Mr. Baldwin's Government,[2] and, though restored by the Labour Government from 1929 to 1931,[3] was allowed thereafter to fall into abeyance, though in fact many treaties not needing legislation are published before ratification. Parliamentary sanction is now invariably sought for all treaties which involve cession of territory ; which alter the rights

[1] 173 *H.C. Deb.* 5 s. 2001 ff. [2] 179 *H.C. Deb.* 5 s. 565.
[3] 230 *H.C. Deb.* 5 s. 408.

of subjects within the realm; which grant subsidies, or impose any public burden. On the other hand, in 1935 it seems to have been held by the Government that a cession of rights of protectorate over an area in Somaliland might have been made to the Emperor of Ethiopia without Parliamentary sanction. The project itself failed of acceptance, but the constitutional position involved must be questioned.[1]

Over the negotiation of treaties the rights of the Crown have remained unchallenged. Questions in Parliament calling attention to the importance of bearing certain interests in mind during negotiations are in order, though vague answers only have been given, nor has anything been devised similar to the present state of affairs in the United States under which proposed tariff concessions and demands for concessions in treaty negotiations are made known to the interests affected, and their views are necessarily ascertained before the final decision of the President is arrived at. Consultations in Britain with the representative organisations of business and agricultural interests are matters for executive discretion.

The authority of the Crown to declare war or neutrality or to make peace has remained undisputed, but, as Hale ecognised as early as the seventeenth century, the making f war and peace, though lodged singly in the King, ever ıcceeds best when done by Parliamentary advice. To ıis dictum exception may be taken in the case of the 'rimean War, for it was feeling in the country, represented n the Commons, which had much to do with the decision to go to war. "If ever a war was made by an ill-informed but ardent public opinion against the better judgment of a divided Government, it was the Crimean War. It is the

[1] Keith, *Current Imperial and International Problems, 1935–6*, pp. 131, 139 ff.

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classic disproof of the view that peoples are always pacific and only the statesmen or financiers warlike." [1] Lord Palmerston no doubt must bear some of the responsibility, for he favoured action, and his manipulation of the press secured his influence, even Sir W. Molesworth admitting that he was indispensable to the Government, as was quickly shown by the reaction of the public to his enforced resignation in 1853. Lord Palmerston displayed his confidence in his own popularity in the inception and conduct of hostilities against China. The incident arose from the attack on the forts and city of Canton carried out by order of Sir John Bowring, Governor of Hong Kong, in retaliation for the seizure of the lorcha *Arrow*,[2] a Chinese vessel which was wrongfully flying the British flag. Lord Palmerston homologated the action of the local authorities and a state of war ensued. His attitude was attacked in the House of Lords by Lord Derby, but upheld there by 146 to 110 votes. In the Commons the eloquence of Mr. Cobden, backed by Mr. Gladstone, Mr. Disraeli, Lord John Russell, and others, inflicted on the Premier a defeat by 16 votes, which he gaily met by a dissolution which gave him a majority of 70 votes. The contest was one between principles of justice and fair dealing even with an Oriental and difficult people, as opposed to upholding the attractiv doctrine of the necessity of maintaining the honour an prestige of the British flag, and Lord Palmerston's elector address at Tiverton, though denounced by Lord Joh Russell as unworthy of a gentleman, was most effectiv in its appeal to what later was known as jingoism. Lor Palmerston's irresponsibility had already been displaye and upheld by Parliament in the episode of Don Pacifico.[3]

[1] Cf. Seton-Watson, *Britain in Europe*, p. 359.
[2] 144 *Hansard*, 3 s. 1185 ff.; Seton-Watson, *Britain in Europe*, pp. 369 ff.
[3] Seton-Watson, pp. 270, 272-6.

The principle thus received recognition that the Commons should place wide confidence in the discretion of the Premier in the issue of foreign affairs. Yet in 1858 his reasonable desire to meet the objections felt in France to the fabrication in Britain by French refugees of plots against the Emperor led to his defeat by the Commons, which had been returned so shortly before to approve his aggression in the matter of China. The necessity of considering the views of the Commons had never been wholly forgotten by the Palmerstonian ministry; it remained inactive both in the American civil war[1] and in the conflict over Denmark not only because the Queen was opposed to intervention, but because the temper of Parliament was too doubtful to allow of successful action.[2]

Relations with Parliament remained similar under owing ministries. The country and the Commons alike wed no desire to intervene in the Franco-Prussian War; 'e was general support for the measures taken by the istry in respect of Egypt in 1882[3] and the following rs; and Russian aggression on Afghanistan at Penjdeh followed by readiness of the Commons to vote whatever ıs might be asked for in view of the possibility of war. e negotiations with France over Africa passed without rliamentary comment, and in the affair of Fashoda the ıistry had no substantial criticism to face; already ıder the Liberal régime Sir E. Grey had given emphatic arning to France of the determination of Britain to retain er rights in the Sudan. The Commons again acquiesced n the acceptance by Britain of the territorial acquisitions of Russia and Germany in China, and in the taking-over of Wei-hai-wei in order to counterbalance them. In the same spirit the Entente with France which was

[1] Bell, *Palmerston*, ii. 313 ff., 326 ff. [2] *Ibid.* ii. 361 ff., 370.
[3] Seton-Watson pp. 551 ff.; Holland, *Devonshire*, ii. 1 ff.

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brought before Parliament to approve certain pecuniary arrangements and the cession of the Îles de Los was generally approved, Lord Rosebery being the only severe critic.[1]

Lord Lansdowne inaugurated and the Liberal Government in 1906 homologated the policy of military conversations with France, which were destined seriously to affect the future possibility of British neutrality in any war. These discussions remained long concealed from the main body of the Cabinet, but their definition in 1912[2] and their extension to naval conversations in 1914 with Russia had Cabinet sanction. All this, however, was concealed from Parliament. On the other hand, in 1906 and later, Sir E. Grey made it absolutely clear that any binding alliance with France was out of the question if were to rest on a governmental agreement only. To m it binding it must be disclosed and approved by Par ment, and the British Government at that time was prepared to take such a step. It seems hardly to h been realised that what had been agreed on, especially regards the disposition of the French naval forces, w so far that it would be impossible for Britain to h aloof from France had she been attacked. It must added also that the withholding from Parliament of secret clauses of the agreement of 1904, though regard lightly by Sir E. Grey, was open to objection, for th looked to the possibility of extension of French authori in Morocco and British authority in Egypt which shoul have been made known to Parliament. For the rest the Commons were willing to leave the ministry a free hand in its efforts during this anxious decade to secure the preven-

[1] Seton-Watson, pp. 598 f.; Newton, *Lansdowne*, chap. x.

[2] Spender, *Lord Oxford*, ii. 70 ff. The implication of the discussions was pointed out by Esher, Oct. 4, 1911; *Journals*, iii. 60 f.

tion of war. Even the mediation of Sir E. Grey in the Balkan wars of 1912–13[1] raised no opposition of consequence, though Labour members grumbled at the existence of close relations with the hated Russian despotism. The Commons had in like spirit trusted the ministry in 1904 when the destruction of British lives and property by the Russian fleet *en route* to the Far East had raised public temper to a dangerous point.[2]

In the declaration of war in August 1914[3] the Commons were made participants, their approval for the ministerial policy being obtained by a great speech by Sir E. Grey in which he explained the inevitability of action, once he neutrality of Belgium had been violated by Germany defiance of treaty obligations. Throughout the war the titude of the Commons remained that of faith in the vernment, but this result was brought about by the odelling of the ministry in 1915, and again in 1916, ı a view to the more effective conduct, as was expected, he war. It exerted thus throughout a definite influence favour of the most strenuous conduct of hostilities, eeing thus with the general temper of the country. the peace settlement the complete supremacy of the ecutive was plainly manifested; Parliament had no portunity to intervene; it is true that the suspicion that ɔ much consideration was being shown for the Germans oked a telegram of remonstrance from a strong group Conservative members, but Mr. Lloyd George's return ɔo England to attack those by whom he believed it had ɔeen instigated proved conclusively how ready with support the House of Commons was.

The post-war years were noted by the fact that the Commons showed no anxiety to assert any more control

[1] Halévy, *Hist. 1905–15*, pp. 614 ff.

[2] *Ibid. 1895–1905*, pp. 415 ff.

[3] *Ibid. 1905–15*, pp. 657 ff.

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over the issues of war and peace than in pre-war days. The movement to prevent the Government from carrying on hostilities against Russia, as it was believed that it desired to do, was a Labour movement outside Parliament and only feebly reflected within its walls. The chief diplomatic achievement of the time, the Locarno Pact, was duly laid before, and ably explained by Sir A. Chamberlain [1] to the Commons, where it received a wide welcome, and equal accord was given to the Paris Pact for the Renunciation of War as an Instrument of National Policy in 1928. In the recognition of the Russian Government in 1921 and in the breach of diplomatic relations in 1927 alike the Commons acquiesced, though the latte action provoked Labour objections. On the other han the necessity of Parliamentary sanction of commerc accords prevented the minority Labour Government 1924 concluding the pact it desired with the Soviet Gov ment, especially as that Government expected guarantee of a loan as part of the bargain, and prepared to consider payment of compensation in resp of British property illegally confiscated in Russia onl a loan could be raised. On the other hand, resumpt of diplomatic relations with Russia in 1929 by the secc Labour ministry was not severely criticised in t Commons, though there was some opposition to t acceptance of the compulsory jurisdiction of the P manent Court of International Justice in certain types dispute, and of the General Act of 1928 for the Pacifi Settlement of International Disputes. It is significant tha both these measures were felt to fall within the ambit of the royal prerogative, and thus could be accepted by the ministry with the assent of the Commons but without homologation by the House of Lords, in which a hostile

[1] Nov. 18 1925; majority for ratification, 375 to 13.

majority might have been found. In the numerous attempts to deal with the reparations issue the Commons were willing to accept the decision of the ministry, and it acquiesced in the fatal settlement of the United States debt imposed on his colleagues by the driving power of Mr. Baldwin in 1923,[1] which unhappily proved a chief stumbling-block in the way of progress to equilibrium in Europe.

In one respect only did the Commons during this period show real uneasiness, and that was in connection with the decision of Mr. Lloyd George to run the risk of war rather than permit the loss of the fruits of victory over Turkey. The issue was settled out of Parliament by the decision of the Unionist party meeting to dissociate itself from the coalition at the appeal to the electorate then imminent.

In the years after 1931 the acceptance by the majority in the Commons of the attitude of the ministry was normally without question, though from the Opposition benches criticism was raised freely against the failure of the Government to secure progress in disarmament, and it was accused of hampering the abolition of aerial bombardments by its desire to retain the right to employ that instrument of war in frontier strife in India. A more critical attitude, however, appeared in the matter of Italian aggression on Ethiopia, which united in demands for a firm policy not merely the Opposition but all supporters of the League of Nations as devised in 1919. Moreover, the general election of 1935 was fought, after a great demonstration in favour of the maintenance of the principles of the League Covenant had been given by the results of a Peace Ballot conducted under the aegis of the League of Nations Union, and other facts had proved

[1] For an explanation see Spender, *Great Britain*, pp. 638 ff.

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the existence of a very strong body of opinion in favour of putting sanctions in force against a recalcitrant State. The effect of this movement was seen in December 1935 when the making of a provisional accord between Sir S. Hoare and M. Laval, who had undoubtedly in January 1935 gone far in assuring Italy of a comparatively free hand in imposing her will on Ethiopia, was regarded by opinion throughout the country as a definite breach of the League Covenant. The Premier, who with his Cabinet had assented to the Hoare-Laval proposals, extricated himself and his ministry from the difficulty by accepting the resignation of Sir S. Hoare.[1]

The mischief, however, had been done, and the chance of effective co-operation with the United States in enforcing an oil sanction was lost. Thereafter the Commons accepted the ministry's guidance without serious demur. It acquiesced in the decision not to attempt to counter the German denunciation of the clauses of the treaty of peace forbidding the fortification and military occupation of the Rhineland, and in June, at the initiative of Mr. N. Chamberlain, the decision to secure the removal of sanctions was approved by the Conservative majority. Further, surrenders of British interests were to follow. The outbreak of war in Spain was followed by a decision at first acquiesced in by the Labour party, but soon opposed, to secure, as suggested by France, a non-intervention agreement under which no aid would be given by any power to either side. The accord was not in principle objectionable, but from the first it was patent that it was not going to be observed by Italy or Germany, which were able and willing to accord far more effectual aid to General Franco than was or could be given by Russia. The operations of the rebels included

[1] Keith, *Current Imperial and International Problems, 1935–6*, pp. 149 f., 162 f., 190 f.

repeated attacks on British shipping, unprecedented in character, but once more the Commons agreed to follow the governmental lead in acquiescing. In February 1938 Mr. Chamberlain's decision to enter into an accord with Italy [1] on terms which were practically all in favour of Italy, and which involved the grant to her of equality of rights in respect of Arabia and recognised her conquest of Ethiopia, led to the tardy resignation of Mr. Eden,[2] the Foreign Secretary, and Lord Cranborne, the Parliamentary Under-Secretary, but without substantial effect on the attitude of the Commons. Instead the accord of April 16 when arrived at was given ready approval, as was the policy of the Government in refusing any active aid to China in her resistance to Japanese aggression, though in commercial circles in Britain considerable anxiety was expressed at the obvious intention of Japan to oust British trade and influence from their existing position in China.

Acquiescence by the Cabinet in the annexation of Austria by Germany in March 1938 was approved by the Commons, though in Labour ranks the danger to Czechoslovakia of the German doctrine [3] that all Germans should be included in the German State was fully appreciated, and efforts were made to secure a firm British stand on the integrity of Czechoslovakia. The ministry appeared to accept the arguments in that cause, and when, on September 7, *The Times* advocated partition of that republic, it was firmly denied that this was the governmental policy; that was explained to contemplate wide autonomy and the reconstitution of Czechoslovakia on the Swiss model, as had

[1] *Parl. Pap.* Cmd. 5726; made operative after approval by the Commons, Nov. 16, 1938.

[2] Feb. 20, 1938; the Government was sustained on Feb. 22 by 330 to 168 votes.

[3] On March 13, 1938, Germany officially disclaimed aggressive intentions against Czechoslovakia.

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been promised by Dr. Beneš in 1919 when the State was being created. The mobilisation of German forces, however, produced a hasty change in the attitude of the Cabinet.[1] Mr. Chamberlain decided to go alone to Berchtesgaden to interview Herr Hitler, and there he came to an accord which meant the dismemberment of Czechoslovakia. On his return to London, the Cabinet accepted his accord, French ministers were invited to discuss it, and on the acceptance acquiescence in the settlement was demanded from Czechoslovakia, which was warned that failure to accept would mean the refusal of France to honour her categorical obligations under the Treaty of Locarno, and that no aid would be given by Britain despite her obligations under the League Covenant. The surrender by France and Britain naturally caused Herr Hitler to raise his terms, which at Godesberg Mr. Chamberlain found too hard to accept, and on his return to England he laid matters for the first time before Parliament on September 28.[2] His narrative of the danger of war ended with the dramatic announcement of the acceptance by Herr Hitler, on the mediation of Signor Mussolini, of a proposal of a further meeting at Munich, at which, with some apparent modification, on September 29 terms were imposed on Czechoslovakia, while on the next day the Premier signed an agreement with Herr Hitler which was widely acclaimed as a peace pact, but which he himself explained [3] in the Commons on October 6 was only an expression of their opinions that the peoples of their countries were anxious never to go to war. This accord was at first accepted with satisfaction by public opinion, but it involved the resignation of Mr. Duff Cooper, the First

[1] *Parl. Pap.* Cmd. 5847, 5848.

[2] 339 *H.C. Deb.* 5 s. 6 ff.

[3] *Ibid.* 5 s. 549. It is unfortunate that he so exaggerated the pact on his return home. In like manner he misled the country regarding the Italian promise to withdraw all war material from Spain; see Commons Debates, June 7, 1939.

Lord of the Admiralty, and it soon appeared that the Munich terms involved the complete subjection of Czechoslovakia to Germany and the remodelling of her constitution unfavourably to democracy. Moreover, while the promise of a British and French guarantee had been made to Czechoslovakia as an inducement to her to accept the terms laid down, neither country made any move to save the State from the demands immediately urged by Poland and Hungary. The concession of Teschen left the former unsatisfied, the aim of both Poland and Hungary being to secure the handing over to the latter of Ruthenia in order that the two countries might have contiguous frontiers and thus interpose a definite obstacle to German penetration towards the Ukraine. Germany and Italy as arbitrators rejected this claim as hostile to Germany, but gave so much territory to Hungary as to leave Ruthenia sadly maimed, but well adapted to form a basis on which to found the creation at the expense of Poland and Russia of a Ukrainian State under German control. Russia, thus menaced, was further weakened by the obvious tendency in France to regard the pact of 1935 with the Soviet Government as obsolete ; France had rejected the offer of M. Litvinoff on September 2 to discuss means of implementing the agreements between that power and France and Czechoslovakia. The new danger to Poland revealed by the agreement of Italy to support Germany in the matter of Ruthenia resulted in the consolidation of relations between Poland and Russia, thus offering both a greater possibility of resistance to German aggression to which both Hungary and Rumania were expected to show at least benevolent neutrality.

The dangers of the new diplomacy were manifest. The procedure of a personal visit by the Premier unaccompanied by Lord Halifax to Herr Hitler ran plainly counter to the whole principle by which foreign policy was

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conducted by the Foreign Secretary under the control of the Premier and the Cabinet with the approval of the King, and subject to the general control of Parliament, and with fidelity to the principles asserted by the ministry at the general election of 1935. The Premier was exposed to personal pressure by an autocrat who was unrestrained by dislike of war and instead a believer in its necessity and in the destiny of Germany. On his return, he could indeed have been repudiated by his colleagues, but at what a risk! The country at a critical moment would have been without an effective ministry; the Premier might have felt compelled to dissolve to test public opinion; had he merely resigned, the ministry would have been so weakened in the country that a dissolution would have been necessary to give a fresh mandate. In the circumstances it was indeed remarkable that even Mr. Cooper should have resigned, especially as it was his insistence on mobilisation of the navy that had induced Herr Hitler at Munich to make sufficient appearance of concession to allow Mr. Chamberlain to accept there terms which he had just rejected as impossible at Godesberg.

The control of the Premier over the party was signally exhibited by the vote which concluded the discussions on October 6, for almost the whole of the party rallied to him, and agreed to allow the House to remain in recess until November, despite the certainty that in that period the good faith of Germany would be put to the test. No doubt it was fortunate for the ministry to be exempt from criticism during the period in question, when the idea of an independent Czechoslovakia was dispelled for good and the creation of an obedient vassal State was carried out, without either British or French protest.[1]

[1] In Feb. 1939 it was admitted that Mr. Chamberlain's settlement at Munich had left the Sudeten Germans who had been loyal to Czechoslovakia

This surrender was followed by the intimation that Signor Mussolini's intervention at Munich had earned him the right to a visit by the Premier with Lord Halifax to Rome in January 1939, together with the acceptance as operative of the agreement of April 16, 1938. This involved the sacrifice of the assurance then given that the coming into force of the agreement was dependent on a Spanish settlement, whereas, while the Spanish Government had made due arrangements under League supervision for the evacuation of all its foreign volunteers, Signor Mussolini had withdrawn only 10,000 infantrymen of eighteen months' service, was maintaining his airmen and technicians, and was determined not to allow the defeat of General Franco. So one-sided a state of affairs aroused comment in the Commons, but the Premier refused to modify his intention to visit Rome, even when the Anglo-Italian accord just operative, which included the assertion on both sides of the maintenance of the *status quo* in the Mediterranean, was rudely violated by demands in Italy, fostered by the Government, for French concessions of territory in Nice, Corsica, and Tunis as well as the surrender of Jibuti and the grant to Italy of a share in the control of the Suez Canal.

(iii) Imperial Relations

The supremacy of the Crown in all matters affecting the oversea territories of the Crown was strongly upheld by William IV, who was even rash enough to denounce his ministers for their advice in the direction of conciliation in Canada, and to threaten to have them impeached. The Queen was content to allow the ministry a free hand, and the introduction of responsible government into Canada by

without the right to leave the annexed territory; this must rank with the violation of pledges to the Assyrians as one of the worst acts of British foreign policy. For the inevitable destruction of Czechoslovakia in March 1939 and its sequel see Chap. XVI, § 5.

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Lord Grey,[1] through the instrumentality of Lord Elgin, was accepted by the Commons, despite the doubts of Mr. Gladstone, though only by use of proxies was Lord Elgin's action in assenting to the Rebellion Losses Bill saved from censure by the Lords. For a time the Commons showed a certain amount of interest and readiness to intervene during the period before 1867. Upholders of the rights of property, including that in slaves, combined with admirers of constitutional rights to protect Jamaica in 1839 from the effort of Lord Melbourne to suspend the legislature in order to permit of effective reforms; this action, which all but caused a change of ministry, postponed reform in considerable measure for a quarter of a century. Opposition speakers again prevented Lord Grey from including federal clauses in his great Act for Australian government in 1850. But the new constitutions of New South Wales and Victoria were readily accepted and enacted with modifications by Parliament in 1855. The formation of the Dominion of Canada was left entirely to the ministry, Parliament showing not a spark of interest in this creation of what was in effect a new Kingdom, though Lord Derby's fear of United States resentment forbade the grant of that style. The Commonwealth of Australia was founded with hardly any sign of interest from Parliament, except in the point of the appeal to the Privy Council,[2] with regard to which the Australian delegates ingeniously engaged Liberal sympathy with them in an alleged reluctance of the ministry to give full scope to Australian aspirations.

Indian affairs, after the accession of the Queen, were seldom treated as acutely controversial. Even the Indian Mutiny raised little party feeling, though the Commons

[1] *Colonial Policy*, i. 200 ff.

[2] Keith, *Responsible Government in the Dominions* (1912), ii. 787 f.

was ready to support any effort of the ministry and in the end readily passed the Act of 1858 to confer the immediate government on the Crown. No difficulty would probably have arisen in the matter but for the fact that the indiscretion of Lord Ellenborough [1] in revealing his censure of Lord Canning's attitude towards Oudh gave critics an opportunity for attacking the ministry, though his resignation weakened the force of the attack, which was finally repelled by the hint that, if it were successful, the Queen would grant Lord Derby a dissolution of Parliament which no one desired to face. The actual Bill suffered attack in Mr. Disraeli's hands largely because of his proposals as to the mode of constituting the Council of India, which had to be discarded, but that was only a matter of detail. What raised far greater excitement in Parliament was the issue of the Royal Titles Bill, which was passed in 1876 in order to allow the sovereign to assume the style of Empress of India. The ground of the feeling in Parliament was not so much objection to the use of the title in India, but the fear that it might diminish the importance of the style of Queen, and even so it is not very easy to recapture the feelings which prompted Lord Hartington among others to oppose.[2]

Acute difficulties arose only in regard to policy in Afghanistan, on the one hand, and South Africa on the other. In both cases Mr. Disraeli's ministry was sharply attacked in Parliament, and the Cabinet was far from unanimous. The Commons under Mr. Gladstone's régime accepted the policy of retirement from Afghanistan as promised, and acquiesced in the retention of the Transvaal annexed in 1877. But in the latter case it would have been well had it pressed on ministers, when in power, the

[1] Monypenny and Buckle, *Disraeli*, i. 1540 ff.
[2] *Ibid.* ii. 779 ff.; Fitzmaurice, *Granville*, ii. 159-63.

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policy they had advocated in opposition. As it was, the retrocession of the Transvaal had to be accepted as well as Lord Derby's further concessions of 1884. In the war in the Sudan the position of the ministry suffered most heavily from the destruction of General Gordon; the suggestion that Mr. Gladstone had special responsibility can no longer be maintained. Lord Hartington must bear at least equal responsibility, and Sir E. Baring also erred.[1] But the ministry was saved from defeat only by 14 votes, and its early destruction was assured in view of its wholesale loss of prestige.

Parliament sanctioned the Boer War, and it acquiesced in the terms given in 1902 at Vereeniging to the burghers in the field. It accepted also, not without Liberal protests, the dangerous policy of Chinese labour for the mines which was to prove so potent an election cry in 1906. The power of the ministry to effect vital ends by reliance on the prerogative was shown to the full in the period following the victory at the elections. The ministry decided to accord responsible government to the Boer colonies. But to do so by Act of Parliament would mean complete failure in the House of Lords, for the Conservative leaders, inspired by Lord Milner, showed complete blindness to the necessity of conciliation of the overwhelming Boer majority, against which Lord Milner's land settlement schemes in favour of English immigrants were powerless. It was found, however, that the grant could be made under the prerogative, and it was thus made effective.[2] The policy, of course, was approved by an overwhelming majority in the Commons. Its success paved the way for the formation of the Union of South

[1] Keith, *The British Cabinet System*, pp. 496 f.; Holland, *Devonshire*, i. 407 ff.; ii. 8 ff.

[2] Spender, *Campbell-Bannerman*, ii. 238 ff. The writer pointed out the legal possibility.

Africa, to which Parliament gave assent by the South Africa Act, 1909. Opposition came only from those Liberals who held that Parliament should not sanction a colour bar as regards the franchise and membership of Parliament.

The development of Dominion status showed in the most striking degree the unfettered power of the ministry to deal with the prerogatives of the Crown. At the Peace Conference of 1919 [1] the British Government secured the acceptance by foreign powers of the view that the King should be represented separately for his great Dominions, and the grant by the League Covenant of equal membership of the Dominions with foreign States in the League. In like manner at the Imperial Conference of 1926 the British Government accepted the doctrine that the United Kingdom and the Dominions were equally autonomous States in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations.[2] This momentous partition of the Commonwealth was not even submitted to Parliament for discussion by the ministry, and was only brought before that body by the action of a private member. In like spirit the separate diplomatic representation of the Dominions was promoted, and at the Imperial Conference of 1930 [2] full effect was given to the doctrine that the King could be directly advised by his Dominion Governments, and that his representative therein should be chosen and removed by the Dominion Government at its pleasure. Parliament next year was presented with the Statute of Westminster to give legal effect to the abolition of all fetters on Dominion authority, and it was

[1] Keith, *The Dominions as Sovereign States*, p. 60.

[2] *Ibid.* p. 307.

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made clear to it that its assent was expected without substantial change on the ground that the measure represented an agreement between Empire Governments which must not be departed from. In the like manner the royal abdication of 1936 was dealt with by Parliament not as regards the Dominions on its authority, but in the manner decided by their Governments.

The case of Ireland in this period was of special interest. The desperate struggles over Home Rule in 1886 and 1893, renewed in 1912–14, might have been expected to have repercussions after the war, and in fact Parliament showed deep concern from the Irish rebellion in 1916 in the relations between the two countries and in the endeavour to decide the issue by the Government of Ireland Act, 1920. Nonetheless it accepted in 1921–2 the complete change of policy which resulted in the Irish treaty of 1921 and the creation of the Irish Free State, though in both houses of Parliament some voices were raised to deplore the departure from principles once asserted to be paramount.[1] Parliament in like spirit accepted the wholesale revision of the treaty in 1925 in favour of Eire, agreed in 1937 to the acceptance of the new Constitution of Eire with its elimination of the King from all but external functions in respect of that State, and approved the agreement of April 25, 1938,[2] by which Mr. Chamberlain consented to surrender all British rights of use of Irish territory in time of peace or war without obtaining in return even a pledge of Irish neutrality in a British war. Nor was the ministry criticised by its supporters when it was revealed that Mr. De Valera could not contemplate any aid to Britain in war, unless Northern Ireland were surrendered, and that he regarded partition

[1] Pakenham, *Peace by Ordeal*; H. Harrison, *Ireland and the British Empire.*

[2] Eire (Confirmation of Agreements) Act, 1938.

as a complete barrier to true friendship between the countries.

In interesting contrast is the case of India. The decision taken during the war to give India gradually self-government was elicited by the important services rendered by India to the Allied cause and by recognition of the fact that the principles for which the Allies were fighting precluded the refusal to India of the right to attain autonomy. But the effort to carry this into operation by the Government of India Act, 1919, was hotly contested, and still more energetic was the hostility shown in the ranks of the supporters of the Government to the Bill of 1935 to extend widely the range of self-government and to create a federation of the provinces of British India and of the Indian States. Opposition was carried by the Duchess of Atholl and four other members to the unusual extent of refusing the Party Whip, and a strong effort to convert the ministry to less daring courses was made through the National Union of Conservative and Unionist Associations, whose meetings were marked by an activity long unknown. On the other hand, the ministry could count on both Liberals and Labour members to support its plans, and it carried thus its Act through both houses with no serious losses in the process, and indeed with some improvements. Apart, however, from matters so far-reaching as these, relations with India are left by Parliament to the discretion of the Government, even in those matters which still appertain to the British Government and which do not naturally fall under the control of the responsible ministries in the Indian provinces. Thus the vast powers of paramountcy over the rulers of the Indian States are still exercised with practically no control of any sort from Parliament.[1]

[1] Cf. Keith, *Const. Hist. of India* (2nd. ed.).

3. *The Dissolution of Parliament*

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It lies with the Cabinet to decide when the time has come when it should seek a new mandate from the electorate, subject only to the controlling power of the Crown, on the one hand, and the necessity of obedience to the law which determines the maximum length of its existence. As is shown elsewhere, Lord Melbourne took over from former precedent the conception that the power to dissolve was a weapon in the hands of the Queen to strengthen the position of ministers whom she liked, but that belief can hardly be said to have persisted after the death of Sir R. Peel. Dissolution then became the method by which a ministry sought to secure a renewal of its authority, either in view of the approaching expiry of the Parliamentary term, then seven years under the Septennial Act of 1716, or because its majority had ceased to be reliable, or because some new issue had appeared upon which it seemed essential to have a fresh mandate from the electorate. There was also the case where a ministry fell and resigned without seeking or obtaining a dissolution, so that the new Government could not hope to carry on comfortably for any length of time without a fresh appeal to the electors.

Dissolution by efflux of time is naturally rare, but that given to Lord John Russell in 1847 was partly accorded on this score. In 1865 the time limit was important, and Lord Palmerston's appeal was largely personal. In 1874 Mr. Gladstone had under consideration also the difficult position in which he had been placed by the errors of his colleagues, which had driven him to take over the office of Chancellor of the Exchequer and had rendered it, very probably, necessary to seek re-election. In 1892 the time limit was of much weight, but Lord Salisbury stressed his desire to secure a message of hope, not ruin to the people of Ireland.

After the reduction of the duration of Parliament by the Parliament Act, 1911, to five years, the element of time weighed heavily with Mr. Baldwin in 1935. It was also very convenient at that moment to take the opinion of the country in view of the dispute between Italy and Ethiopia, but Mr. Baldwin had no difficulty in satisfying himself, if not the Commons, that November was a month which presented special advantages for the purpose of electioneering. It is, however, true that, while no time is really convenient for an election, that is perhaps the least undesirable period upon which to fix. The precedent thus set may easily turn out to have considerable influence in determining four years as the normal duration of Parliament.

Defeat in the Commons on an issue regarded by the Government as vital has caused dissolution or its alternative resignation on comparatively few occasions. In 1841 Lord Melbourne met with a direct vote of no confidence, and dissolved unsuccessfully. In 1857 Lord Palmerston dissolved on his Chinese policy and won a remarkable victory. In 1859 Lord Derby dissolved on the defeat of an amendment to his reform proposals, and was defeated. In 1886 Mr. Gladstone appealed to the electorate on his defeat on the issue of Home Rule, and lost, as Mr. Disraeli had done when he dissolved in 1868 on account of earlier defeats. In 1924 Mr. MacDonald challenged the electorate to pass judgment on his ministry after it had failed to defeat the attack upon it in connection with the withdrawal of the prosecution of Mr. Campbell, and was decisively rejected, not so much perhaps on that score as on that of the Zinovieff letter.

The grant of a dissolution to a ministry which took office on the resignation of its predecessor is clearly proper, even if in certain circumstances it may not be necessary, as was argued by Sir R. Peel when he assumed office in

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1834 after the resignation of Lord Melbourne. In normal circumstances it is desirable for a ministry to secure a definite approval from the electorate and, although Lord John Russell did not desire a dissolution in 1846 and was opposed to frequent elections as making members too subservient to the electors, he obtained one in 1847 when the approach of the termination of the Parliament by the passage of time afforded another ground for action. In 1852 Lord Derby's right to dissolve was patent; without strengthening his majority he could not hope to effect anything useful, and he did gain some strength from his action, though insufficient to maintain him in office. In 1885 Lord Salisbury was reluctant to take over from Mr. Gladstone; he wished him to dissolve and, if not, he asked for assurances regarding aid in passing necessary financial business, and this Mr. Gladstone finally promised in sufficient measure to secure royal pressure on Lord Salisbury to accept office.[1] In this case there was good reason for delay, because redistribution was in progress and a dissolution had to wait until it was complete. It was then accorded. In 1895 we find Lord Salisbury again anxious to make Lord Rosebery dissolve, but yielding to the royal request, but on this occasion with full success. In 1906 Sir H. Campbell-Bannerman accepted the duty of dissolution with complete justification.[2] Once more the issue rose in 1931, for the National Government, though it was not in a minority in the Commons, had every excuse for seeking to obtain from the electors justification for its formation, as well as a mandate to solve as might seem best to it, after investigation, the grave economic and financial difficulties in which the country found itself. The objections then raised by the Labour party, though

[1] *Letters*, 2 s. iii. 678; Holland, *Devonshire*, ii. 63.

[2] Spender, *Campbell-Bannerman*, ii. 206 ff.

natural, cannot be deemed to have had any real justification in law or usage.

The need for a mandate was also the chief motive in the dissolution of 1910. The situation created by the rejection by the Lords of the Finance Bill was so unique that the King was fully justified in expecting that a mandate would be sought; like justification applied to the second dissolution of 1910 to secure such a popular verdict as would make it proper for the King to create peers, if need be, to pass the Parliament Bill. In 1918 there was not merely the consideration that Parliament had long outlived its normal span, and had had to be given by itself extensions of its existence, but also the desirability of securing authority for the ministry which had won the war to show equal skill in making peace.[1] Much more surprising was the famous dissolution of 1923, when Mr. Baldwin decided that he must have a mandate for protection if he were to conduct the affairs of the country effectively.[2] The result was disastrous, and for once it is easy to sympathise with the strictures of Lord Beaverbrook, who was from the first opposed to the move.

In 1880[3] Lord Beaconsfield's decision to dissolve was mainly prompted by successful by-elections, which were assumed to indicate that dissolution would be successful. In 1878 he had refused to dissolve, though success might have been assured in view of his achievement at Berlin in securing a satisfactory peace between Turkey and Russia. His motive was that to dissolve at so early a date when he had a safe majority was not wholly proper. His negation of selfish considerations on that occasion was ill-rewarded by the *débâcle* of 1880, contributed to by failure

[1] Spender, *Great Britain*, p. 580, questions the necessity but does not meet the position.

[2] Spender, pp. 645-7.

[3] Monypenny and Buckle, ii. 1380 ff.

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in Afghanistan and South Africa. The dissolution of 1900 stood in a different position. It was deliberately pressed on Lord Salisbury by Mr. Chamberlain to exploit what then seemed to be the attainment of real victory in the Boer War, which in fact was fated to drag on for over a year later. In 1926–7 Mr. Baldwin could easily have capitalised his success in meeting the General Strike, but he preferred instead conciliation, and in 1938[1] Mr. Chamberlain refused to make political capital out of the popularity achieved at the moment by his apparent success at Munich and laid it down that he did not desire to take advantage of the wave of feeling due to the belief that war had just been avoided or to exacerbate political decisions. He contemplated dissolution only if he found he had lost the support of his followers or if a new issue arose demanding fresh authority to deal with it. The decision was clearly prudent, for the immediate sequel of the Munich arrangements, involving the destruction of Czechoslovakia as an independent State and the persecution of the Jews in Germany, might have resulted in influencing many votes against the ministry if dissolution had then taken place.

In 1922 the position was in many ways unusual. The Government of Mr. Lloyd George had contemplated an appeal to the people[2] and its purpose was suddenly frustrated by the revolt of the Conservative party against continued co-operation with the Premier and his supporters. Mr. Bonar Law, on succeeding to the ministry, then naturally dissolved, but he can hardly be said to have asked for a mandate for anything more exciting than return to normalcy, which at that time no doubt seemed possible and certainly desirable.

[1] 339 *H.C. Deb.* 5 s. 548.

[2] It was negatived by Sir G. Younger, head of the Conservative organisation; Spender, *Great Britain*, p. 634.

One issue has frequently been discussed by statesmen: the signification of by-elections as suggesting or dissuading an appeal to the people. Sir Robert Peel [1] pressed against Lord Melbourne in 1841 the argument that his duty was to resign, because of twenty by-elections in the current Parliament sixteen had gone against him. It might rather have been held that the fact was a signal reason for supposing that it was high time that the electorate should be given the chance of saying what it thought of the ministry. Mr. Gladstone in 1874 [2] frankly avowed that the unfavourable results of by-elections had influenced his decision to try the opinion of the country, and by it to stand or fall. He explained to his constituency [3] that the House of Lords had shown a hostility to his measures which would hardly have been manifested had by-elections confirmed the more distant mandate of 1868. Mr. Balfour in 1905 [4] was outspoken in denying that by-elections could be regarded as a test of public feeling as a whole, and insisted that it lay with the House of Commons alone to decide whether a Government should receive the necessary measure of support to enable it to carry on the duties entrusted to it by the sovereign and expected from it by the country. The position is quite clear. The loss of a few by-elections matters not at all; there are so many local reasons which satisfactorily explain an apparent lack of trust in the ministry. But a series of by-elections is a very different thing; after Munich, in the by-elections [5] all parties were specially interested to see if there could be derived from them any motive for the Government

[1] 58 *Hansard*, 3 s. 817 f.

[2] See 150 *Hansard*, 4 s. 73.

[3] *Ann. Reg.* 1874, i. 2.

[4] 141 *Hansard*, 4 s. 160 ff., 181 f.; cf. in 1904, 132, *ibid.* 1015 f.

[5] The December election in Kinross and West Perth induced by the Duchess of Atholl's resignation to test opinion in Spain gave an unexpected victory to the ministry.

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to dissolve or to hold on for a few months longer in the hope that a successful appeasement, not wholly at the expense of Britain and her allies, might afford satisfactory ground for dissolution.

Another question remains open. Is it proper to refer matters to the electorate in times of great excitement, or should care be taken to submit questions under conditions of relative calm? In 1841 we know[1] neither Lord Melbourne, who on this point differed from most of his colleagues, nor Sir R. Peel cared to place before the people so inflammatory a topic as their food. The reply of Mr. Macaulay[2] was adequate: the only agitation existing was created of and by the people, and later in the same spirit he defended agitation as being the necessary means of securing reform by arousing public feeling against abuses, and as being inseparable from popular government. Artificially to excite agitation no doubt may be condemned, but it must be regarded as strange that Sir Robert Peel[3] was unwilling to let the electorate decide on the repeal of the corn laws. Yet the Reform Act of 1832 had been won only by the resort to continued and effective agitation. Yet there are objections to artificial production of agitation, for the electorate is so large that it may quite fairly be doubted if in moments of excitement it is really capable of passing a sound judgment. In 1900 the khaki election certainly displayed the electors in a rather sorry light,[4] and an election held immediately after Munich would have been fought on the duty to reward the man who had saved the country from the threat of war. The realities of war had been so forcibly brought home to the public mind by the issue of gas-masks, the digging of trenches,

[1] Broughton, *Recollections*, vi. 26 ff.

[2] 58 *Hansard*, 3 s. 817 ff., 850, 887; 51 *ibid.* 821.

[3] *Memoirs*, ii. 163 ff.

[4] Spender, *Campbell-Bannerman*, i. 284 ff.

preparations for evacuation and billeting, and so on, that a reasoned vote would have been out of the question. It would have been very much the same in 1878.

Ought a ministry to refuse to disclose matters for inquietude when it asks for a verdict? The issue is clearly raised by the attitude of Mr. Baldwin in 1936[1] when he explained the causes of the delay in British rearmament which doomed Ethiopia and Austria. It appears that the ministry was conscious in 1934 of the dangers of the comparatively unarmed condition in which Britain found herself, but that it was deterred by by-election results from venturing to take up the issue of rearmament lest the result might be injurious to its position. In 1935, when in fact the ministry did dissolve, it must be admitted that it signally failed to give the country any adequate warning of the position. It can easily be understood how this came to pass. To reveal the danger from failure to provide armaments would forthwith have caused the Opposition to attack the Government on the score of negligence, with results that must at least have been embarrassing. Instead the electorate undoubtedly believed that the ministry was standing out firmly for the doctrines of enforcement of the Covenant of the League of Nations and collective security, and that the country possessed adequate means to give effect to both ideals.

Dissolution in time of war necessarily raises grave issues. During the Great War dissolution would normally have been due in 1915, but patently it was wiser on the whole for Parliament to make use of its plenitude of power, and to prolong its existence. Yet the step taken was a grave one, since it deprived the electorate of its right to pronounce a verdict on the work of the members,

[1] Keith, *Foreign Affairs*, i. p. xlviii; ii. 175-81.

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and the action taken could be justified only on the belief that the prolongation of the life of Parliament commanded the approval of the people. The suggestion was indeed made that in 1916 [1] Mr. Asquith contemplated defeating the intrigue which was devised to deprive him of the Premiership by the devise of a dissolution. It seems, however, clear that the plan was deliberately rejected by the Premier as inconsistent with the public interest. Nor can there be much doubt that national interests must have suffered seriously from the vehemence of the political strife which such a dissolution must have engendered.

A problem which defies solution is when a ministry should feel bound to dissolve in order to obtain a new mandate. The question arose in a very clear form in 1936, when the Government decided to abandon sanctions, and thus departed vitally from the programme which it had stood for in 1935. It arose again on the attitude to be adopted towards Spain, and in 1938 it was suggested that the ministry should test public opinion on the attitude to be adopted towards Czechoslovakia. After Munich the same issue was suggested. The answer given was that the ministry did not feel that it had lost the support of the Parliament, and that a dissolution, while it enjoyed that support and it believed also that of the country, would be unjustifiable. It was insisted also that the number of losses in by-elections up to December 1938 had only been 13 out of 57 since 1935, not a number suggesting any really serious revulsion of public opinion.[2]

Ministries thus retain a wide discretion as to dissolution where the only motive is the question of mandate. In other cases the discretion is limited. How far can a ministry

[1] Spender, *Lord Oxford*, ii. 272; Beaverbrook, *Politicians and the War*, ii. 124.

[2] In Jan. 1939 a dangerous agricultural opposition was met by a change of policy and of the Minister of Agriculture.

safely ignore a defeat? The answer has differed with the passage of time; prior to 1867 ministries did not object to defeats on minor matters, but since then such indifference has become impossible in a normal ministry. A defeat on an amendment to the Address was indeed accepted without resignation or dissolution by Lord Rosebery's Government in 1894, but it was one of exceptional kind, and the acceptance of defeat on the issue of Irish land administration by Mr. Balfour in 1905 was a distinct source of weakness to the ministry. It is different, no doubt, if the ministry be a minority ministry, as was that of Lord Salisbury in 1886; and the Labour ministry of 1924 accepted ten defeats in its short existence without discredit, the Premier having taken the sensible view that the ministry would not normally resign merely on defeats other than a vote of no confidence. The issue on which it did dissolve was essentially a minor point, the Campbell case;[1] but the cause of its attitude was no doubt largely the knowledge that it would shortly be compelled to face a definite disaster on its policy towards Russia, which it preferred to avoid.

The Commons can certainly force dissolution if it so desire. A ministry could not possibly remain in office after a vote of no confidence without a minor revolution. The Commons could refuse all further supply, decline to pass the Army and Air Force (Annual) Act, if it were not already operative, refuse all legislation, petition the Crown for the dismissal of the ministry, and threaten ministers with impeachment, for in the case of the breach of the constitution resort to ancient weapons long disused might well be deemed meritorious as a method of remonstrance if not for serious purpose. Moreover, the Crown would be vehemently denounced if it refused to dismiss, as demanded by the

[1] Cf. Clynes, *Memoirs*, ii. 61 ff., with Spender, *Campbell-Bannerman*, ii. 345 ff.

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Commons. Failure of ministers to dissolve would be a proof of their knowledge that the country would not back them. It is true that, if the session had been some time in progress, there might be authority to spend considerable sums and that borrowing powers might exist, but the possibility of expenditure would be drastically limited by the power of the Comptroller and Auditor-General, and by the fact that the Bank of England would be most reluctant to advance sums which might never be repaid if the Opposition finally achieved power. The Conservative Opposition during the struggle of 1910–14 clearly had before it the possibility of finding itself in office without daring to dissolve, but Mr. A. Chamberlain's enquiries do not seem to have helped him to devise any real method for maintaining a ministry in power, when the Commons is determined to put it out.[1] This theoretical view is confirmed by the facts. Ministries have never attempted to stay in office once they were convinced that the Commons desired them to go.

A ministry which is defeated and wishes to resign instead of dissolving may be placed in a position of difficulty, if there is no Opposition leader willing to take office. On the principle that the royal government must be carried on, retiring ministers can hardly help in the last resort consenting to continue in office. For this there is the precedent of 1851[2] when Lord John Russell's ministry, defeated on electoral reform, desired to resign, but resumed office when Lord Stanley finally failed to form a ministry and no one more fit to do so was found available. Elsewhere has been mentioned Mr. Gladstone's reluctant return to office in 1873[3] when for purely tactical reasons, of great weight, Mr. Disraeli was determined to allow his rival further to plunge

[1] *Politics from Inside*, pp. 258 ff.
[2] *Letters of Queen Victoria*, 1 s. ii. 288 ff.
[3] Monypenny and Buckle, *Disraeli*, ii. 545 ff.

into difficulties before he could place before the electorate the Conservative programme.

The claim that a ministry which is defeated must dissolve, if the Opposition is unwilling then to take office, is one which has been put forward in 1885 by Lord Salisbury and again by him in 1895, but neither claim was admitted, nor could such admission be expected. If a Premier who desires to resign is forced to keep office by the inability of the Crown to secure a successor and by his sense of duty to his country, that is one thing; that he should be forced to dissolve is another and an impossible claim, which in 1905 Sir H. Campbell-Bannerman[1] declined to put forward. No ministry can properly dissolve unless it is prepared to ask the electorate to give it a mandate for some policy or other. In 1885 and in 1895 neither Mr. Gladstone nor Lord Rosebery was in a position to seek a mandate, for neither had a definite policy to put forward, and in the latter year the Liberal party was hopelessly divided on all questions. In 1905 Mr. Balfour, after two long years of manœuvring to avoid a direct issue of policy on the Tariff question, was wholly unwilling to put any policy before the electorate. Redistribution he had toyed with, but that was a singularly unsuitable topic for a dissolution policy, and it was in the interests of the country to place in power a ministry which had definite views to maintain. It may be that it would have been better from the party point of view for Mr. Balfour to fight while in office, but that is a different thing from the claim that it would have been better for the country.

A ministry, therefore, is normally both entitled and indeed bound to resign if it finds that it cannot carry on with useful results to the country, and its action is not subject to the wishes of the Crown. The Aberdeen ministry

[1] Spender, *Great Britain*, pp. 247 ff.

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in 1855, and that of Lord Russell in 1866, would not have resigned if the Queen alone had been in a position to decide, and Edward VII was of opinion that the ministry of 1905 should have dissolved in preference to resignation, nor did he relish his Premier's refusal to meet his wishes in this regard.[1] When a ministry is in office, under modern conditions mere resignation on defeat is not common; it is natural that it should refuse to be dismissed by the caprice of the Commons and demand the ruling of the electorate. The cases recorded are all old: Sir R. Peel in 1846, when defeated on the Irish Coercion Bill, virtually in revenge for his action as to the corn laws; Lord John Russell in 1852, on defeat on the Militia Bill; Lord Palmerston in 1858, on defeat on the Conspiracy to Murder Bill; Lord Russell in 1866, on defeat on reform; the cases in 1885, 1895, and 1905 just discussed; and that of 1922, which is in a class by itself.

Normally resignation takes place after a dissolution has proved to the ministry that it has failed to retain the confidence of the electorate. In this regard there has been an interesting development showing how essential is the support of the voters. The old practice was that the Commons, and the Commons alone, had the right to dismiss the ministry and, when a dissolution had taken place, it was proper for the ministry to meet Parliament at an early date and take its verdict. In 1868, however, an important innovation took place. Mr. Disraeli held that it would be most in keeping with the public interest and with the dignity of the ministry that it should accept the verdict of the electorate and not wait for a defeat in Parliament before resigning. The advantages of such a course to the country were obvious.[2] The new ministry could be formed and could prepare a policy to be announced in the royal

[1] Lee, *Edward VII*, ii. 189 ff.

[2] Monypenny and Buckle, ii. 433 ff.

speech from the throne instead of the existing ministry putting forward a programme on which defeat would be assured whereafter the new ministry must be created. Yet, cogent as the reasons were, we find Mr. Gladstone in 1874 still, under the influence of the practice of the past, doubting whether or not he could properly follow the precedent set. Luckily the Queen had no doubts, and Mr. Gladstone agreed. The same course was followed by Mr. Disraeli in 1880, by Mr. Gladstone again in 1886, and by Mr. MacDonald in 1924.

In other cases the failure to resign has been motived by the valid consideration that the will of the electorate has not been so clearly manifested that resignation was due. Lord Salisbury waited to be defeated in 1886 and in 1892, but in neither case was it certain that his opponent would be able to secure an effective majority. In 1924 Mr. Baldwin found himself at the head of the strongest of the three parties, and it was far from clear at first that Mr. Asquith would take the responsibility of uniting with Labour for the purpose of electing the Conservatives; in fact much pressure was brought to bear on him to refrain from such action.[1] Similar hesitation was expected from Mr. Baldwin in 1929, and it seems possible that personal pique at his failure to win the election determined his decision that he would resign at once, on the score that the electors at any rate did not want him and he and his colleagues were determined to get out as soon as they could.

An interesting question arises whether the decision to dissolve is one for the Prime Minister or whether it is essentially one to be determined by the ministry as a Cabinet decision. *Prima facie* the right would seem to appertain to the Cabinet as such, and not to the Premier

[1] Spender, *Lord Oxford*, ii. 342 ff. My view was that he should only act on an agreed basis.

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alone. There is abundant proof that the decision was long always taken by the Cabinet. Lord Melbourne in 1841, on his view of a dissolution as an appéal by the Crown to the electors, was anxious to resign rather than dissolve, since he feared an adverse result and regarded such a happening as an insult to the Crown. But he yielded to the Cabinet preference to dissolve.[1] There is evidence thereafter of regular Cabinet consultation; the allegation in 1868 that Mr. Disraeli secured a dissolution behind the backs of his colleagues is clearly unfair; the Cabinet had generally approved dissolution before he asked for it, and it *ex post facto* homologated what had been done.[2] The most that can be said is that he took full advantage of his position as the mouthpiece of the Cabinet. Mr. Gladstone in 1874[3] did not ignore his Cabinet; he merely informed the Queen that he would propose to the Cabinet that they should advise her, and, when the Queen approved his action, he then obtained unanimous assent from the Cabinet. No doubt we see here the pre-eminent position of the Premier, but the principle that the Cabinet must act is asserted absolutely. In 1895 we know that the alternatives of dissolution or resignation were duly put to his ministers by Lord Rosebery and that the decision to resign was arrived at because the Premier and Sir W. Harcourt presented the amazing picture of complete agreement on a course of action.[4] In 1905, however, Mr. George Wyndham[5] was responsible for the doctrine that the right to dissolve rested with the Prime Minister alone, but Mr. Balfour in fact did not act on this suggestion; instead he accepted the advice of his colleagues to resign,

[1] Walpole, *Russell*, i. 372 ff.
[2] Monypenny and Buckle, ii. 370-4; Gathorne-Hardy, i. 276 ff.
[3] Morley, ii. 486.
[4] Oxford, *Fifty Years of Parliament*, ii. 195.
[5] *Life and Letters*, ii. 505.

not to dissolve, but it is not clear that he was himself really anxious to dissolve, despite the royal preference for that course. Mr. Asquith held decided views on the due course and obtained in 1909 and 1910 for his dissolutions, as had Sir H. Campbell-Bannerman for his in 1906, the assent of his colleagues.

On the other hand, it may be that the Premier now claims the right to decide independently of the wishes of his colleagues. But we have no evidence of this before 1935. It is far from likely that Mr. Lloyd George claimed the power in 1918; he must have consulted Mr. Bonar Law at least as the essential link of the War Cabinet with Parliament. That Mr. Baldwin [1] decided on a dissolution in 1923 largely on his own judgment is beyond dispute, but that he did not formally obtain Cabinet assent is not certain. In 1924 Mr. Clynes has made it clear that the decision was that of the Cabinet after discussion.[2] Of 1929 nothing is known, but it is clear that in 1931 the decision must have been taken by the National Government Cabinet and could not have been the work of the leader who, however, was the head of an infinitesimal party in the Coalition. In 1935,[3] however, we have the assurance of Sir John Simon that the decision whether there should be an immediate general election, and if so at what date, rested with the Prime Minister, and it is possible to find corroboration for this in the language of Mr. Baldwin himself, and on October 6, 1938,[4] Mr. Chamberlain seems to have indicated a like view of his powers. If so, the innovation cannot be regarded as in itself desirable, and it does not accord with the practice in the Dominions, where the rule that a dissolution should be asked for by the Cabinet as such has often been enforced by refusal to grant a dissolution unless so advised. This is

[1] Spender, *Great Britain*, pp. 643-5.
[2] *Memoirs*, ii. 63.
[3] *The Times*, Oct. 18, 1935.
[4] 339 *H.C. Deb.* 5 s. 548.

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recorded in Canada in 1856 and in 1927, when Mr. Lang in New South Wales could not induce his Cabinet to agree to dissolution he had to resign and obtain a commission to appoint a new ministry before he could secure the Governor's assent to the advice now tendered by his Cabinet.[1]

In certain cases it is possible for a Government to avoid the unpleasant choice between resignation or dissolution, although some action for which, on the principle of ministerial solidarity, it must accept responsibility is disapproved by the Commons. There is a convention that the ministry may by acceptance of the resignation of a peccant colleague purge itself of his offence. The best known case of the success of such tactics is that of Lord Ellenborough's resignation in 1858 [2] in order to aid the ministry in its difficulties arising out of his unwise publication of his censure of Lord Canning; the ministry *inter alia* did not feel called upon to justify his action. This was rather mean, seeing that Mr. Disraeli among others had passed as proper the despatch, but there is no doubt of their success. In 1864 Mr. Lowe [3] brought trouble on the ministry, which was attacked on the score that the reports of the Education Department had been manipulated before laying before Parliament. The Government was prepared to defend him, but he preferred to resign, thus excusing the ministry from serious notice of the censure passed on this action. Instead he demanded an enquiry which exonerated him, and the vote of censure was rescinded. In 1873 Mr. Gladstone was brought into more serious trouble by irregularities in the management of Post Office business, but he met the point by changes of office, himself taking the Chancellorship of the Exchequer, though that brought him himself into the

[1] Keith, *The Dominions as Sovereign States*, p. 355.
[2] Monypenny and Buckle, *Disraeli*, i. 1542 ff.
[3] Fitzmaurice, *Granville*, i. 425 ff.

difficulty that he probably forfeited his seat by acceptance of office, and ultimately led to his dissolution of Parliament.[1] Of later examples the most important are those of Colonel Seely [2] on account of his erroneous handling of the Curragh incident, of Mr. Birrell [3] on account of the Irish rebellion in 1916, of Mr. A. Chamberlain in respect of the Mesopotamian expedition mismanagement in 1917,[4] and of Mr. Montagu in 1922 [5] on the score of his publication without Cabinet sanction of the protest of the Government of India against the anti-Moslem character of the policy of Mr. Lloyd George. The resignation of Sir S. Hoare in December 1935 was more obviously tactical, as a means of saving the ministry from public resentment of its action in view of the mandate it had received at the last election, and his speedy readmission to the Cabinet proved that he was not really regarded by the ministry as substantially to blame.

A different device to save a ministry is the acceptance of a proposal for the appointment of a Committee or other form of enquiry. There are obvious objections to such acceptance, and the Aberdeen ministry refused to accept that of Mr. Roebuck regarding the administration of the Crimean War. But, when Lord Palmerston took office, he felt that he could not refuse to give effect to the proposal, though it cost him the resignation of Mr. Gladstone. In the case of the failures of the Dardanelles and Mesopotamian campaigns the appointment of Special Commissions was preferred, but the results in either case did not go uncriticised. Their appointment, however, undoubtedly served the purpose of tiding over the position. In 1936 the widespread rumours of anticipation of the income tax change in the budget led to the resort to a judicial Com-

[1] May, *Const. Hist.* i. 84 ff.
[2] Spender, *Lord Oxford*, ii. 44 f.
[3] *Ibid.* ii. 213 f.
[4] *Ibid.* ii. 294 f.
[5] Speech at Cambridge, March 11, 1922.

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mittee of enquiry with statutory powers under the Tribunals of Inquiry (Evidence) Act, 1921. The result was the resignation of Mr. Thomas, which completely exonerated the ministry from implication as such with his grave error of judgment.[1] There is no doubt that the procedure in this way had great advantages over that by a Commons Committee in the case of the alleged Marconi share scandals. Though the report of the Committee enabled the ministry to avoid serious criticism, the fact that the vote thereon was a party vote deprived the public of the satisfaction which could have been derived from a more judicial enquiry.[2] The action of the House of Lords[3] thence arising involved a decidedly more dispassionate view of the conduct of Lord Murray, who as Master of Elibank and Chief Liberal Whip was under unfounded suspicion of having acted imprudently as regards the party funds in his charge.

4. *The Cabinet and the Opposition*

As we have seen, the Opposition forms an essential element in the system of Cabinet government. It is recognised as such by the whole system of responsible administration, and its style as Her Majesty's Opposition was insisted on by Mr. Disraeli. In the Dominions the logical step of providing a salary for the leader as not less important than a minister was adopted many years before the plan was accepted in the Ministers of the Crown Act, 1937.

As a result of the principle it is an essential part of the work of the ministry to arrange business with the Opposition, and this is carried out by the co-operation of

[1] *Parl. Pap.* Cmd. 5184.
[2] Cf. Spender, *Lord Oxford*, i. 361 ff.; Oxford, *Memories*, i. 207 ff.
[3] 15 *H.L. Deb.* 5 s. 412 ff.

the Whips on either side, or in matters of grave importance by communications, oral or written, between the leaders themselves or important ministers and Opposition chiefs. The principle is adopted that, apart from legislation promoted by the ministry, the time of the Commons should largely be given to issues which the Opposition desire to raise. When in 1896 reforms were made in the financial procedure of the Commons, the aim was largely to allow the Opposition to select those questions on which they desired to press points. It is usually possible to secure by give-and-take the putting to the best purpose of the time of the house and the avoidance of needless late sittings, which not merely weary members, but are subject to the grave disadvantage that the inadequate reports in the press of the debates in Parliament ignore the work then done almost completely. As will be seen, the effective use of devices for closuring debate depends largely on co-operation; if it is forthcoming, the essential clauses of a Bill will be effectively discussed; if not, time may be thrown away on unimportant detail and important issues evaded.

Apart from the day-to-day conduct of business there is a tendency to work together on important issues in order to find a compromise. The business of the change of the royal title in 1876 to accord notice to India might clearly have been arranged privately if the ministry had not neglected an obvious duty. The passing of the Roman Catholic Relief Act, 1829, was achieved by compromise, while the repeal of the corn laws and the final settlement of the franchise issue in 1867 were achieved by a complex interplay of counter-suggestions.[1] Mr. Gladstone sought and obtained a limited [2] measure of aid in seeking to deal with the disorder in the Commons arising out of the

[1] Morley, *Gladstone*, iii. 257. [2] Monypenny and Buckle, ii. 1472 ff.

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organisation of obstruction by the Irish members in 1881. In 1886 his desire to settle the Irish question by agreement unhappily was defeated and the question was left deeply to trouble British politics. In 1906 the Liberal ministry was extremely anxious to remove the question of Education from party strife by a generous settlement, but then and in 1908 clerical intransigence led to the miscarriage of the plan. What was more unfortunate, all the attempts to solve by accord the issue of the relations of the two houses in 1910–11 failed, as did the efforts to compromise over the issue of Irish Home Rule in 1912–14. On the other hand, the Franchise question was solved by accord in 1917–18.

The position of the Opposition when it has a majority in the Lords is naturally potent in forcing compromise. Mr. Gladstone had to make concessions on his Irish Church Bill in 1869, on the Education Bill of 1870, which brought much unpopularity on Mr. Forster by reason of his generosity to the Church of England, and on his Ballot Bill. Part of the unprogressive hue of Lord Palmerston's ministry of 1859–65 was no doubt due to his working understanding[1] with Lord Derby, though that consideration can be overestimated; Lord Palmerston may easily be excused at his age in seeking to rule in peace.

On fundamentals, of course, there cannot be compromise. The Liberals could not agree to acquiesce in the policy of the Queen and Lord Beaconsfield in the issue of Turkey and Russia in 1877–8,[2] and Lord Derby's resignation showed the strength of their case. Sir H. Campbell-Bannerman[3] considered carefully but rejected the contentions put forward by Mr. Chamberlain in support of his proposal that the Liberals should refrain from any

[1] Guedalla, *Gladstone and Palmerston*, p. 150.

[2] *Letters of Queen Victoria*, 2 s. iii. 187 ff. [3] Spender, i. 232 ff.

dissent likely to encourage President Kruger in his attitude towards the Uitlanders in the Transvaal. Mr. Balfour declined to accept the pressing offers of Mr. Lloyd George for a coalition in 1910 to effect certain desirable ends.[1] It is difficult not to feel that the Irish issue could have been wisely solved by accord, and it may be admitted that party feeling is capable of developing into an end in itself; equally on the Royal Titles Bill of 1876 and the Government of Ireland Bill of 1912 the speeches of the leaders of the Opposition seem to display a deliberate desire to ignore fundamental considerations.

There are, however, spheres in which co-operation can be arranged without raising party issues. Mr. Balfour was ready to aid in matters discussed by the Committee of Imperial Defence during the Liberal régime and served thereon in war-time before the Coalition of 1915.[2] But even in war party considerations cannot be expected to disappear; that Coalition was forced by intimation of open criticism over the resignation of Lord Fisher and shortage of shells, and the Opposition leaders had been, behind the back of the ministry, in touch with Sir John French. The consultations of the Labour Government with Conservative and Liberal leaders in 1931 seem to have resulted in weakening the Labour position and in aiding the fall of the ministry, though it seems that if the ministry had been ready to make concessions on unemployment relief it might not have found resignation unavoidable.[3]

In cases of minority Governments, of course, co-operation with one at least of the Opposition parties becomes

[1] Dugdale, ii. 72-80; Chamberlain, *Politics from Inside*, pp. 191 ff., 283 ff., 576 f.

[2] The Opposition leaders agreed to the secret arrangements as to Russia and Constantinople and the promises to Italy: Spender, *Lord Oxford*, ii. 129; Churchill, *World Crisis*, 1915, pp. 298 f.

[3] Clynes, *Memoirs*, ii. 195.

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essential. That between Liberal Unionists and Conservatives in 1886–92 was effective because those who had deserted Mr. Gladstone on Home Rule were men who were in the main not essentially in sympathy with their chief's steady progress towards democracy and who had not, like Mr. Chamberlain, to jettison principles to work with Lord Salisbury. The fact that that leader was prepared to serve under Lord Hartington is significant of his recognition of the fundamental similarity of his views and those of that chief.[1] In 1924 and 1929–31, on the other hand, Liberal co-operation with the Labour party was never effective, because Liberals inevitably rejected the fundamental doctrine of socialisation which Labour [2] held.

One field of activity, even if embarrassing to the ministry, is unquestionably of great advantage to the State. It is the duty, as it is to the advantage, of the Opposition to stress every instance of unjust treatment of the public by governmental departments or officers, whether it be due to excess of zeal by the police, as in the case of Miss Savidge, or to careless treatment of the poor by unemployment or public assistance authorities, or oppressive treatment of members of the defence forces, or instances of profiteering or other misconduct against the public interest. When these issues are brought up, the Commons reveals itself in its best aspect, as the guardian of the rights of the people, and ministers of experience hasten to meet their critics, and by investigation and explanation to turn away wrath, as when out of the incident of Miss Savidge's questioning by the police came about the Royal Commission on Police Powers and Procedure.[3]

The power of the Opposition imposes duties. Its

[1] Holland, *Devonshire*, ii. 166 ff. (1886); 179 f. (1887).

[2] Mr. Clynes' references to Liberals in 1924 and 1929–31 are hostile: *Memoirs*, ii. 61, 188.

[3] *Parl. Pap.* Cmd. 3297 (1929).

obligation to accept office, if it deliberately defeats the ministry, is in principle clear and undisputed; the special circumstances of 1873, when Mr. Disraeli raised objections to acceptance, are discussed elsewhere. But it is clear that an Opposition which defeated the Government and yet refused itself the burden of governing, would soon lose all public support. Even if there was no question of having actually defeated the Government, as in 1905, the duty of taking office on resignation was clearly accepted with unanswerable grounds by Sir H. Campbell-Bannerman:[1] "Personally I am strongly against refusing office: it would be ascribed to divisions or to cowardice. It would slump our stalwarts, who do not care for or understand tactics."

[1] Spender, ii. 192.

PART IV

PARLIAMENT

CHAPTER VI

THE HOUSE OF COMMONS — FRANCHISE AND MEMBERSHIP

1. *The Representation of the People*

THE Reform Act of 1832 effected a vital change in the position of the right to vote for members of Parliament. It swept away the worst anomaly of the old régime, the existence of rotten boroughs under the control of a few persons, 86 being wholly or in part disfranchised. It gave representation to large towns hitherto without representation, and increased the representation of populous counties. It reduced the qualification for the franchise, though it still differentiated between borough and counties. It aimed at reducing the cost of elections by providing for the registration of voters, the increase of polling districts, and the limitation of polling hours.

For the counties which represented in 1832 the relatively sound element of the system, the Act[1] retained the old freehold qualification of forty shillings, but in order to remove abuses restricted it to cases of occupation, or estates by inheritance; where the estate was for life only and not in occupation, the vote was given where it was acquired by marriage, marriage settlement, devise, or promotion to a benefice or office. To these were added four new qualifications: freehold for life not in occupation nor acquired as above, of the annual value of £10; copyhold,

[1] 2 & 3 Will. IV. c. 45: there were Acts for Scotland (c. 65) and Ireland (c. 88).

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or land held on any other tenure but freehold, of the same value; leasehold of like value originally created for at least sixty years; and leasehold of £50 value, for at least twenty years. Finally, an occupation franchise of £50 was conceded.

In the boroughs the old medley of franchises disappeared in favour of occupation as owner or tenant of any house, warehouse, counting-house, or other building, which separately, or jointly with other land in the same city or borough, was of a clear annual value of £10. Residence for six months preceding registration in or within seven miles of the place where the vote was claimed, was enjoined, and the claimant must have been rated and have paid his rates. As survivals from the old régime were left the forty-shilling freehold qualification in towns which were counties, and the Act continued the vote to freemen of chartered towns conditional on that position being obtained by birth or servitude and on residence within seven miles of the borough.

The reform was valuable in that the franchise was now given to the middle classes as opposed to a small body of peers and other great landholders. But it left boroughs where corruption could flourish and for the working classes it did nothing whatever, while some quite considerable places had been overlooked in the allocation of seats. There was thus considerable cause for dissatisfaction among the workers, who had hoped to secure a share in political power as the result of the reform movement which their exertions had helped to bring into being, and the Chartist movement seemed to satisfy it by the programme of manhood suffrage, equal electoral districts, vote by ballot and annual Parliaments, payment for members, and the abolition of any property qualification for membership of the Commons. The proposals were too advanced for the

times, and, though eagerly pressed in the country, the movement did not recover from the fiasco in 1848 of its monster petition, the names appended to which were often found to be fictitious. With the collapse of the movement there came the possibility of fairer consideration of the weakness of the existing system, and Lord John Russell in special busied himself with projects for reform. In 1852 he would have conferred the vote on the skilled artisan class, which had gained nothing from the reforms.[1] In 1854 [2] his proposals tended towards the better representation of minorities and the giving of greater weight to the educated and thrifty classes. The latter idea attracted Mr. Disraeli in his suggestions in 1859,[3] when also he contemplated the assimilation of the borough and county franchises. Next year [4] Lord J. Russell proposed to lower the franchise, while preserving intact the position of the smaller boroughs. In 1861 the reduction of the county franchise to £10 and of the borough franchise to £6 was mooted, in vain ; and in 1864 and 1865 alike the Commons refused to be moved. Lord Palmerston was quite unwilling for any change, and Mr. Gladstone got into trouble for saying in 1864 that "every man who is not personally incapacitated by some consideration of personal unfitness or of political danger is morally entitled to come within the pale of the constitution". Very different was the view of Mr. Disraeli,[5] who declared in 1874 that "the distribution of political power in the community is an affair of convention, and not an affair of moral or abstract right and it is only in this sense that we can deal with it".

Yet the advance to fuller representation desired by Mr. Gladstone was not to be accomplished directly by his

[1] 119 *Hansard*, 3 s. 252, 971.
[2] 130 *ibid.* 491 ; 131 *ibid.* 277.
[3] 152 *ibid.* 966.
[4] 156 *ibid.* 2050 ; 159 *ibid.* 226.
[5] Monypenny and Buckle, ii. 650.

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party. The death of Lord Palmerston followed on the election of 1865, at which there had certainly been no pledge of reform, and Earl Russell, who succeeded him, and Mr. Gladstone felt justified in seeking in 1866 to secure a measure which would lower the county occupational franchise to £14, and the borough franchise to £7 annual value, increasing the electorate by 400,000 voters, of whom half would be working men. But the project offended many supporters of the ministry who had been elected under the influence of the Palmerstonian régime, who did not believe in reform, whose seats would be affected by redistribution, and who at least would be faced with an early general election to give effect to the reforms. The ministry was also attacked for not proposing redistribution, and, when this omission was remedied by another Bill, it was found necessary to agree to consolidate the measures. The *coup de grâce*, however, was administered by an amendment that the borough franchise should be based on rating, not rent.[1] The ministry decided despite royal objections on resignation, and Lord Derby had to take power.

Public opinion resented the fall of the ministry, and a great meeting in Hyde Park on July 23 demanded reform, brushing away the police, who tried to shut the park by ministerial orders to the people. Meetings in various parts of the country demanded reform, and the new ministry at the cost of the resignation of Lords Carnarvon, Cranborne, and General Peel decided that it must deal with reform. The plan enfranchised a householder who paid rates in the counties and occupiers rated at £15 in the counties, while, to counter this addition of voters, a system of dual voting was proposed for more highly qualified voters. The result was expected to be that the

[1] Monypenny and Buckle, ii. 171 ff.

working classes would have the vote, but the extra votes given to the middle classes would consolidate their voting power. But the Bill fared badly at the hands of Mr. Gladstone, whose followers were in a majority in the Commons, for Mr. Lowe and the malcontents who had formed the Cave of Adullam and had defeated the Bill of 1866, refused to change sides. A whole series of proposals cut out all the safeguards and the fancy franchises, and, as Mr. Disraeli was determined to pass a Bill, he had no alternative save to proceed with the transformed measure. The result [1] was to give in the boroughs household suffrage with a qualifying period of a year, and to create a lodger franchise of £10 annual value unfurnished; in the counties a £12 occupation franchise was conceded, based on ratable value instead of rent as in the former £50 franchise which remained, while the £10 franchises of the Act of 1832 were reduced to £3.

The Bill of 1866 had contemplated the redistribution of 49 seats; that of Mr. Disraeli was content with 30, but as finally passed the number dealt with was 52. The important changes were the giving of seats to the Universities of London, Edinburgh, and Glasgow, and the addition of seats to larger boroughs and counties. Seven members taken from England were given to Scotland, in which the franchise was remodelled on like lines to England. In Ireland the borough franchise was reduced from £8 based on rating, as established in 1850, to £4, the county franchise of £12 dating from 1850 was left unaltered, and lodgers were treated as in England. The House of Lords made one important change by way of experiment. It required that in Manchester, Birmingham, Liverpool, and Leeds, each given three seats in lieu of two, voters could vote for two members only. This device displeased Mr. Bright on the

[1] 30 & 31 Vict. c. 102; for Scotland and Ireland, 31 & 32 Vict. cc. 48, 49.

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natural ground that it meant that in practice such towns, in lieu of having two representatives in Parliament of one political colour, would have in effect but one. On this ground it disappeared in 1885, but not before Mr. Chamberlain had introduced at Birmingham the causus system in order to secure that the full number of seats should be won, with important results for electoral organisation later.

The result of the new measure was to create a genuine democracy as regards the borough franchise, while leaving that for the counties limited. The borough electorate was roughly doubled; in Birmingham it was tripled, in Leeds and Blackburn quadrupled, but the lodger vote proved important in London only, for registration was difficult. In the country areas agricultural workers, small traders, and miners normally could not qualify. What was much more serious was the fact that the small boroughs in rural areas were far too strongly represented; it has been calculated that an aggregate population of half a million in such boroughs had more seats than ten millions in the metropolitan, midland, and northern boroughs, and the Lake District counted for as much as the mining and shipping areas of the north-east. It is easy to understand how Conservative principles were reinforced. But at least the working classes had the power if they so desired to return members to the Commons to represent their views there.

There remained obvious abuses. Open voting had been defended not only by Conservatives, who appreciated the power of intimidation of tenants thereby given to landowners, but also by Lord Palmerston and many Whigs. The election of 1868, however, revealed abuses both in the country and in the towns and made the case for the introduction of the ballot overwhelming. In 1869 a Committee

was appointed to examine the mode of conducting Parliamentary and municipal elections with a view to restrain bribery and intimidation and to limit expense, and this body in 1870 definitely recommended secret voting. In 1871 a Bill to provide for the ballot was passed in the Commons but not by the Lords; a proposal to put the expenses of the returning officer on the rates was rejected in the Commons on the score that it would add to local costs, though in the boroughs, until the Act of 1832, the constituencies had paid. In 1872 the Ballot Act was reluctantly passed by the Lords, provision being made for the preservation of a counterfoil of the voter's ballot paper, which would be available in case of controversy arising. The importance of the measure was undoubted; the Irish peasantry were thus liberated, and Mr. Parnell[1] with just prescience saw in the Act something more important than the Irish Church Act or the Land Act, since it opened the way to the creation of an Irish party independent of any English party.

The Act of 1867 definitely rendered untenable any attempt to confine the franchise to any special class and rendered illogical the limited rights of the people in the counties. In 1872 Mr. Trevelyan enunciated the clear principle that better rural representation would assure more attention to the needs of rural districts; in 1873 he proposed to extend the householder franchise to the counties, but, while Mr. Gladstone sympathised, Mr. Lowe and Mr. Goschen dissented. Mr. Disraeli resisted in 1874 the proposal on the ground that it must involve the addition of a million voters, must be accompanied by redistribution on the basis of equal electoral districts, and was therefore too large a reform to add to those of 1867. Mr. Trevelyan

[1] O'Brien, *Parnell*, i. 56. For Disraeli's hostility, see Monypenny and Buckle, ii. 538-40.

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persisted in demanding the equalisation of the franchise and in 1877 he had the support of Lord Hartington, and from 1876 the Reform League, which had been dissolved in 1869, was revived in order to secure the demand of the agricultural population for the right to vote. Mr. Gladstone was definitely converted, and Liberal candidates at the general election of 1880 placed equalisation of the county and borough franchises in their programmes.

A preliminary reform was first dealt with. Proceedings at the election had shown the existence of serious corruption. The Ballot Act, 1872, had been expected to destroy bribery by rendering it impossible to trace whether the voter who had been bought had kept faith, but the expectation was not realised, nor in any case did the Act affect bribery by results. It was found by the Commissions which enquired into the allegations that more than half the voters in Sandwich and Macclesfield had been corrupted and both boroughs were disfranchised. Oxford was among the places whose members were disqualified. Matters were not apparently much better than in 1841, when the Parliament was styled the bribery Parliament. The electors of St. Albans between 1832 and 1854 had collected £24,000, and an Act of 1854 tried to improve matters by defining bribery; it failed to deal effectively with the twin evil of undue influence. Disputed elections were dealt with up to 1868 by Parliamentary Committees, the members of which were frankly partisan, and both sides were unable to make a stand against practices which both knew to be carried out by agents. A step in reform imposed, despite judicial protests, on the judges the duty of disposing of such petitions, and the House of Commons was relieved of a duty which it was well aware it systematically performed badly.

The essential remedies, however, were those of the

Corrupt and Illegal Practices Act, 1883, due to Sir H. James, who had had interesting experience of bribery in his own constituency. The Act added greatly to the penalties for corrupt practices; they might include hard labour and fines might reach £200. Treating on the part of candidates was defined to include the providing any meat, drink, entertainment, or provision, with the object of corruptly influencing voters, and it was made an offence for persons other than the candidate to treat voters. Undue influence was defined as the use of force, violence, or restraint, or the infliction of temporal or spiritual injury on any person in order to influence his vote or by duress or fraud impeding the free exercise of the franchise; threats to do forbidden acts were equally struck at. The disabilities placed on candidates reported by the election court as guilty of corrupt practices were increased; a candidate reported as guilty of treating or undue influence or any corrupt practice was excluded from Parliament for seven years and for ever from representing that constituency; if found that he had treated through agents, seven years' exclusion from sitting for the constituency was provided.

Other provisions struck at the expense of elections. Candidates were restricted to £100 personal expenses; they might have only one agent through whom all legal expenses must be defrayed, and paid canvassers were forbidden as well as the conveyance of voters to the poll in hired vehicles. A maximum scale of returning officers' expenses was laid down and the number of committee rooms was regulated. But the expenses of returning officers were not placed on the rates, though Mr. Gladstone would have taken this course had the Opposition not objected; the weight of wealth on the Conservative side rendered the party reluctant to do anything to help their

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poorer rivals. The results were striking: in 1880 the cost of an election with about three million electors was about £1 a head; in 1885 the cost was £780,000 for 5,670,000.

But the vital reform was the enlargement of the electorate. The change of 1867 had shown the value of public meetings; at the Birmingham celebrations in 1883 in honour of Mr. Bright, Mr. Chamberlain stood out for the vote for all fit to use it, equal electoral districts, and payment of members. Lord Hartington, however, questioned the wisdom of including Ireland in the scheme. As introduced by Mr. Gladstone in 1884, the Bill gave the counties the household and lodger franchises, thus adding in England 1,300,000 new voters, over 200,000 in Scotland, and over 400,000 in Ireland. In the boroughs the existing franchises were retained, but the £10 annual value franchise was extended to land held without buildings, and a new service franchise was created to cover those inhabitants of a house who were neither occupiers nor tenants. In the counties the household, lodger, and service franchises were introduced, the £12 occupation franchise was reduced to £10; the 40s. freehold franchise was left, but the £50 franchise of 1832, a Conservative innovation to help landholders, was swept away. The abuse under the 40s. freehold of creating fictitious votes was ended by restricting the qualification to tithe rent charges, and hereditaments acquired by descent, wills, or marriage settlements to the exclusion of other incorporeal hereditaments.

In the Bill redistribution was ignored, though it was explained that a Redistribution Bill would be brought forward next session and a sketch of its contents given. An amendment to refuse approval, unless redistribution were also brought forward, was defeated by a majority of 130; the exclusion of Ireland was negatived by 332 to 137 votes, and the third reading was passed without a

division. In the Lords on July 6 an amendment was carried by 205 to 146 votes demanding that the measure should be accompanied by redistribution proposals. The division no doubt illustrated the power of members of the Lords who seldom otherwise entered the Chamber to override the judgment of more prudent peers. Mr. Gladstone denied the right of the Lords to force a dissolution on anything except the issue of organic change in their powers or constitution, which had not been raised, and would not be raised unless the Lords again rejected the Franchise Bill. The Queen was moved to intervention by a warning from Mr. Gladstone that continued resistance on the part of the Lords would create a demand for organic reform which would be difficult to resist, and she used her influence.[1] She took up the matter with Lord Salisbury, and at last when the Bill had passed the Commons unchanged, the solution was achieved: the redistribution proposals were to be privately shown to the leaders of the Opposition before the Lords had accepted the Franchise Bill, and, if agreed to by the Opposition, the Franchise Bill would be allowed to pass and redistribution carried out on the agreed basis in 1885. The procedure was successfully followed, the party leaders meeting at Mr. Gladstone's house on November 19, and in due course the proposed settlement was arrived at; on redistribution Mr. Gladstone pretended to be shocked by Lord Salisbury's readiness for change and disregard of tradition, and avowed himself the better Conservative. There was indeed in the Franchise Bill itself more than a hint of Conservatism in the retention of the property vote, thus preventing complete similarity of the borough and county franchises and in the leaving plural voting to stand.[2]

[1] May, *Const. Hist.* iii. 38 ff.; Morley, iii. 130 ff.

[2] 48 Vict. c. 3.

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The Redistribution Act of 1885[1] was a far-reaching measure. The Act of 1832 had given England 500, Scotland 53, and Ireland 105 seats. That of 1867–8 reduced England to 495, Ireland to 103, and increased Scotland to 60. The new measure added 12 to Scotland, raising the total to 670. It was found before 1885 that the number of population to members in a borough was 78,000, in a county 41,200, but 79 boroughs with populations under 15,000 each returned a member, and 36 boroughs with populations under 50,000 had two members. This anomalous position was ended. Roughly speaking, one member was to be given to 54,000 population but with latitude for local representation. Thus boroughs with fewer than 15,000 population were deprived of members, those with less than 50,000 were given one: those with over 50,000 and less than 165,000 received two and thereafter one was added for each additional 50,000 population, the counties being dealt with analogously. Ireland remained proportionately over-represented, but the excuse was available that for a prolonged period after Union she had been very gravely under-represented,[2] though it was admitted that it was never any part of the terms of union that the Irish representation should stand unaltered. Greater London now received 62 members in place of 22, though the City was reduced to two.

The change of electorate resulted in very little difference in the composition of the Commons so far as regards social standing of members. In 1860, 108 members were still sons of peers or heirs to peerages; in 1897 there were 51. In 1865 90 members were engaged in manufacturing or mercantile operations, in 1880 112; a very large proportion of

[1] 48 & 49 Vict. c. 23.

[2] In 1821 the Irish population was 32·5 per cent of that of the United Kingdom, but its membership 100 out of 658. In 1901 the percentage was 10·69, membership 103 out of 670.

members still continued after 1867 and 1884 to be drawn from those who had been educated at the public schools or Universities of Oxford and Cambridge. Only in 1906 is the real development of a democratic house to be noted in the introduction of Labour candidates and Liberals of less social standing. Chapter VI.

Mr. Gladstone's preoccupation with the vital Irish issue, which had been made more difficult by the creation as a result of the Ballot Act and the new franchise of a genuine Irish Nationalist party, led to his refraining from initiative in franchise reform. In 1891, however, the party programme adopted in October by the National Liberal Federation at Newcastle demanded abolition of plural voting, payment of members, and the mending or ending [1] of the House of Lords. The programme was too ambitious, and all that could be done in 1893 was to introduce Bills for quinquennial Parliaments, the improvement of registration, and the limitation of electors to a single vote, while in 1893 and 1895 resolutions in favour of payment of members were carried. In 1894 a Bill to reduce to three months the period of qualification for the franchise, and to secure the holding of elections on one day and to abolish plural voting, could not be carried beyond second reading. The Conservative Governments from 1895 to 1905 were naturally indifferent to reform, save that some urged redistribution to destroy the over-representation of Ireland, though reluctant to redistribute in Great Britain where electoral anomalies tended to party advantage. Resolutions, however, on redistribution [2] were brought forward in July 1905, but could not be discussed, as the Speaker ruled, at the instance of the Opposition, that they must be subdivided and discussed each separately in committee. Their purely

[1] Spender, *Campbell-Bannerman*, ii. 172 f.
[2] Ullswater, *A Speaker's Commentaries*, ii. 11 f.

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party character appeared in the fact that small boroughs which tended to be Conservative were to be allowed a member for no more than 18,500 population, while in the counties the number was 32,500, a figure fixed to strike at Ireland.

The Liberal Government of 1906 presented a Bill to abolish plural voting, which passed on third reading by 333 to 104 votes, only to be rejected in the Lords by 143 to 43 on the untenable plea that redistribution should have been provided for. The Lords with equal impropriety rejected the London Government Bill of 1909 which endeavoured to preserve to London residents votes often lost by reason of change of abode in the metropolis, and which proposed to make plural voting illegal in London as it was already in the great provincial towns.

But the Liberal Government was faced with a new problem, which cut across political party affiliations and divided the cabinet itself. The Middle Ages had seen occasional instances of women claiming to exercise the franchise, but the usage had died out before condemned by Lord Coke, and the revival of the claim was the logical outcome of the new doctrine that the vote ought to belong to every person who contributed by labour to the welfare of the community, or made contributions to the public revenue. In 1866 Mr. J. S. Mill presented a petition to the Commons for the removal of the anomaly, and in 1867 he moved an amendment to Mr. Disraeli's Bill, which was lost by 196 to 73 votes; the National Society for Women's Suffrage was then formed, and in 1868 the first public meeting was held in its support in Manchester at the historic Free Trade Hall. An effort to have the legal position clarified, the argument being that the Act of 1867 had merely mentioned "men" and that this term fell under the general rule of including "women" was defeated, the Court of Common

Pleas ruling that women had no status as appellants under the Registration Act.[1]

In 1869 [2] the municipal franchise was given generally to women who had already enjoyed it for some purposes,[3] and in 1870 [4] they were made eligible for school boards under the Education Act of that year. Mr. Jacob Bright unexpectedly secured a second reading for an enfranchisement Bill, but Mr. Gladstone was hostile and the Bill was not allowed to go into committee. In succeeding years not even the second reading could be carried, and an amendment in 1884 to the Franchise Bill was denounced by Mr. Gladstone, and defeated by 271 to 135 votes. Though the Trades Union Congress in 1884 favoured enfranchisement, it was only in 1892 that a Bill was discussed, when the most interesting point was Mr. Balfour's support. On the other hand, the activity of women on the Primrose League, the Women's Liberal Federation, and the Women's Liberal Unionist Federation provided evidence of their interest in, and capacity to deal with, political problems. The Local Government Acts of 1888 and 1894 accepted sex equality in that important sphere, while the grant of the suffrage in 1893 in New Zealand and in 1894 in South Australia suggested that the objections of British statesmen were out of date. In 1897 a Bill passed second reading by a majority of 71, and from 1902 the Commons always had a majority for the principle.

Repeated failures to carry the matter further led to dissatisfaction of a dangerous kind among women supporters, to the use of violence against public property and even the persons of ministers, and to the adoption in prison of the device of the hunger strike, which had to be met by

[1] *Chorlton* v. *Lings* (1869), L.R. 4 C.P. 374. So in 1908: *Nairn* v. *University of St. Andrews*, [1909] A.C. 147.

[2] 32 & 33 Vict. c. 55.

[3] Poor law guardians; 4 & 5 Will. IV. c. 76, s. 34.

[4] 33 & 34 Vict. c. 75, s. 29.

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the plan of release followed by rearrest and detention, with the result of grave exacerbation of feeling on all sides. The Liberal party was divided, but Mr. Asquith in 1908 [1] and 1909 was willing to allow the issue to be raised though he himself opposed it. In 1910, therefore, a Bill was introduced intended to secure the maximum amount of general support; it gave the vote to women occupiers, already entitled to the local franchise; it was carried by 109 votes but sent to a Committee of the Whole House, which meant its failure. Other matters occupied too fully the attention of Parliament to permit of success in the face of the divisions of Cabinet opinion, and the question was only decided in 1918.[2] The step then taken was the outcome of a conference [3] representing all parties under the chairmanship of Mr. Lowther, the Speaker, and the concession, which was deemed to be justified by the service of women in the war, was accompanied by other far-reaching changes.

The Representation of the People Act, 1918, conferred the suffrage on men who were possessed of a residence qualification or a business premises qualification. Residence was fixed at six months, but the vote is not lost because of moving, if there is residence in another constituency in the same borough or county or in one contiguous or separated by not more than six miles of water. London is treated for this purpose as a single borough. Residence is not interrupted by letting a furnished house for not more than four months of the period, nor, under an Act of 1921, by absence for a like period in the performance of duty arising out of an office or employment. The occupation

[1] For Sir H. Campbell-Bannerman's view, see Spender, ii. 213. See also Halévy, *Hist. 1905–15*, pp. 504 ff.; 3 Geo. V. c. 4.

[2] 7 & 8 Geo. V. c. 64.

[3] *Parl. Pap.* Cmd. 8463 (1917); Ullswater, *A Speaker's Commentaries*, ii. 186-99, 203, 226.

of business premises is necessary for six months before the last day of the qualifying period, with similar relaxations as in the case of residence. The value of the land or other premises must be not less than £10 a year. Both franchises are free of any requirement as to liability to be rated or payment of rates.

Women, however, were restricted by certain conditions. The vote was given to women aged thirty or over, if entitled to be registered as a local government elector in respect of the occupation of a dwelling house in the constituency of any value, or of lands or premises of not less than £5 annual value, or in the case of a wife if her husband was entitled to be registered. The position was clearly anomalous, and the demand for equality was put forward with much energy, nor was it easy in logic to defend the maintenance of a position which was clearly illogical. But there was strong exception to further concession, Lord Birkenhead among others objecting, and it was only in 1928,[1] when the Representation of the People (Equal Suffrage) Act was passed, that artificial distinctions were swept away. The responsibility for the measure was unfairly placed by public opinion on Lord Brentford.[2] It is clear that the change was made because Mr. Baldwin had pledged himself to the principle in his election manifesto in 1924 and felt bound to make good that declaration.

The Act of 1918 made provision for naval or military, now including air force, voters, reducing the qualifying period of residence to one month; a special concession was made to those men who had served after age nineteen in the war. The University franchise was retained in 1918 and given to women voters at age thirty or over. Plural voting was restricted by the Act; a man may vote for a residence qualification and for a business premises or

[1] 18 & 19 Geo. V. c. 12.

[2] Taylor, pp. 279 ff.

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University qualification; a woman had the right to vote for an occupation and a University qualification, but this distinction was abolished in 1928. While joint occupation was recognised as entitling those occupying to a vote, not more than two joint occupiers can be registered in respect of the same land or premises unless they are *bona fide* engaged as partners in carrying on their profession, trade, or business in the land or premises. To give a vote the aggregate value of the premises must be proportionate to the number of occupiers.

An important concession was made by the Act of 1918, under which no person is disqualified from registration, or from voting, on the ground that he, or some person for whose maintenance he is responsible, has received poor relief, or its equivalent public assistance. Other disqualifications were left untouched. They include alienage, expressly preserved in the British Nationality and Status of Aliens Act, 1914; idiotcy and lunacy; treason and felony convictions, unless the sentence has been served or a free pardon granted; a person convicted of corrupt practices may not vote at any election for seven years, nor a candidate or agent guilty of certain illegal payments for that constituency for a like period. The disability of a peer to vote was finally established in 1872 in Earl Beauchamp's appeal against the Overseers of Madresfield.[1] The disabilities of revenue, stamp, and excise officers disappeared in 1868 and 1874, those of the police in England and Scotland in 1887, while persons employed by a candidate legally were allowed to vote by the Act of 1918. Returning officers were permitted by the Ballot Act, 1872, to vote to break a tie only. A temporary provision under the Act of 1918 disqualified those who had been conscientious objectors to military service in the war.

[1] L.R. 8 C.P. 252; *Marquis of Bristol* v. *Beck*, 96 L.T. 55.

Registration reforms were introduced by the Act of 1918. Two registers were contemplated, since for economy reduced to one ;[1] each borough and county is a registration area, and the registration officer is either the town clerk or the county clerk ; control of registration was transferred from the Minister of Health, who took it over in 1919 as part of the functions of the Local Government Board, to the Home Secretary in 1921. The duty of registration rests on the officer, who prepares preliminary lists which are published and against which appeal can be brought to the county court, with further appeal on a point of law to the Court of Appeal. The costs of registration are borne equally by the rates and the Exchequer. In the Universities, however, the governing bodies register and charge £1 therefor. Registration is *prima facie* evidence of the right to vote, but the returning officer may exclude any person who is prohibited by statute or common law, *e.g.* an infant,[2] and persons procuring infants to vote are subject to penalty.

Important changes in the form of elections were made by the Ballot Act of 1872, the former nomination at public hustings being replaced by written nominations, each candidate being proposed and seconded by a registered elector ; the names of eight other electors must be affixed as assenting. By the Act of 1918 all elections must be held on one day, namely, the eighth day after the date of the royal proclamation summoning a new Parliament ; it is formally fixed by the returning officer, who is the sheriff, mayor, or chairman of the urban district council, the actual duties being performed by the registration officer as acting returning officer. In a by-election that date must be within nine

[1] Three months residence is required ; 7 & 8 Geo. V. c. 54, s. 11 ; 12 & 13 Geo. V. c. 12, s. 1, sch. ; 16 & 17 Geo. V. c. 9, s. 9, sch. 3.

[2] *Stowe* v. *Jolliffe* (1874), L.R. 9 C.P. at p. 750.

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days in a county, in seven days in a borough, from the receipt by the returning officer of the writ. Polling falls on the ninth day, when the election is contested, from the sixth to the eighth in the case of by-elections. The hours of polling, the places for which are arranged by the local authorities, have been fixed by Acts of 1885 and 1913 as 8 A.M. to 8 P.M., but may be extended to begin at 7 A.M. and end at 9 P.M. on a candidate's request. Two important innovations as to voting were made by the Act of 1918 as amended in 1920; a voter may secure his name being placed on the absent voters' list if he can satisfy the registration officer that, by reason of occupation or employment, he is likely to be unable to vote in the normal manner, and, if he has an address in the United Kingdom, he may send his ballot paper by post, or, if absent from the United Kingdom, his vote may be given by proxy. In the Universities in the case of Scotland voting is by papers supplied by the University and returned by post to the returning officer, who is the Vice-Chancellor of Edinburgh University; in England voters may vote in person[1] or deliver or send papers by post to the appropriate Vice-Chancellor.

To prevent frivolous candidatures, the Act of 1918 provided for a deposit of £150, which is forfeited to the Crown if he does not obtain one-eighth of the total votes polled. This provision has proved useful in practice. The expenses of returning officers at elections, except in the University constituencies, are placed on the Consolidated Fund by an Act of 1919;[2] that of 1918 made them votable by Parliament, but the constitutional objection was raised that a hostile Commons might, by refusing to vote, be able to interpose difficulties in the way of a dissolution on the advice of ministers who had ceased to command their support.

[1] The returning officer may direct to the contrary.

[2] 9 Geo. V. c. 8; 112 *H.C. Deb.* 5 s. 1334.

The Act of 1918 made elaborate provision for redistribution. Generally the measure was based on eliminating as distinct constituencies boroughs or counties with less than 50,000 population, and on giving the status of Parliamentary boroughs to each municipal borough or urban district council with a population of 70,000. A county or borough already returning two members was allowed to keep them, if the population was not under 120,000, but the norm aimed at was one member for 70,000 and each multiple thereof, with an additional member for any surplus not under 50,000. The boundaries of constituencies were made to accord as far as possible with administrative areas. By a separate Act [1] the unit of 43,000 was chosen for Ireland, and only counties and boroughs with under 30,000 population lost representation. The representation of the United Kingdom was increased under these principles to 707, for England was given 528, Scotland 74, and Ireland 105 seats. But the Government of Ireland Act, 1920, reduced the number of Irish seats to 13 for Northern and 33 for Southern Ireland, and the latter were not occupied. The Irish Free State (Agreement) Act, 1922, passed to give effect to the Irish treaty of 1921, abolished the seats for Southern Ireland, leaving the total number of Parliament 615. The representation of Northern Ireland, therefore, accords much more closely than would else have been the case with its due proportion according to population.

Single-member constituencies were definitely perpetuated under the Act of 1918, there being only exceptions in the case of certain [2] boroughs and of the Universities. Oxford and Cambridge have each two seats; London one; the combined Universities (Durham, Manchester, Liver-

[1] 7 & 8 Geo. V. c. 65.

[2] 10 in England; 3 counties out of 5 in Northern Ireland, which has one University seat.

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pool, Leeds, Sheffield, Birmingham, Bristol, and Reading) have two; there is one Welsh University seat, and three for the four Universities of Scotland. The London boroughs have 62 seats; other English boroughs, 193; the counties of England, 230; Welsh boroughs, 11; Welsh counties and Monmouth, 24; Scottish boroughs, 33; counties, 38. There are very great discrepancies between the populations represented, but redistribution has been definitely admitted to be necessary. The total electorate in 1937 reached 27,948,139, 14,772,288 being women, in England; and 3,167,854, 1,669,240 being women, in Scotland.

2. *Proportional Representation*

In 1917–18 there was debated keenly the issue of proportional representation, and much stress was quite properly laid on the extreme inaccuracy of the representation accorded to various parties in Parliament in comparison with the actual votes cast in their favour. There is no doubt that majorities have often been obtained in the Commons which were out of all proportion to the votes cast in the country. The Conservative majority of 1900 was about 134, and on the strength of it a very important Education Act and grave changes in the system of liquor licensing were carried through, which would have been impossible if the majority had been under twenty as the figures of votes cast would have suggested. The vast Liberal majority of 336 in 1906 would have been more effective and more satisfactory had it been about ninety. In 1918, 526 seats went to the Coalition ministry of Mr. Lloyd George and Mr. Bonar Law, but in 600 contested seats the votes for the Coalition were 5,180,257 to 5,608,430 for Opposition candidates. In 1922 the Conservatives won about 344 seats, with 5,500,382 votes; National Liberals, with 1,673,240

votes, 53 seats; Liberals, with 2,516,287 votes, 61 seats; and Labour, with 4,241,383 votes, 142 seats. Yet in 1923 the Conservatives, with 5,538,824 votes, secured 258 seats; Labour, with 4,438,508 votes, 191 seats; but the Liberals, with 4,311,147, only 158 seats, thus definitely losing the position of the chief Opposition wing. In 1924 again the Conservatives, with 412 seats, represented but 19,000 voters by each member; the Labour party, with 151, 36,000; and the 40 Liberals, 73,000. The Government was in an actual minority of votes cast against the two Opposition parties. In 1929, on the other hand, the Conservatives polled about 270,000 votes over the Labour party, but had only 260 to 287 or 289 seats. In 1931 the Conservative party should have had about 270 seats in place of 473, the Liberals 110 in lieu of 68, and the National Labour members would have numbered 50 instead of 13. In 1935, for 405 contested seats about 11,792,332 votes went to the Government; for 141 seats, 8,325,260 votes were cast for Labour, and 17 Independent Liberals polled 1,377,962 votes. In the southern counties of England in 79 seats 836,573 Labour votes were thrown away, while 2,068,323 Conservatives secured 77 seats, two going to traditional Liberal candidates. But 760,000 London voters won 22 seats, and in the West Riding the votes which gained nothing in the south gave 24 seats. There is not the least doubt regarding the capricious character of the results of the polls, and the enormous discrepancy between the size of certain constituencies accentuates the different value of the votes cast.

Efforts to modify the results of this position have been considered, but little effected. The Conservative amendment of 1867, which gave voters in a few large constituencies one vote less than the number of seats to be filled, was not of great value, and disappeared in 1885. In that year Mr. Gladstone defended as sound the principle then adopted

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of replacing the historic double-member constituencies by single-member constituencies on the ground that it permitted the representation of separate interests and pursuits and thus in some degree provided opportunity for minorities. To provide actually for minority representation he thought difficult, artificial, and too novel. It may be admitted that the difficulties of the system were less apparent, when there were but two main parties opposed to each other, though it remained absolutely accidental whether the returns of members accorded with the votes cast taking the country on the whole.[1] The appearance of the Labour party led at once to a serious problem, for the voters might return a Conservative, though there were far more Liberal and Labour voters than Conservative voters, and in most cases a Liberal or Labour member would have expressed better the will of the majority of the electorate in that constituency. This became notable in the election of 1906, when there were thirty three-cornered fights, and several minority candidates were chosen.

Though some system of proportional representation had been advocated by Mr. Mill, who had popularised the idea brought forward by Mr. Hare in 1859, the matter was only taken up seriously by the Liberal Government after 1906. A Royal Commission was chosen in 1908[2] to investigate the schemes to secure a representative character for popularly elected legislative bodies, and reported in 1910. It recognised as the most plausible among proportional representation schemes the system of the transferable vote but preferred the alternative vote of which there was recent experience in Queensland and Western

[1] In 1886 Gladstonians numbered 1,344,000, Liberal Unionists, 397,000, Conservatives, 1,041,000; with the Irish vote the ministry may have had an actual minority; Holland, *Devonshire*, ii. 164.

[2] *Parl. Pap.* Cd. 5163 (1910).

Australia. Under it the voter arranges the candidates in order of preference; when the votes are counted, the candidate who has received the smallest number of first preferences is eliminated, and his second preferences are distributed, and so on until one candidate is left with an absolute majority. The report did not command any wide enthusiasm, but in 1918[1] a definite effort was made to secure the adoption of proportional representation in view of the great extension of the franchise then determined upon. Proportional representation had been provided for in regulations made by the Insurance Commissioners in 1913 and 1914 for the election of committees under the National Insurance Act of 1911, and had been prescribed by Parliament for the election of school authorities under the Education (Scotland) Act, 1918, and had figured in the Government of Ireland Act, 1914, which never became operative. It was proposed in 1918 to apply the system to the University constituencies, where two or more members fell to be elected, and in addition commissioners were to be appointed to prepare a scheme for the election of about a hundred members for constituencies to return three or more members. The prospect, however, found little enthusiasm outside a narrow circle of experts and the House of Lords, and, as the scheme was to be subject to approval by both houses and the Commons would have none of it, it was dropped. If in 1920 it was pleased to apply it to the elections to be held in Northern and Southern Ireland, that was merely a sign of the special importance attached to securing representation for the Protestant minority in Southern Ireland. The fate of the system in Northern Ireland was unfortunate; the hostility of the Government towards it remained marked and it was duly swept away in 1929. On the other hand, while the

[1] 106 *H.C. Deb.* 5 s. 63 ff.; 173 *Com. Journ.* 91.

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Government of Ireland Act was superseded by the Constitution of the Irish Free State, proportional representation was retained, and despite criticism it has survived in the Constitution of Eire.

The objections to the system are of various kinds and of differing value. The fact that it is not possible to fit by-elections into the scheme is of minor importance and should not be pressed. The idea that the system is complicated has reference, on closer analysis, simply to the work that has to be done by the enumerators. There is no real difficulty in explaining to an average elector what the meaning of preferential marking of the ballot paper is, and there is no necessity of compelling an elector to mark preferences, if he simply desires to record a single vote. An elector who cannot understand the matter so far is clearly unfit to exercise the suffrage, and, if he is deterred by the difficulty, he had better refrain. The objections to compulsion for preferential voting are doubtless serious; the severe check sustained by the Government of the Commonwealth of Australia at the Senatorial election of 1937 was widely ascribed to indignation at compulsory voting for a long list of candidates, which led to electors simply marking the first three and thereby giving many votes to the Labour party.

It is objected to the system that it tends to increase the control of the party machine over voters. They have to be instructed how to vote so as to produce the best results, and thus lose whatever initiative they may have. Again, it is suggested, in preparing a list of candidates the tendency must be to draw up one with safe moderate men only in it, lest the fact that a man of individual views is included may prejudice the claim of other persons; the Duchess of Atholl, for instance, might not be acceptable as one of a team of three or five standing in a constituency

with seats of either of these numbers. It is, however, possible that it might be desirable to put in the list a candidate of some outstanding interest, so that, if votes for him failed to elect him, they might go to his colleagues by reason of the reflected glory shed by his ability upon their mediocrity. Nor in any case is it made out that the party hold would be seriously increased by the new system.

Nor, again, is there much substance in the plea that in large constituencies electioneering would be very difficult and impose an undue burden on candidates, or the kindred objection that the contact between member and electors would be weakened. The obvious solution for the problem is that the team of candidates would divide up the constituency into districts, each working one, and expecting thence his first preferences, second and third preferences, for instance, being given to his colleagues. Similarly he would be expected to keep in touch only with the electors in his special area. In the time of the actual election the candidates might readily aid one another by taking meetings outside their normal areas, just as under the present system a strong candidate will often spare time to help a friend in an adjacent constituency.

The further argument that it tends to the creation of many small parties and that Parliament might thus be burdened by the presence of groups, whose lack of cohesion would endanger the formation of a strong Government, is a widely held belief, and it is supported by the argument that in Germany proportional representation led to the multiplication of parties, with the result that in the long run Government became enfeebled and the opportunity was given to enemies of democracy to seize power. But it must be noted that the system of proportional representation operated in Germany was wholly different from that proposed in Britain, and that the argument from German

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experience is without special value. Circumstances in Holland, Belgium, Denmark, Norway, Sweden, or Switzerland are so different from ours that argument thence is rather useless. In the Irish Free State the existence of proportional representation can hardly be said to have created groups to any dangerous degree. Moreover, the election of 1938 gave a clear majority to Mr. De Valera's party, showing that the system was not doomed to barrenness as regards the creation of effective Governments. Prior to that the system had probably well served the State by preventing any party having overwhelming strength, a condition of affairs which, in the heated atmosphere of Irish political life, might easily have led to unfortunate results. Though Mr. De Valera, on December 2, 1937, was inclined to regard the abolition of the system as necessary because it had failed to give him a clear majority at the election on the issue of the new constitution, he can hardly be regarded as having been motived by anything more serious than annoyance at his then failure. There is no evidence whatever that the result then did not give clear expression to the divided state of the public will. In the case of Tasmania the system has now worked with general approval since 1907.

There are obvious arguments for the system. It is the theory of democracy that all wills of rational beings should be treated as nearly equally as possible, and proportional representation must certainly give results far more nearly expressing the views of the majority of voters than the present system. Those who doubt the principles of democracy are no doubt justified in deprecating its full acceptance, but comparatively few of the opponents of proportional representation are prepared to admit that they dislike it because it is the logical outcome of democratic theory. Moreover, the system has the valuable result of enabling a voter to cast a vote for a candidate with whom

he is in general sympathy, and then to indicate, if he desires, which other candidate he would wish to see elected if his favourite is beaten. The fact that the electorate frequently fails to poll is largely the outcome of the feeling that neither a Conservative nor a Labour candidate has any attractions; there are very many people whose views are alien from the rigidity of either orthodox Conservatism or the Labour policy as enunciated by the intelligentsia which dictates it. Again, the system does offer greater possibilities for men of independence to stand for Parliament with a modest chance of election. No doubt a House of Commons made up of Independents would be unworkable, but, having regard to the enormous strength of party which is an inevitable feature in British conditions, the existence of a few Independents is certainly of no danger and, instead, of much value. Most of them can command the ear of the Commons and exert influence of no mean character. Possibly too the system would diminish the importance of the unattached voter, whose vote is apt to be swayed by emotion of the moment rather than by considered reflection. In the large constituencies which proportional representation demands, conflicting emotions arising from the same facts might tend to cancel one another.

A very strong plea for the system as necessary under British conditions has been put forward from the Liberal standpoint by Mr. Ramsay Muir.[1] His argument stresses the dangerous tendencies of the two-party system at the present day, when the tyranny of party has grown so great that there is no possibility under normal conditions for moderate principles to prevail. It is true that the Conservative and the Labour parties tend to stand against each other, and that they are coming to be based on fundamentally different economic principles, differing thus very

[1] *How Britain is Governed* (1930).

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seriously from the position when Conservatives were opposed to Liberals. Both parties then shared a common basis of economic principle, the faith in capitalism, and vital strife between them on that most important of all issues was ruled out. Now it may be argued there is urgent need for a moderate party which can hold the balance, which can prevent the occurrence of violent oscillations, and maintain continuity in the conduct of public affairs. Such a party would prevent the risk which does exist of violent change, or efforts at change, followed by reaction, and such a party cannot be hoped for, unless proportional representation is brought into operation to terminate the tendency of the two-party system to extremism. This centre party is needed to provide support for the doctrine, not that the individual should be eliminated from activity as Socialism demands, but that he should be encouraged to shape his activity not selfishly but in such manner as to procure the greatest measure of common good.

To this argument an able reply [1] has been made. No great weight indeed attaches to arguments from Germany or Spain against the theory that a three-party system would make for stability. But it is contended that proportional representation would either give a Government with a majority over the other parties, which would not alter the existing position, or leave the House of Commons without a party able to stand by itself, so that there must be a coalition Government or a minority Government dependent on arrangements, and both these possibilities are bad. A minority Government is condemned by British post-war experience; it has to substitute manœuvre for principle; the supporting party controls the position; the ministry must postpone principles in which it believes for others in which it hopes to gain support; its measures lack the

[1] H. J. Laski, *Parl. Govt.* pp. 75 ff.

cardinal virtues of courage and consistency. The indictment is severe, and it is possible to take a less condemnatory view. The ministry, it may be argued, is certainly condemned to postpone those principles for which there is not a majority in the Commons, but it is certainly not compelled to put forward principles in which it does not believe; it is optional for it to take office and it should do so only if it can count on enough support to carry measures which are in themselves satisfactory, and which interpose no obstacle in principle to later advances of a more thoroughgoing type. It must no doubt compromise, but compromise may be better wisdom than forcing through an extreme policy, for the British character seems to have an affection for compromises, which may be exasperating but which seems to be ineradicable. To those, of course, who regard the system of capitalism as a fatal obstacle to human happiness, compromise with the evil is intolerable, but that doctrine is not yet proved and certainly it is not axiomatic.

Nor is a coalition Government anything very objectionable. It is always desirable, if possible, in war, for the simple reason that the task of fighting the enemy should not be rendered heavier by that of keeping political rivals at bay; what is unfortunate is that many coalitions are brought about by conditions resulting in an absence of sincerity of confidence, as in the case of the coalition of 1915. Coalitions for the purpose of effecting definite objectives as in the case of M. Blum's administration of 1936 seem to be sound in principle. The members thereof may coalesce, as in the case of the coalition of 1931, whose members virtually form one party, or they may sever, as did the members of the coalition of 1916. But there seems no reason to deprecate coalitions as such, if they correspond to a real need.

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On the other hand, British opinion may prefer to run the risk of the existence of two parties only, despite the exacerbation of their differences thus produced. One reason for this preference is the fact that a strong Government is usually believed to be the natural result of the present system. That in fact it does produce such Governments in an unexpected degree is shown by the figures above given, and it may be added that on proportional representation it is possible that the ministry of 1886 would have been in a minority, while that of 1895 would have been barely sustained. Yet this is after all accidental, and, if there should be an interruption in the chapter of accidents, the system might come under condemnation and proportional representation would come into favour.

A further advantage urged for it is that under it there would be much larger scope for the promotion by private members of Bills of an important but comparatively uncontroversial kind, such as are apt as matters stand to be left aside, because they have no political value. Certainly one result must be the readiness of the Government to allow much greater freedom of voting to individuals, and to accept amendments to its measures instead of forcing them through unchanged by the use of the Whips. That would add to the interest of Parliament to the average member, who is conscious that he is mainly required to vote and not to speak, still less to think for himself.

For the time being, however, proportional representation is out of the bounds of political possibility. The Labour party is definitely hostile, as was seen in 1924, when it joined the Conservatives in opposing a Liberal proposal to this effect, and even in 1929–31 when there was some measure of co-operation with the Liberal party, it would concede only preferential voting, and that fell with the other governmental proposals at the fall of the ministry

in 1931. That the Conservative party will be converted to the theory seems far from likely.

One of the Labour proposals in the ministry of 1929–31 was the abolition of the University constituencies. The Liberals on the whole shared this point of view, and there is in fact little or nothing to be said for the giving of a special University suffrage. Moreover, it is contrary to principle that men should sit in Parliament on the strength of such votes if they have been rejected by ordinary constituencies, as was the case with Mr. Ramsay MacDonald in 1935, and still more if they have denounced in earlier days the University representation as undesirable. A refusal by one of the members for the Scottish Universities in December 1938 to meet his constituents to discuss the foreign situation illustrates well the irresponsibility of the members, and their remoteness from the realities of political obligation.

3. *Members and Conditions of Membership*

The general rule allows electors the widest freedom in the choice of those who should represent them, and the disqualifications now existing have been reduced to a minimum, and are based on grounds whose weight cannot seriously be disputed. Alienage disqualifies absolutely.

Infancy as a disqualification existed by the law of Parliament according to Sir E. Coke, and the rule was made statutory by 7 & 8 Will. III. c. 25, later extended to Scotland and Ireland, and no exception has been known since the Reform Act of 1832. Lunacy was a potential disqualification, for the constituents might petition[1] the Commons to have the seat declared vacant on the ground that they were not represented, or a question of privilege might be

[1] *Alcock's Case*, 66, *Com. Journ.* 226.

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raised if a certified lunatic voted.[1] But a more effective mode of meeting the case was devised by the Lunacy (Vacating of Seats) Act, 1886. The Speaker must be informed of the committal or reception of a member as a lunatic, and must then obtain a report from certain authorities on his state of mind; this is done six months later, and, if he is still of unsound mind, the reports are laid on the table and the seat is vacated.

Peerage is a disability as regards peers of the United Kingdom and of Scotland, but an Irish peer, not having been elected a representative peer, may sit for any seat in Great Britain.[2] Efforts to avoid the disability of election by failing to apply for the writ of summons to the Lords have not succeeded,[3] and, if a member who succeeds to a peerage should fail to apply, the house itself may take notice and order the issue of a writ to fill his place.[4] All efforts to enable peers to sit in the Commons by statute have failed.

Clergy of the Established Churches of England and Scotland are disqualified as well as those of the Roman Catholic Church,[5] though the latter exclusion is anomalous. Clergy of the Welsh Church were set free on the taking effect of disestablishment under the Welsh Church Act, 1914. In 1870[6] clergy of the Church of England were enabled to divest themselves of their orders.

Disqualifications on the score of office are now much reduced. The returning officers for elections are disqualified from membership for the place where they act in that capacity, but under the Representation of the People Act, 1918, this does not apply to the nominal returning officers,

[1] *Stewart's Case*, 162 *Hansard*, 3 s. 1941.
[2] 39 & 40 Geo. III. c. 67, art. 4.
[3] *Lord Wolmer's Case, 1895*; 33 *Hansard*, 4 s. 1058, 1728.
[4] *H.C. Pap.* 272, 1895.
[5] 41 Geo. III. c. 63; 10 Geo. IV. c. 7, s. 9.
[6] 33 & 34 Vict. c. 91.

when as is usual their work is done by the registration officers.

In regard to other offices exclusion is statutory. The Act of 6 Anne c. 41 provided that no person should be capable of being elected who accepted any new office created after October 25, 1705, made the holders of certain specified offices ineligible, and disqualified persons holding pensions from the Crown during its pleasure. It also required that any person accepting an old office must vacate his seat, but might be re-elected, and these provisions have been extended according as new offices have been created with or without disqualification. Acceptance occurs when overt expression is given of intention to accept an offer duly made. The rule has excluded from eligibility for election persons whose position is akin to that of Civil servants, including members of such bodies as the Commissioners of Woods and Forests, except only the Minister of Agriculture, who since 1906 is a Commissioner *ex officio*, the paid members of the Charity Commission, the Irish Church Temporalities Commissioners, the Welsh Church Commissioners and their officers, the paid officers of county councils, and others. There are excluded, of course, the Comptroller and Auditor-General as well as officers of customs and excise. The exclusion of judges, which existed at common law, is statutory and the principle has been applied to county court judges, Scottish and Irish judges, Scottish sheriffs and sheriff-substitutes, if salaried, stipendiary magistrates, recorders for their boroughs, paid chairmen of Quarter Sessions, commissioners of metropolitan police, and others connected with the administration of justice. Governors and deputy governors of colonies are still excluded, as were members of the Council of India from either house and now advisers in the India and Burma offices, a fact which curiously enough precluded use of the services of Lord

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Cromer and terminated the services of Lord Inchcape.

A peculiarly troublesome case was that of Secretaries of State and Under-Secretaries. The Government of India Act, 1858, provided that not more than four Secretaries of State and four Under-Secretaries might sit simultaneously, and there were heavy penalties for doing so. In 1864, when it was found that there were five actually sitting as Under-Secretaries, the law was strengthened to render ineligible to be elected any Under-Secretary while four were sitting. In 1917 the Air Force (Constitution) Act made the number five, in view of the fresh appointment, and in 1926 it was increased to six. The Ministers of the Crown Act, 1937, dealt with the issue in a different way, these ministers no longer being signalled out for special attention, as will be shown elsewhere.

Offices to be held in Parliament were specially provided for when created by the Acts establishing the ministries, as in the case of the President of the Board of Education in 1899, but re-election on acceptance of office was deemed essential on the ground that electors were entitled to express their view on the propriety of their member accepting ministerial office, while the Opposition insisted that there should be permitted in this manner full opportunity for the expression of views on governmental policy, such by-elections being regularly made the occasion for spectacular contests if there were any uncertainty regarding the political complexion of the seat. This rule had many embarrassments for ministries, for it might prove impossible for a suitable minister to be taken into the Government lest he lose his seat, and on the other hand some promising aspirants had their careers ruined for a time or altogether by defeat at by-elections, as in the case of Mr. Masterman or Mr. Hills, or in Scotland, Mr. Kidd. In 1916[1] an Act

[1] 6 & 7 Geo. V. c. 56.

was passed to deal with the case of the ministerial reconstruction of 1915–16, for during war it was desired to limit by-elections fought on policy issues, and in 1919 [1] a wider measure was proposed to abolish re-election on taking office. But, as passed at the desire of the Commons to which the ministry yielded, exemption from re-election was for a period of nine months after the proclamation summoning a new Parliament, the idea being that in that time the right of the Prime Minister to constitute his team free from the trouble of by-election considerations might well be conceded. In 1926 [2] the complete exemption from re-election was accorded, not without dissatisfaction on the part of those who thought that no real case had been made out for the abolition of an ancient practice.

Even under the older régime there was a statutory exemption under the Representation of the People Act, 1867, for ministers who accepted transfer from one office to another. But this did not apply to a minister who, holding one office, took on another, as did Mr. Gladstone in 1873 when he assumed the Chancellorship of the Exchequer,[3] so that he probably became then under the obligation of re-election, a fact which helped him to decide on dissolution, and in 1914 when Mr. Asquith took over the Secretaryship of War in view of Colonel Seely's error in dealing with the Curragh incident, he at once secured re-election.

In certain cases of lesser ministerial office statute had already given the right to sit without re-election, as in the case of the Secretaries to the Treasury, to the Admiralty and to the Boards, now Ministries, later created as well as to Under-Secretaries of State, and the Act of 1919 gave the right of not more than three ministers without portfolio to sit in the Commons while receiving salary. The present

[1] 9 Geo. V. c. 2.

[2] 16 & 17 Geo. V. c. 19.

[3] May, *Const. Hist.* iii. 85 f.

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position is laid down in the Ministers of the Crown Act, 1937, which schedules the offices which may be held without depriving their holders of right to sit in the Commons, and provides that, if persons are appointed in excess of these numbers, their election shall not be voided, but they may not sit nor vote, unless holding office before the excess occurred, until by death, resignation or otherwise a vacancy is created, the penalty for sitting or voting being a sum not exceeding £500 a day. It appears that there is nothing to prevent a person holding a ministry in excess of those allowed to sit being elected, for as regards non-eligibility to election the Act of 1864 has been swept away.

Commissions in the militia and reserve forces were expressly made compatible with sitting in Parliament by statute.[1] From the disqualification of pensioners, holders of Civil servants' and diplomatic pensions were expressly freed in 1869.[2]

Any person directly or indirectly undertaking a contract or commission on account of the public service was disqualified from election or sitting by the House of Commons (Disqualification) Acts of 1782 and 1801. The disqualification was vague, and during the Great War it was made clear in the Finance Acts that it did not apply to contributions or subscriptions to public loans. On the other hand, in *Sir S. Samuel's Case*[3] it was held by the Privy Council on reference that it applied to raising a loan for India. The House of Commons Disqualification (Declaration of Law) Act, 1931, confined the operation of the rule to the furnishing or providing of money to be remitted abroad and merchandise to be used in the public service.

A person adjudged guilty of treason or felony is eligible

[1] 6 Anne c. 41, s. 27 deals with military and naval commissions; 7 Edw. VII. c. 9, ss. 23 (1), 36; for air officers, 7 & 8 Geo. V. c. 51, s. 4.

[2] 32 & 33 Vict. cc. 15, 43.

[3] [1915] A.C. 514.

only if he has served his sentence or received a free pardon. That was decided [1] in *John Mitchel's Case*, and is laid down in the Forfeiture Act, 1870, but does not apply if the sentence inflicted is not accompanied by hard labour and does not exceed twelve months. The house may, of course, expel any person who has been convicted of misdemeanour or felony, but that does not prevent re-election. A bankrupt may not be elected, nor, if he is already in Parliament, may he sit, and his seat falls vacant in six months unless his bankruptcy is annulled, or he is discharged therefrom with a certificate that his bankruptcy was not due to misconduct.[2]

A candidate found guilty of committing, or knowing of the commission in his interest of, corrupt practices may never be elected for the constituency in question, nor, for seven years, for any other constituency. The latter disqualification applies for the constituency only if the corrupt practice was the unauthorised act of an agent, or if the candidate himself has committed, or known of the commission of, illegal practices, while, if an agent is guilty, the candidate is debarred from that constituency during the Parliament for which the election was held.[3]

The disqualification of women was removed by the Parliament (Qualification of Women) Act, 1918. It had existed at common law.

A further disqualification existed in regard to oaths. The law existing at the accession of Queen Victoria demanded the taking of oaths of supremacy, allegiance, and abjuration; the former repudiated the spiritual or ecclesiastical authority of any foreign prince or prelate, and the doctrine that princes deposed or excommunicated by the

[1] 9 I.R.C.L. 217.
[2] 46 & 47 Vict. c. 52, ss. 32, 33; 53 & 54 Vict. c. 71, s. 9.
[3] 46 & 47 Vict. c. 51, ss. 4-6, 11.

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Pope might lawfully be killed, the last repudiated the title of the descendants of James II. For Roman Catholics, and them only, an acceptable form of oath had been provided by the Roman Catholic Relief Act, 1829, which abolished for all persons the necessity of making a declaration against the doctrine of transubstantiation, imposed in 1679. In 1858 [1] the three oaths were united into one, but the words "on the true faith of a Christian" which served to exclude Jews were not removed until 1866,[2] though in 1858 [3] and 1860 [4] provision had been made which allowed Jews to omit these words by virtue of a resolution in individual cases in either house or under a standing order of the House of Commons. Quakers, Moravians, and certain others were exempted by various Acts, and by the Promissory Oaths Act, 1868, were allowed to affirm in a prescribed form. The penalty for sitting and voting was reduced in 1866 to £500 for each occasion. The case of Mr. Bradlaugh has been alluded to elsewhere. His refusal to take the oath and claim to affirm instead was first ruled illegal, and his effort to take the oath, administering it to him himself, was held unlawful, but in 1886, under a new Speaker, he was permitted to take the oath in the ordinary way, and in 1888 [5] the Oaths Act settled the matter for good by allowing an affirmation by all who objected to taking the oath because they had no religious belief or because their religious belief forbade them to take oaths.

One disqualification on property grounds was allowed to remain on the statute book until 1858. Knights of the shire had been required by 9 Anne c. 5 to have land worth £600 a year, burgesses land worth £300; in 1838 this was modified to allow the total to be made up by real, personal,

[1] 21 & 22 Vict. c. 48.
[2] 29 Vict. c. 19; altered 31 & 32 Vict. c. 72.
[3] 21 & 22 Vict. c. 49.
[4] 23 & 24 Vict. c. 63.
[5] 51 & 52 Vict. c. 46; 9 Edw. VII. c. 39.

or both combined. All requirements disappeared in 1858[1] when attention had been called by court proceedings to the invidious position.

A most important consideration affecting membership has been that a residential qualification in the constituency has never been insisted on since the time of Elizabeth, and the statute (1 Hen. V. c. 1) on the subject was repealed in 1774. This fact has powerfully influenced the whole history of the Commons, and has helped to maintain the theory, so effectively asserted by Burke,[2] which makes a member not a representative merely of his constituents, still less a mere delegate, but one entitled to consider the issues in Parliament from a national point of view.

Once elected, a member cannot resign except indirectly by undergoing a disqualification which vacates his seat.[3] For this purpose there remain in the gift of the Crown, through the Chancellor of the Exchequer, the sinecure offices of nominal profit, the stewardships of the Chiltern Hundreds and the manor of Northstead. The use of such a nominal post dates only from 1740, and under modern practice no enquiry is made as to the reasons for retirement, unless an election petition has been instituted or criminal proceedings taken against the member concerned. Since 1880, however, the warrant of appointment has not contained the words expressing confidence in the fidelity of the appointee. In fact the latest use in 1938 was that made by the Duchess of Atholl in her desire to challenge the policy of Mr. Chamberlain towards Germany and Italy in the matter of Spain.

[1] 21 & 22 Vict. c. 26.

[2] For earlier views from Coke on, see Emden, *The People and the Constitution*, pp. 24-7.

[3] Report (Vacating of Seats), *H.C. Pap.* 278, 1894. Other manors were formerly used. For the Hundreds see Ullswater, *A Speaker's Commentaries*, ii. 31.

CHAPTER VII

THE HOUSE OF COMMONS — ITS OFFICERS AND PRIVILEGES

1. *The House of Commons and its Officers*

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THE Houses of Parliament represent the historic buildings which perished in the fire of 1834. The distinctive feature of the Commons is the fact that it is wholly inadequate to contain more than half the members in comfort. The main space on the floor accommodates only some 360, while the side galleries, which have about a hundred seats apiece, are almost useless for those who desire to take part in the debates. There is accommodation in galleries for reporters, strangers, and women, but even the members have nothing except benches, without the desks which in many legislatures are deemed indispensable. The Speaker's chair is at the upper end of a broad aisle running from the main entrance, and the front bench at the right of the Speaker is reserved for ministers, the opposite bench being given to the Opposition leaders. Behind them sit as a rule their staunchest supporters, while below the gangway, which crosses the house at right angles to the aisle, sit those who are less closely loyal; but much depends on chance on any particular occasion, for members have no fixed seats.[1] But a dissatisfied ministerialist makes a point of taking his seat

[1] Standing Orders, Nos. 81, 82. A seat can only be reserved at the time of prayers which marks the opening of the sitting; the Speaker's chaplain officiates.

in such a way as to indicate his doubts. The issue where to sit was debated by the Peelites in 1852, and in 1919 there was a controversy where the Liberals and the Labour leaders should sit,[1] a matter resolved after the election of 1922 left Labour predominance beyond question. The Irish Nationalists used to sit below the gangway on the Opposition side under every ministry; the Labour party did likewise in the Liberal ministry of 1906, while the Liberal Unionists, when they first broke with Mr. Gladstone, sat below the gangway on the governmental side.[2]

The most essential officer of the house is the Speaker. Immediately after a new Parliament is formed, the members are desired, when they meet at the bar of the House of Lords, to choose a Speaker, and return to the Commons to do so. If there is but one nomination there is no division; if more than one, they are voted on successively, a simple majority sufficing for election. The Speaker is regularly selected by the Government and normally from its own ranks; thus in 1895 Mr. Gully [3] was a decidedly unexpected choice, other proposals having been mooted, and his election was carried by a small majority only. This fact raised an issue which had been for some time dormant. It had become the usage for the late Speaker to be re-elected unopposed, as a mark of consideration in view of the fact that his impartiality precluded him from adopting an effective party rôle, but this rule was broken. It had last been ignored in 1833 and 1835, the Speaker being on the second occasion defeated, but that was prior to the operation in full force of the doctrine of strict impartiality.

[1] Ullswater (*A Speaker's Commentaries*, ii. 252) arranged in 1919 that the Liberal and Labour leaders should in alternate weeks be regarded as the Opposition leader.

[2] Holland, *Devonshire*, ii. 174-6.

[3] Sir H. Campbell-Bannerman wished to be Speaker: Spender, i. 172-7. L. Courtney was objected to by the Opposition.

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When re-elected, Mr. Gully was re-elected Speaker unopposed.[1] In 1935, however, the issue was revived. The view taken by the members of the local Labour party at Daventry was that the system meant that the constituency was virtually disfranchised for the period when it was represented by the Speaker, since his position precluded his interesting himself in its special need, as an ordinary member can do. The efforts of the Labour leaders to avoid a contest failed to achieve success, and the seat was fought unsuccessfully, Liberals co-operating with Conservatives to maintain the principle of automatic re-election. Various suggestions were made to avoid the anomaly, the most common being that the constituency should be allowed a supplementary member, but the matter was left over for consideration before the election due in normal course in 1939. A Select Committee[2] deprecated any action, and none is now likely.

The Speaker has the prime duty of controlling debate; it is he who calls on those who are to speak, and who, by his readiness or refusal to give members opportunities for doing so, may markedly help to make or mar a career. His choice, of course, is guided by definite considerations. He must allow the Government case to be put fairly by a minister, and he must allow the Opposition to voice its views. The Whips may ask or be asked by members to let the Speaker know that they wish to be allowed to speak, and his knowledge may influence their success in catching his eye when they rise in their places on the conclusion of other speeches. But he is apparently often guided by considerations of the interest which a member's speech will probably arouse, so that men with independent views, likely to amuse the house, get a good share of the time given

[1] Mr. Lowther was generously unopposed in 1905; Ullswater, *A Speaker's Commentaries*, ii. 16.

[2] *H.C. Pap.* 98, 1938–9.

to private members. The Speaker has often appealed to the leaders to curtail their eloquence so as to allow more time for private members, but to no purpose. He maintains order with very wide powers, for he can refuse a closure motion, decline to admit a dilatory motion, or stop a member for irrelevance or tedious repetition. His rulings on points of order cannot be challenged at the time, for that would amount to disobedience and endanger the suspension of the member protesting; a challenge must be made later, on due notice of motion. He decides what is a money Bill, and who is the leader of the Opposition if doubt arises. He admonishes or reprimands offenders, issues warrants for commitment, and summons witnesses. He issues warrants for elections to fill vacancies, either on the order of the house or under statute when the house is not in session.[1] He appoints every session a panel of not less than ten members from whom he chooses the chairmen of standing committees. On entering and leaving the house, the Mace is borne before him by the Serjeant-at-arms as a symbol of authority, and while he is in the chair it remains on the table.

The Speaker at the end of any discussion on a motion puts the matter to the vote, and pronounces whether the "ayes" or "noes" have it. If a division is called for, he was empowered in 1888 to call on members to rise, when he can count them, if he thinks the demand is frivolous;[2] but normally since 1906[3] members are required to proceed to the lobbies on the right and left of the Speaker, right

[1] On death or peerage, 24 Geo. III. c. 26; on taking office (formerly), 21 & 22 Vict. c. 110; on bankruptcy, 46 & 47 Vict. c. 52, s. 33; see also Elections in Recess Act, 1863 (26 & 27 Vict. c. 20).

[2] Standing Orders, Nos. 29-31. Proceedings in committee are stopped to allow voting; No. 47 (1).

[3] Ullswater, *A Speaker's Commentaries*, ii. 40. Members need no longer vote; contrast the scene in 1901; *ibid.* i. 308 ff.

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for " ayes " and left for " noes ". Their names are there taken down by clerks, while two tellers for each lobby, one for the " ayes ", one for the " noes ", count them as they pass back into the house. The Speaker selects the tellers for the Government or Opposition, if they desire this to be done; in other cases, where the vote is to be open, he chooses the movers and seconders or members who have been prominent in support or opposition. If there be a tie, he votes to break it, and by a regular practice his vote is cast so as to avoid if possible a decision in favour of change, thus leaving the matter to be brought up again.

The Speaker's services are rewarded when he desires to retire by a viscounty and a pension, though Mr. Whitley refused the former. He has since 1919 precedence next after the Lord President of the Council.

The Chairman of Committee of Ways and Means may act as Deputy Speaker; he takes his place in committee and exercises most of his powers therein, but, though he can name a member, suspension must be carried with the Speaker in the chair. He is elected by the house and salaried, as is the Deputy Chairman.[1]

The Clerk of the Commons is appointed by letters patent, and has a considerable staff, with whose aid he makes the necessary entries, keeps the records, endorses Bills, signs orders, etc. Help is given to members in framing questions that will be in order, and even in wording motions. The Serjeant-at-arms is likewise appointed by letters patent, and attends the Speaker in the house, keeps order in the precincts, brings to the bar persons summoned there or entitled to make communications to the house. He executes warrants to bring to the bar persons ordered to be brought thither in custody, detains them or commits

[1] Standing Order, No. 80; Deputy Speaker Act, 1855 (18 & 19 Vict. c. 84).

them to such place of detention as the house may order. Hence it is he against whom actions have been from time to time brought to challenge orders of the house.[1]

The Whips of the Opposition and the Government are essential to secure the orderly conduct of the proceedings of the house; they control in large measure the presence of members, arrange pairs for those who have good reason to be absent, organise the speeches to be delivered so far as possible in view of the Speaker's freedom of choice. It is they who inform ministers on what issues it may be advisable to avoid divisions in view of feeling in the house, and then endeavour to secure that the motion or amendment be talked out. They keep ministers in touch with members and *vice versa*, and exercise some discipline over members by their control of party funds and their influence with constituency organisations.

2. *The Privileges of the House and its Members*

By 1837 the privileges of the Commons had attained a certain definiteness, but much remained uncertain. As late as 1831[2] it had fallen to be ruled that privilege had no reference to criminal contempt of court, and when on January 23, 1874, Mr. Whalley was committed for contempt in the Tichborne Case, no action was taken, though he was shortly afterwards released. The right of freedom of speech was no longer liable to be challenged, and the right of collective access to the throne and of having the most favourable construction placed on the proceedings of the house had never raised controversy. The present

[1] The Speaker's Counsel has important functions as regards private bill legislation, and his chaplain opens proceedings with prayers: Ullswater, ii. 34, 193.

[2] 86 *Com. Journ.* 701. For a new issue, the position of members in respect of the Official Secrets Acts, see Chap. XXV, § 5.

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claim therefore by the Speaker of these privileges has historical rather than practical value.

The right to provide for the due composition of the house by the expulsion of unworthy members was raised on several occasions, beginning with that of O'Donovan Rossa in 1870, Mitchel's case in 1875, M. Davitt's case in 1882, and Lynch's case in 1903. The ground of disqualification was conviction for treason or felony; in Mitchel's case, after his election for a second time had taken place it was left to the court to declare that the votes cast for him had been wasted and that his opponent was duly entitled to the seat.[1] This clearly was a more satisfactory result than only vacating the seat, which permitted of a fresh election.

In 1868 [2] an interesting surrender was made. The trial of election petitions was handed over to a court of two judges, without appeal save by leave of the court. The judges report to the Speaker, and the house either confirms the election or orders a new writ to issue.

A serious issue unhappily was raised on a question of religious faith. In 1866 the oaths to be taken by a member of Parliament had been simplified and made, it was hoped, acceptable. In 1880 Mr. Bradlaugh, a confessed atheist, desired to make an affirmation in lieu of taking the oath, thinking that he was entitled thus to act, as under the Evidence Amendment Acts, 1869 and 1870, he had on several occasions been allowed to affirm in court. His claim was referred to a Select Committee, which concluded that the Act of 1866, being confined to persons then entitled to affirm, did not apply to those entitled to affirm in courts under later Acts. Mr. Bradlaugh then attempted to take the oath, but objection was raised, and unhappily the Speaker did not rule it out of order. The issue then went to a second Select Committee, which absurdly ruled that

[1] 9 I.R.C.L. 217.

[2] 31 & 32 Vict. c. 125.

the oath could not be taken because Mr. Bradlaugh had used the right to affirm, but suggested that he be allowed to affirm so that the issue might be tried at law. The house refused at first, but later permitted affirmation, whereupon action was taken successfully against him, and the Court of Appeal [1] ruled that the Act of 1866 gave no right to affirm to persons who were not then entitled, as were Quakers, to do so. The judgment vacated his seat, but he was re-elected and from 1882 to 1885 the contest continued: in 1882 he administered the oath to himself, was expelled, and re-elected; in 1884 on like action he was excluded from the precincts of the house, applied for the Chiltern Hundreds, and was re-elected. Action was brought against him for illegally taking the oath, and it was ruled [2] that he had done so as he had no religious belief; he appealed to the Lords, but in 1886 further proceedings were stayed by the Conservative Government entering a *stet processus*. At the general election of 1885 he was again elected, and the Speaker in the new Parliament ruled that, if a member came forward to take the oath, there was no right whatever to interfere. In 1888 the Commons, which had rejected Mr. Gladstone's proposal in 1883 to pass a Bill to allow affirmation, agreed to a Conservative measure, and in 1891 the Commons, when he was dying, unanimously expunged the resolutions of expulsion. Their conduct had been foolish to an incredible degree.

In *Bradlaugh* v. *Gossett* [3] an effort was made to induce the court to declare illegal the action of the house in excluding him by resolution from its precincts, and to forbid the Serjeant-at-arms from carrying it out, but the court refused in any way to interfere with the autonomy

[1] *Clarke* v. *Bradlaugh* (1881), 7 Q.B.D. 38. In the Lords, 8 App. Cas. 324, it was ruled that a common informer could not sue.

[2] *Att.-Gen.* v. *Bradlaugh* (1885), 14 Q.B.D. 667.

[3] (1884), 12 Q.B.D. 271.

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of the Commons as regards its own proceedings. This case was cited as a precedent when Mr. Herbert endeavoured to secure a summons against the members of the House Committee of the Commons for selling liquor without a licence, though it was also doubted if the Licensing (Consolidation) Act, 1910, applied to the House.[1]

The house can punish any member who defies the authority of the Speaker or Chairman or Deputy Chairman, or is guilty of obstruction or behaves objectionably, for example by insulting another member of the house, or by speaking improperly of the King or using his name in debate. The Speaker or Chairman may be asked to name the offender, and in the house the Speaker puts the motion without amendment or debate. The former difficulty regarding the length of suspension has been removed by providing a code, five days on the first occasion, twenty on the second, and on a third until resolution of the house; if force is required to secure withdrawal, the suspension lasts until the end of the session.[2]

The Commons possesses the right to debate in secret if they so desire. In 1875[3] the rule was adopted that in the house or in committee any member may call attention to the presence of strangers, whereupon the motion must be put "that strangers be ordered to withdraw", and withdrawal may at any time be ordered by Speaker or Chairman. In 1908–9 the ladies' and strangers' galleries were closed because of the female suffrage demonstrations, and in 1920 owing to bitterness over Ireland. But secret sessions are very rare, though adopted over conscription in 1916. A regulation under the Defence of the Realm Act[4]

[1] *R.* v. *Graham-Campbell*; *Herbert, Ex parte*, [1935] 1 K.B. 594.

[2] Standing Order, No. 17. [3] *Ibid.* No. 89.

[4] *Ibid.* No. 27A. The secret sessions of April 25 and 26, 1916, were on conscription. The last was in 1918. See Ullswater, *A Speaker's Commentaries*, ii. 192.

forbade publication of the proceedings of such debates in either house or even any reference thereto. But the information always leaks out in unsatisfactory form,[1] and in 1938 the Government deprecated any idea of debating the foreign situation or rearmament in secrecy.

Publication, however, of debates is essential, and in 1836 division lists were issued, thus enabling constituents to find how their members voted, and in constructing the new houses of Parliament room for reporters[2] was found. Arrangements for publication of the debates of various kinds gave the volumes known as *Hansard*, while from 1910 an official Report appeared. Cheap sale of Parliamentary papers began in 1835.

Serious difficulties arose from the publication of papers. It had been decided long before[3] that defamatory statements in a petition circulated to members were privileged, but it had also been held in 1813[4] that a criminal information for libel lay against Mr. Creevey because he sent to a paper a corrected version of an attack made by him in the Commons, which had been incorrectly reported. In *Stockdale* v. *Hansard*[5] the courts ruled that there was no privilege for publishers by order of the house of papers which contained matter defamatory of the plaintiffs. The Parliamentary Papers Act, 1840, gave protection to publishers of documents authorised for publication by either house. It has been decided also that it covers documents printed *bona fide* and without malice as extracts from or abstracts of Parliamentary papers though not specially authorised for publication.[6]

The further issue arose of the voluntary publication in

[1] Spender, *Lord Oxford*, ii. 210 f.
[2] The Speaker allots seats in the Press Gallery: Ullswater, ii. 29.
[3] *Lake* v. *King* (1667), 1 Wms. Saund. 131.
[4] *R.* v. *Creevey*, 1 M. & S. 278. [5] (1839), 9 A. & E. 1.
[6] *Mangena* v. *Wright*, [1909] 2 K.B. 958; 3 & 4 Vict. c. 9.

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a paper of proceedings in Parliament which contained matter defamatory of an individual. This was ruled to be legal in *Wason* v. *Walter*,[1] though distinguished from the special publication of a speech intended to attack an individual, as contrasted with a normal report of proceedings which included incidentally defamatory matter.

The Commons necessarily has powers to secure of its own right the respect due to its privileges. It has asserted its rights, not merely over members but also over non-members guilty of disrespect to members of either house, of disobedience to orders of the house, of interference with its officers in the carrying out of their duties, or of hostile treatment of witnesses in respect of evidence given before the house or its committees. The mildest form is admonition by the Speaker at the bar; this may be avoided by a frank apology which the house accepts. More serious is a formal reprimand; but that is rare except after a commitment. Formerly fines could be imposed, but the idea of reviving the practice, which was mooted on April 7, 1892, as the result of the gross misconduct of directors of a railway company, in dismissing a servant on account of evidence given, was dropped.[2] Commitment is in the first instance to the custody of the Serjeant-at-arms; the offender may apologise and his apology be accepted, or he may be reprimanded, or committed to prison; if the contempt be flagrant, he may be committed without being given the opportunity to apologise. The severity of the punishment is greatly reduced by the fact that it ceases on prorogation or dissolution even if not terminated before that on payment of fees. The legal basis of the power is that the house is a court of record;[3] this has

[1] (1868), L.R. 4 Q.B. 85; *Ex parte Wason* (1869), 4 Q.B. 573.

[2] See Witnesses (Public Inquiries) Protection Act, 1892 (55 & 56 Vict. c. 64).

[3] 1 *Com. Journ.* 604.

Sir E. Coke's authority, but, were it not so, it would be clear that the Commons should have such a power, and its assumption by statute in Nova Scotia was expressly approved by the Privy Council.[1]

A serious question arose in *Stockdale* v. *Hansard*,[2] for the attitude of Lord Denman resulted in the assertion by the house, in May 1837,[3] not merely that their order justified the sale of any papers which they thought fit to circulate, but that no court had jurisdiction to discuss or decide any question of Parliamentary privilege which arose before it either directly or indirectly, and that a vote of the house on an issue of privilege bound every court. The house directed the printers to plead to further actions so as to rest their case on privilege only, but Queen's Bench upheld Lord Denman's views, on the ground that it was the duty of a court, in dealing with a matter within its jurisdiction, to investigate the jurisdiction of another court whose authority was adduced, and that such investigation showed that Parliamentary privilege did not authorise invasion of the rights of others. The issue was resolved by legislation, but not before the house had shown its power by committing for contempt the sheriffs who levied judgment under the decision of the court, as well as his attorney and Stockdale himself. This raised the issue whether it was possible for the house to commit for contempt when the courts had decided that the attitude of Stockdale was legal, but the court declined to liberate those committed,[4] holding that as in *Burdett* v. *Abbott*[5] a committal without cause other than contempt assigned could not be questioned. In *Paty's Case* in 1704[6] this view had been taken

[1] *Fielding* v. *Thomas*, [1896] A.C. 600, 612.
[2] 9 A. & E. 203.
[3] 92 *Com. Journ.* 418.
[4] *Sheriff of Middlesex's Case* (1840), 11 A. & E. 273.
[5] (1811), 14 East 1 (variously spelled Abbot); (1817), 5 Dow 199.
[6] (1704), 2 Ld. Raymond 1105.

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by the majority of the court in rather similar circumstances. In *Ashby* v. *White* [1] it had been ruled by the courts that an action lay against a returning officer who refused to accept a vote duly tendered, but the Commons regarded this as a breach of their privilege of deciding disputed elections and committed Paty, who had brought a similar action, and he was refused release, though Holt, C.J., dissented. The possibility that the courts might intervene, if commitment was stated to be for something that could not be in contempt in law, may be noted, as Lord Ellenborough alluded to it,[2] but as there is no instance and as the issue is never likely to arise, it seems impossible to place any faith in the dictum.

In 1911–12 there was granted for the first time an official salary to each member of Parliament, of £400 a year, paid quarterly [3] and subject to income tax. The value of the sum was later increased by allowing £100 to be reckoned for expenses, and free first-class travelling facilities to the member's constituency were also allowed. In 1937, after increase of salaries for ministers had been allowed, an increase to £600 a year was provided. The amount is voted in the annual appropriation Act. For the leader of the Opposition there is granted, under the Ministers of the Crown Act, 1937, £2000 a year. The Speaker in case of doubt determines to whom the payment falls to be made. It is charged on the Consolidated Fund.

[1] (1702), 2 Ld. Raymond, 938.

[2] 14 East at p. 150. If the warrant is irregular, it is of course no justification: *Howard* v. *Gosset* (1847), 6 St. Tr. N.S. 319.

[3] It is only paid from date of taking the oath: 90 *H.C. Deb.* 5 s. 1691. In *Hollinshead* v. *Hazleton*, [1916] 1 A.C. 428, it was ruled that an order could be made to set aside part of the salary for creditors of a bankrupt, who under the Bankruptcy (Ireland) Amendment Act, 1872 (35 & 36 Vict. c. 68), is not in Ireland debarred from election.

CHAPTER VIII

THE HOUSE OF COMMONS — FUNCTIONS AND PROCEDURE

1. *The Functions of Parliament*

By the advent of Queen Victoria to the throne the functions of Parliament had assumed fundamentally the state in which they have continued ever since. The essential purpose of the House of Commons is, on the one hand, to place a ministry in power and enable it to administer and to legislate, and on the other, to control it in the exercise of both these functions, so that its actions may correspond as closely as possible to the wishes of the electorate. It is this which gives British government its particular character as opposed to the very interesting American system of administration, where the people place by popular vote the head of the administration in power, and by another vote create a legislature, between which two there necessarily exists a great gulf. The extent of the control over the ministry varies from time to time, and the power to dissolve among other things gives to the ministry a very serious hold over the members, more especially since the payment of members has been introduced, and since so many members, Labour and otherwise, find membership a source of livelihood, as well as a means of discharging a public service. This mixture of motives has operated most strongly since 1911, when formal payment from public funds commenced, but throughout the period men have been anxious to

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remain members from a combination of anxiety to further the national interests and to promote their personal advantage. The modes of this reciprocal influence are discussed elsewhere.[1] They consist of questions and supplementary questions, designed to reveal errors in administration; in formal motions of various kinds and of discussions arising on finance, for the attempt, no doubt inevitably futile, to control the details of expenditure has long been given up, and the days spent on finance are days devoted to the investigation of alleged errors of the ministry in administration, and defences of its action by the spokesmen of the Government.

The public has one direct means of bringing influence to bear on Parliament, the petition; but that has lost much of its importance with the passing of time, partly because of the fact that the collection of signatures for petitions is carried on without any possible check, and therefore the mere number of signatures is of minimal importance in the great majority of cases. The Peace Ballot of 1935 was a different thing, for signatures were collected under a procedure carefully worked out to secure the maximum of consideration, and strong attacks were made on, as well as arguments adduced for, the carrying out in this way of a national referendum on the attitude of the country to the principles of the Covenant of the League of Nations. But the petition in the ordinary form is not now an effective means of persuasion of the Commons.

The other function of Parliament is legislation, and the formal action, which is cast in legislative form, of making available finance for the needs of the country, and of appropriating the funds available for the services of the State.

The part of the Lords differs essentially from that of

[1] Chap. XI.

the Commons. The control over administration disappeared early in the Victorian era; even under Lord Melbourne no one contemplated that there was any possibility of the ministry depending on the goodwill of the other house, and, if the ministry cared in 1850[1] to affirm its position when the Lords disapproved it by a vote of the Commons, that practice died out immediately after. It remains open for the Lords to express disapproval of the ministry at pleasure, as it did in 1911 in the case of the Parliament Bill, when it censured the action of the Government in procuring the royal promise to create peers; but the ministry remains indifferent.

From the history of the relations of the two houses given below it will be seen that from finance the House of Lords has been excluded entirely since the Parliament Act, 1911, and its authority in legislation has been drastically curtailed by the same measure. But it still has substantial authority in that regard. It has also developed in increasing measure its power of discussing, on formal motions for papers, questions of general interest, foreign or Imperial policy in particular. For this purpose it has become in the course of time more and more adapted since the grant of peerages to diplomats and Civil Servants on retirement, and the increase of those peers who have had experience of the Commons has strengthened the house, while the fact that the ministry does not depend on its vote renders it far easier to express views not wholly acceptable to the ministry of the day.

2. *The Meeting and Dissolution of Parliament*

Parliament is kept as far as possible in continuous existence, though not in session, for its functions include

[1] On the issue of Don Pacifico censure was expressed by a majority of 37: 111 *Hansard*, 3 s. 1293–1332. Russell felt his position so weakened

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not merely legislation and finance, but the control of the ministry and the discussion of all issues of importance to the life of the country. Great as are the rights of the Crown, they must be exercised with the approval of the majority in the Commons. The King has powers under the Emergency Powers Act, 1920, to take serious steps for the maintenance of the security of the life of people when menaced with injury by internal strife. He has also the prerogative to make war, and he may by statute order the reserve forces to be embodied. But in either case he receives the support of his Parliament, for it must, if not in session, be assembled forthwith.[1] It is clear therefore that, when a Parliament is dissolved, and it cannot last for more than five years, it should be brought into being again with the minimum delay.

On dissolution therefore a royal proclamation recites the fact that the King has thought fit, with the advice of the Privy Council, to dissolve the Parliament which stands prorogued to a certain date, and dissolves the Parliament, releasing the Lords and Commons from attendance on that date. The royal desire and resolve " as soon as may be, to meet our people and to have their advice in Parliament ", is recited, as well as the royal will to call a new Parliament, and the fact that an Order in Council has been made ordering the issuing of writs, and the proclamation ends with enjoining their issue, the date of return being specified.

There is also passed an Order in Council for the issue of the writs, but the proclamation itself suffices in the view of the Crown Office in Chancery; formerly a sign-manual warrant for the issue was also issued, an interest-

that he justified remaining in office by precedent: 112 *ibid.* 102-6; and also secured Commons' approval: Bell, *Palmerston*, ii. 24 ff.

[1] This rule is temporarily in abeyance; see Chap. XIX, § 3.

ing relic of the time when forms were duplicated without need. The writs are addressed to the Lord Chancellor of Great Britain, and formerly to the Lord Chancellor of Ireland. The abolition of that office has resulted in their being addressed to the Governor of Northern Ireland.

The writs of summons are addressed to the temporal peers, the spiritual lords, the representative peers of Ireland, to the returning officers of counties and boroughs for the election of members; and to the judges, Attorney-General, and Solicitor-General, writs of attendance are addressed inviting them to be present, not, as in the other cases, " with the said prelates, great men, and peers ", but " with us and the rest of our Council to treat and give your advice ". This marks their inferior position, which dates from the time when the Lords became discriminated from the Council, and in its new capacity did not admit the right of mere judges to vote. Since the Judicature Acts, the Lords Justices of Appeal are included in the summons. Those to the spiritual lords contain also the *praemunientes* clause, which bids them tell the dean and archdeacon of the diocese to appear in person, and the chapter and the clergy by one and two proctors respectively; this instruction is a dead letter, but it is a relic of the time when the clergy could be deemed a separate estate of the realm. The writs to returning officers, save for London and Middlesex, go by post, but the Representation of the People Act, 1918, permitted use of the telegraph to notify their issue, and action may be taken thereon. Until 1872 the writs for election of members were couched in the old phraseology, and the knights of the shire were " girt with swords ", and the cities were to choose citizens, the boroughs burgesses, while the returning officers entered into indentures with electors which served the purpose of identifying those selected.

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The members meet on the day fixed in their houses, and the Commons are summoned to the bar of the Lords, where a Royal Commission is read appointing Commissioners in lieu of the King to open Parliament. The Lord Chancellor bids the Commons choose a Speaker, and they return to their house so to do. The Commons then adjourns until next day, when the Speaker takes the chair, until summoned to the Lords with the Commons, and submits himself with all humility to His Majesty's gracious approval, which the Lord Chancellor pronounces, whereupon the Speaker demands the ancient and undoubted rights and privileges of the Commons, which again are granted, and the Speaker and the Commons return to their own place.

The identification of the members chosen is simple in the Commons; the Clerk of the House receives from the Clerk of the Crown, to whom the returns go, a book containing a list of those elected. In the Lords the peers present their writs, while Garter King-of-arms lays on the table the roll of the hereditary peers entitled to receive writs. The Scots representative peers appear on the strength of a certificate from the Lord Clerk Register of Scotland. Newly created peers present patent and writ of summons, which are read by the Clerk of the House.

To enable a member of either house to sit he must take an oath of allegiance or make a declaration in lieu, as has been seen above. The oath can be taken by a peer as soon as Parliament is opened, by a member of the Commons after the Speaker is elected;[1] until then he may not sit within the bar, speak, or vote, and from 1917 his salary is paid only from the time he takes the oath. The oath is only required at the beginning of a Parliament, as also is the election of the Speaker.

The opening of Parliament is followed by the King's

[1] Standing Order, No. 83.

Speech, which Queen Victoria refused regularly to deliver in person; since Edward VII's accession it is always so delivered. Otherwise Commissioners act. The speech is read while the Commons commanded by the King, desired by the Commissioners, are present at the bar of the Lords; when the King is absent, the Lord Chancellor reads the speech. The houses then adjourn; when they reassemble they read first *pro forma* a Bill [1] for the first time to manifest their autonomy; they then proceed to debate an Address in reply to the Speech from the Throne,[2] which enables the Opposition to attack and the Government to defend the broad policy of the ministry as declared in the speech.

The Address, when agreed to, is ordered by the Lords to be presented by the Lords with white staves, *i.e.* the Lords attached to the household, by the Commons to be presented by those who are of the Privy Council.

Once in session, the houses adjourn at their pleasure, but the Crown, when both houses stand adjourned for more than fourteen days, may call on them to meet by proclamation calling for a meeting not less than six days after the date thereof.[3] It is now usual when adjournment takes place to give the Speaker authority, on the motion of the Government,[4] to recall the house before the date fixed for reassembling. The power is of high utility when matters unexpected and dangerous may arise.

Prorogation is by royal authority, and unlike adjournment, it terminates absolutely all business, nor can that

[1] So also the House of Lords.

[2] Edward VII vetoed preliminary disclosure to the press of the speech: Lee, ii. 46 f.

[3] 39 & 40 Geo. III. c. 14; Meeting of Parliament Act, 1870 (33 & 34 Vict. c. 81).

[4] It has been deemed that the authority should be given alternatively by request of a number of members.

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business be taken up again when the Parliament reassembles except *de novo*. Notification is given either in the presence of the King by the Speaker of the Lords, or in his normal absence by Commissioners. Up to 1867,[1] if it was decided to postpone the meeting of a new Parliament or to extend the prorogation of an old, a writ to both houses was used in the first case, a commission in the second, both being read by the Chancellor to a clerk representing the Commons. For either purpose a proclamation now suffices, as also for acceleration of meeting, which, under an Act of 1870,[2] can be done so long as the date is not earlier than six days from the proclamation.

Dissolution may be carried out by the King in person, though this is not now in use. Normally the house is prorogued and then dissolved, by commission and proclamation respectively, which may be issued in immediate succession. If it were not formally dissolved, it would expire in five years under the Parliament Act, 1911, and prior to that enactment its life would have ended in seven years under an Act of 1716, passed to secure the safety of the Hanoverian dynasty at a time when the state of the country, following on the rising in 1715, was deeply disturbed. This paramount act of Parliamentary sovereignty was not repeated until the Great War, when it was necessary to extend[3] the life of Parliament, but with the essential constitutional difference that for such extension general accord was available. The Parliament thus lasted from 1910 to 1918.

An important reform in 1867[4] terminated the awkward rule that Parliament was dissolved by the demise of the Crown, which was no doubt a logical outcome of the theory of Parliament as summoned by the King to aid him person-

[1] 30 & 31 Vict. c. 81.
[2] 33 & 34 Vict. c. 81; 14 days, 37 Geo. III. c. 127.
[3] 5 & 6 Geo. VI. c. 100; 6 & 7 Geo. V. c. 44.
[4] 30 & 31 Vict. c. 102, s. 51.

ally by advice and money grants. By 7 & 8 Will. III. c. 15, on a royal demise Parliament remained in existence for six months unless sooner dissolved. To provide for the case of a dissolution during which the King died, in 1797 [1] provision was made that the old Parliament should forthwith meet and sit for six months unless earlier prorogued or dissolved; the time limit was removed by the Act of 1867. By 6 Anne c. 41 provision was made for the immediate assembly of Parliament in the event of a royal demise while it was prorogued or adjourned. On the occasion of the abdication of Edward VIII, which was by statute made to have the effect of a demise of the Crown,[2] Parliament met immediately afterwards, when the members took oaths once more. The taking of the oath is not statutory, but as there is a new King the procedure was manifestly proper, though it may be doubted if it was necessary or could have been enforced if challenged. The original oath is one covering not only the reigning sovereign but his heirs and successors.

As a new Parliament is always summoned by the same proclamation as the old is dissolved, it is of none but theoretical interest that no provision actually covers the case where there is a dissolution and the sovereign dies before writs are issued.

It may be noted that the rights of the Crown to summon, to prorogue, and dissolve Parliament are prerogative rights; the rights of the peers to a summons and a summons in a certain form are common law, as is the rule that legislation can be passed only by the Lords and Commons in Parliament assembled with the assent of the King. But statute has fixed the form of writ for election of members of the Commons, limited the duration of Parliament, abolished the rule of its dissolution by the royal demise, determined the oaths to be taken and the penalties for not taking them

[1] 37 Geo. III. c. 127, s. 4.

[2] 1 Edw. VIII. & 1 Geo. VI. c. 3.

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and sitting and voting, fixed the mode of election and numbers of peers from Scotland and Ireland, and limited the number of bishops entitled to sit.

3. *The Order of Business*

Certain changes have been introduced from time to time in the arrangements for business, all in the direction of making less demands on physical endurance and bringing about greater order in debate. Until 1888 on Monday, Tuesday, Thursday, and Friday, the house met at 3.45 and no hour was fixed for adjournment, so that debate might go on indefinitely, and all-night sittings were not rare. In 1879 opposed business was not to be taken up after 12.30, but that under discussion continued. In 1888 the house was made to meet at 3; at midnight the business on hand was to be interrupted, no opposed business was to be taken up, and adjournment was fixed for 1. It was also arranged to have two sittings on Tuesday and Friday, 2–7 and 9–12. The Wednesday hours remained from noon to 6. In 1902[1] the two-sitting practice was adopted for all full days, 2–7.30 and 9–11, while Friday was made a short day in lieu of Wednesday, a concession to the week-end habit. In 1906 the inconvenience of too early meetings was removed, the hours being fixed at 2.45–11.30, the dinner interval being cut out, but 8.15 being chosen as the mark of a break in business, when members who have been dining can be expected to be ready for resumption of debate in earnest.

The present arrangement differs only slightly. The house meets at 2.45 on Monday to Thursday, 11 on Friday.

[1] Private Bill business was then relegated to the evening: it had been taken most inconveniently just after prayers; Ullswater, *A Speaker's Commentaries*, i. 315.

On the full days the Speaker adjourns the house at 11.30, without question put, and after 11 normally only unopposed business is in order. But on the motion of a minister the Standing Orders may be suspended. On Friday no opposed business can be taken up after 4, and when the business under discussion then is finished, or at 4.30, the house is adjourned.

Precedence is normally given to Government business. Up to Easter, Wednesday is allowed for motions by private members, Friday for their Bills, but after Easter they are allowed only the first four Fridays and the third to sixth Fridays after Whitsuntide. If the session begins after Easter and before Christmas, Government business has precedence on as many Wednesdays immediately before Good Friday as those before Christmas on which it has not had precedence, and on as many Fridays as the number, reduced by three, of the Fridays on which it has not had precedence. After Easter it has precedence on all days except the second to fifth Fridays after Easter Day. After Whitsuntide, Bills other than public Bills are arranged on the order paper to give precedence to those furthest advanced towards final acceptance.

On Monday to Thursday the house deals first with private business, that is business respecting private Bills in the technical sense of the term explained below, but only up to 3; with questions[1] from 3 to 3.45. Notice must be given, but the minister may accept verbal notice especially in case of urgency, and the leader of the house announces business often in this way. Information must be asked for, and even it may be refused; supplementary questions are permissible, but need not be answered, and are kept in due bounds by the Speaker. Questions are starred if an oral reply is desired; if not reached, printed

[1] Standing Order, No. 7.

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replies are included with those to unstarred questions. Thereafter, sometimes arising from a question, may be made on certain conditions motions for the adjournment of the house.[1] After questions may be taken petitions[2] which may be briefly presented by a member who states the provenance, number of signatures, the allegations and prayer; unopposed motions for returns or papers; motions — now obsolete — for leave of absence, and ballots for notices of motion, for private members cannot give notice at pleasure, but must ballot for priority. On Tuesday and Wednesday, and, if set down by the Government, on Monday and Thursday, motions for leave to bring in Bills and for the nomination of Select Committees may be set down for consideration at the commencement of public business.[3] On these motions a brief explanation by the proposer and an opponent alone is allowed, whereupon the Speaker puts the motion or that of the adjournment of the debate, as he thinks right. Then follow the orders of the day, which, if governmental, the Government may arrange at its pleasure, except on Wednesdays when notices of motion take precedence. On Friday[4] the house deals with unopposed private business, petitions, orders of the day, and notices of motions. Opposed private business normally is taken at 7.30,[5] being divided as fairly as possible over the sittings on which the Government has precedence, and other sittings. After 11, when business on hand is interrupted except that the closure may be moved and any procedure thereon consequent may be carried out, only unopposed business can be taken except as regards proceedings on reports from or Bills originating in the Committee of Ways and Means.[6]

[1] Standing Order, No. 8.
[2] *Ibid.* Nos. 75-9.
[3] *Ibid.* No. 10.
[4] *Ibid.* No. 2.
[5] *Ibid.* No. 6.
[6] *Ibid.* No. 1.

4. *Public Bill Legislation*

The procedure on public Bills does not differ greatly in the two houses, the one essential distinction lying in regard to finance. It is necessary that such Bills and that Bills regarding representation should commence in the Commons, while Bills for the restitution of honours, for a general pardon (Acts of Grace) — now obsolete — and Bills of attainder and of pains and penalties — in like case — originate in the Lords, and Bills affecting the privileges or procedure of either house would begin therein.

Prior to 1902, a member who desired to introduce a Bill had to give notice of desire to move it; an order for introduction was then made. Since then[1] a member may simply present a Bill at the table after notice but without leave, when it is deemed to have been read a first time. Or he may use the procedure mentioned above and, under what is known as the ten-minutes rule, introduce his Bill,[2] in order to ventilate the topic or conciliate mistaken objections. Or the motion for leave may be made part of the order of the day by the Government. Bills passed by the Lords, if taken up by a member, are deemed to have been read a first time.

If there is a motion for leave to introduce, and it is granted, it is ordered that the Bill be brought in by the mover and those he names as backers; he appears with the Bill at the bar, is called upon by the Speaker and presents it (a dummy suffices), and the title is read; without debate the question of first reading and printing is decided. The date of second reading is fixed by the mover. In the Lords there is no need for notice of leave; any member may present a Bill, and have it laid on the table.

[1] Standing Order, No. 32 (2).

[2] *Ibid.* No. 10.

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On second reading the principle is supposed to be decided for or against. An opponent may simply move a direct negative, which shelves the Bill for the day, or that it be read six months later, which kills it for the session, or may propose resolutions affecting the character of Bill, thus equally destroying it.

A Bill which passes on second reading goes for consideration to a committee. Originally the house considered all Bills in committee of the whole house, the Chairman taking the place of the Speaker, but in 1882 two Standing Committees were created for the consideration of Bills referred to them, one committee dealing with matters of law and justice, the other with commerce, agriculture, etc. These differed substantially from Select Committees which formerly were employed, for the latter, which were authorised to take evidence, merely reported for consideration by the Committee of the whole house, while the Standing Committees took the place of the latter. In 1888 the procedure was made permanent, and in 1907 there were four committees to which all Bills, except finance and provisional order Bills, should normally go. In 1919[1] the number of committees was raised to six; at the same time the number of members of each was fixed at 40-60 in lieu of 60-80, but from 10 to 15 members might be added. In 1926 the number was fixed at 5, the membership at 30-50, and the maximum number of additional members raised to 35. When Bills relate exclusively to Wales and Monmouthshire all the members for these areas must be put on the Committee. The Scottish Committee includes all the Scottish members and 10-15 additional members selected with regard to the strength of the parties. The members are chosen by the Committee of Selection,[2] a body nominated

[1] Standing Orders, Nos. 46-8.
[2] *Ibid.* (Private Business), No. 105.

at the beginning of every session, eleven in number, chosen by the party leaders in proportion to party strength in the Commons. The Chairman used to be chosen from their own number by a panel of from 4 to 6, later 8-12 members chosen by the Committee of Selection; but the Speaker [1] now chooses a panel of not less than ten members who may act as temporary chairmen of committees on the request of the Chairman of Ways and Means, and from the panel, of which the latter and his deputy are members, he selects the chairman of each committee.

Every Bill now stands committed to one or other committee chosen by the Speaker, unless the house, on motion made after second reading, decides that it be retained in committee of the whole, or it is a money Bill, when it is always so retained, or it is a Bill to confirm a provisional order, which is similar to private Bill legislation in principle. It therefore goes to the Committee of Selection and is treated as a private Bill as a rule, going to a Private Bill Committee or the Committee on Unopposed Bills. Bills which have a composite character, but are allowed to proceed as hybrid Bills, go to a Select Committee appointed partly by the house, partly by the Committee of Selection. The house may refer a Bill to a Select Committee of not more than fifteen members which can take evidence, or to a joint Select Committee, if the Lords concur. But these committees merely report, and the Bill must then be considered in committee of the whole.

In committee of the whole the Chairman of Ways and Means presides, and, if discussion is not over at the end of the sitting, reports progress and asks leave to sit again; the Government decides when the Bill is to be taken by putting it in the orders of the day. In standing committees the sitting is usually in the morning; it fixes its own hours

[1] Standing Order, No. 80 (4).

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and adjourns to a day and time at its discretion. The difficulty arises in their case that members may not attend regularly, so that a quorum — twenty — may not always be obtainable and the progress of the Bill may suffer. The Committee of Selection may replace members for non-attendance.[1] A committee may sit during the sitting of the house and even while the latter is adjourned.

The house may give instructions to any committee, enabling it to go beyond the scope of the Bill. In any case all relevant amendments may be moved, and members may speak more than once thereon. If amendments go beyond the title of the Bill, it should be amended and a special report be made. Though amendments should not go beyond the principle of the Bill, in fact they often do much injury to it.

After passing through committees, a Bill is reported[2] to the house and, if the committee is a standing committee or if the Bill has been amended in committee of the whole, it is examined on report, when amendments may be made or new clauses added, but no member can speak more than once, except the member in charge of, or the mover of an amendment to a Bill brought from a standing committee. No amendment may be moved which would not have been in order in committee without an instruction from the house, and this limits irrelevant action.[3] Or a motion to recommit may be made after a brief explanatory statement for and against, without further debate.[4]

The report stage concluded, a motion is made that the Bill be read a third time. Only verbal amendments may be made at this stage in the Commons,[5] so that a motion to recommit is necessary if further changes are desired. Those who oppose the passage altogether can adopt one

[1] Standing Order, No. 47 (2). [2] *Ibid.* Nos. 38, 50.
[3] *Ibid.* No. 41. [4] *Ibid.* No. 40. [5] *Ibid.* No. 42.

or other of the amendments available on second reading. The Lords allow new amendments at this stage of further clauses, and they can act likewise on the motion that the Bill do now pass, which the Commons do not use.

If passed, the Bill is sent on from the Commons endorsed *soit baillé aux seigneurs*, from the Lords *soit baillé aux communes*.

The Bill then enters upon its course in the other house if, as is normal, it is there taken up. If passed, notification is sent to the Commons. If returned with amendments, these are duly considered,[1] and either accepted in whole or in part, or rejected. The other House is duly informed of the attitude taken. The older forms of discussion on these amendments took the shape of formal or free conferences between managers appointed by the houses: in the former no discussion took place; in the latter compromise might be arranged by exchange of views, but no free conference has been held since 1836, and in 1851, exchange of messages was agreed upon, while since 1855 [2] such messages are delivered by the clerks of the houses; previously masters in chancery and the Chairman of Ways and Means had acted. The messages give reasons for insistence on amendments or on their rejection, but, if accord is to be reached, it is usually through personal intercourse between leaders or the Whips.

In order to control debate, the Speaker [3] has important powers which are normally shared by the Chairman in Committee. He may stop irrelevance or repetition, and, if the member goes on, may order him to sit down. He may refuse to put motions that the house adjourn or that progress be reported if he considers them dilatory. He may name a speaker in case of disorderly conduct, in which case

[1] Standing Order, No. 43.

[2] *Ibid.* No. 93 (1855).

[3] *Ibid.* Nos. 17-19.

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the house will suspend; if the offence occurs in committee, the Chairman names, but suspension must be moved in the house. It is the duty of the leader to act in these cases. Since 1902 the Speaker has power, in case of grave and continuous general disorder, to adjourn the house without question put, or to suspend the sitting; this was first used on May 22, 1905, and in the crisis of the passing of the Parliament Bill it was repeated.[1]

The necessity for the power to closure a debate was created by the Irish Nationalists in 1881 when they tried to destroy the working of a Parliament to which they acknowledged no allegiance. On the coercion legislation of 1881 the Speaker,[2] after consultation with Mr. Gladstone, returned to the chair, after a debate enduring from January 31 for forty-one hours, and declaring that the dignity, the credit, and the authority of the house were threatened, insisted on putting the question forthwith, though he had no standing order to rely upon. An urgency resolution[3] was then passed after the suspension of all the Irish Nationalist members, and in altered form was continued in 1882, but in 1887 a new plan was adopted and made permanent in 1888. This[4] allows any member to propose the closure, gives the Speaker the right to allow or disallow it, and, if carried, at least one hundred votes being cast for it, the question pending is at once put. In another form a member may move in committee or on report that certain words stand part of a clause, or a clause stand part of the Bill; if carried, all amendments inconsistent therewith fall to the ground. The power as to closure was extended in 1902 to the Deputy Chairman, and in 1907 to chairmen of standing committees, the number necessary being twenty.[5]

[1] Standing Order, No. 20.
[2] 256 *Hansard*, 3 s. 2032 f.
[3] Morley, *Gladstone*, iii. 52 f.
[4] Standing Orders, Nos. 26, 27.
[5] *Ibid.* No. 47 (5).

In 1887 there was adopted for the purpose of forcing through the Criminal Law and Procedure (Ireland) Bill the device [1] now known as the guillotine. The essence of the plan is that the house determines the time to be given in debate to the parts and stages of a Bill; at the expiration of that time, discussion must cease and the vote on that issue is taken. It was employed after 16 days in committee on the Irish Bill, after 28 days on the Home Rule Bill of 1893, with reasonable division of time for the several clauses,[2] and after 38 days on the Education Bill of 1902. In 1914 it was even applied to the Finance Bill. But the war brought cessation of party strife in the usual form, and it was only used on the urgent Military Service Bill of 1918, and its use was rejected on the Government of Ireland Bill, 1920. It was revived in 1921 and has been used at times since, but with an effort, on occasion at least, to secure, as in the case of the Government of India Bill, 1935, an accord with the leaders of the opposition thereto to fix limits as to the distribution of time. But it must be remembered that the accord as regards that Bill was rendered possible by the fact that Mr. Churchill and his friends were normally allies of the ministry, while the ordinary Opposition was in general agreement with the latter. Successful as then was the *modus operandi*, it was arrived at under circumstances quite other than those ordinarily existing.

A more considerate and intelligent form of closure is that known as the kangaroo,[3] used from 1909 and regularised in 1919, which allows in committee or on report the Chairman and Speaker to select from proposed amendments and new clauses those which they think most deserving of

[1] It had been used on Feb. 21, 1881; 258 *Hansard*, 3 s. 1092.

[2] 14 *Hansard*, 4 s. 590. See also Balfour, 197 *Hansard*, 4 s. 999; Asquith, 30 *H.C. Deb.* 5 s. 120.

[3] Standing Orders, Nos. 28, 47 (5); A. Chamberlain, 144 *H.C. Deb.* 5 s. 455.

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consideration. The responsibility thus placed on these officers is heavy, but it is not abused, and the combination of the guillotine and kangaroo was effective in 1935. The Unemployment Bill in 1933, it was insisted, could not be passed without some such aid to the house.

The new methods have effected a remarkable change on the position of the early Victorian Parliament. As the reports of committees of 1848, 1854, and 1861 show, there was almost unlimited opportunity for raising a debate on a Bill; in committee every day it could be joined on the motion that the Speaker leave the chair. If the parties then had not been willing to submit to self-discipline, there would have been no effective action by the Commons, and, when the Irish Nationalists decided to defeat the working of the house, the path was easy. The later changes have been in the main the result of the eagerness of members to discuss, and thus to bring themselves before the public eye. The effect of the closure no doubt is to accentuate party differences, and to bring about more party votes. Moreover, it unquestionably compels men to vote on matters as to which they have no very decided views, whether the issue be a motion or a private member's Bill. Formerly it was easy to talk out such a measure; now the closure will be moved, and granted, unless the presiding officer thinks the motion an abuse of the procedure of the house or an infringement of the rights of the minority. There is no such protection afforded in the case of the guillotine, which represents the decision of the Government to carry its measures, and its reluctance to allow of intelligent discussion of any save such portions as it thinks fit. There is no doubt that this procedure lessens the value of debate; the Opposition has no objection or even likes taking up such time as is given in discussing minor points, in the knowledge that it can go

to the country with a melancholy tale of the wickedness of the ministry in passing clauses without a moment for discussion or voting blindly large sums of money under the guillotine, not a word of protest being allowed. It is true also that the outside public does not profit greatly from debates where the matters are not fully considered, and where the outcome is known from the first. However necessary the process may be, the fact remains that it does lessen the importance and value of the Commons.

5. *Money Bills*

These Bills differ from other Bills in that they must originate in the House of Commons, and moreover in a committee of the whole house. No petition for any sum relating to the public service, nor any motion for a grant or charge upon the public revenue, will be received or proceeded with unless recommended from the Crown.[1] No taxation will be imposed unless likewise there is an intimation from the Crown that it is requisite, so that ministers control all initiative. It is possible, indeed, for a private member to move a resolution that public money might properly be expended on some object or other and the house may agree, but that is a very different thing from an actual vote. The rule is the essential safeguard against competition between private members, but it rests merely on a standing order.

The rule as to grants being considered in a committee of the whole house dates from 1707 but reflects older practice. The appointment of the Committees of Supply and of Ways and Means is made after the voting of the address in reply to the Speech from the Throne.[2] Until 1882 the rule prevailed that, on any day when supply was

[1] Standing Orders, Nos. 63-9.

[2] *Ibid.* No. 13.

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an order of the day, when the time came to move the Speaker out of the chair, a member might move any amendment, however irrelevant to the votes in supply to be discussed, in order to enable grievances to be debated before supply was considered. Since 1882 this rule has been abrogated,[1] the only exceptions being the occasions when the house first goes into committee on each of the four great groups of estimates, army, navy, air force, and Civil Services. On these occasions an amendment may be moved or question raised relating to the group of estimates to be considered.

Twenty days before August 5 are allowed for supply[2] not including the days when the Speaker has to be moved out of the chair, or any day when supply does not come first on the orders of the day. Three days more before or after August 5 may be allowed by the house. Not more than one day in committee and one in report shall be allowed to any one vote on account, and at ten on the penultimate day the chairman puts every question necessary to dispose of the votes outstanding, and the same procedure follows by the Speaker on report next day. The votes selected each day are those desired by the Opposition; if the discussion is not finished, the vote will be provided under the guillotine in the manner above noted. The principle of this mode of procedure dates back to 1902, when it was adopted to replace the earlier procedure under which time was wasted on discussing the earlier votes including such things as royal palaces. The change was advocated first in 1896 by Mr. Balfour[3] and stereotyped in 1902. In 1901 time of walking through the division lobbies was saved by the rule that all the votes in each set of estimates outstanding on the days are put *en bloc*.

[1] Standing Order, No. 16.

[2] *Ibid.* No. 14.

[3] 37 *Hansard*, 4 s. 727 ff.

At the end of each sitting the committee resolves to report progress and ask leave to sit again. The Speaker resumes the chair, and the Chairman reports the resolutions and asks leave to sit; the house orders the reports to be received on the day named. On that day it approves the resolutions; it cannot alter the amount or the destination of the sums granted in committee.

When a Bill for general legislation involves a public charge, a resolution authorising it must be passed in committee and agreed to on report, before the Bill can be discussed in committee.[1] Or a money resolution may be first moved and a bill be then introduced if its terms are limited to those of the resolution; in such a case notice of the resolution is sufficient notice of the intention to introduce the Bill. This procedure, however, involves a risk that the terms of the resolution may be drafted too specifically to allow of proper amendment of the ensuing Bill, and, after consideration by a Parliamentary committee, it was recommended that some latitude should be given in moving resolutions in this manner.

As will be noted elsewhere, the procedure of the house allows only of criticism of policy and of administration, not of detailed control of estimates, and the employment of a Committee on Estimates has made no real change in this regard.

The consideration of the means of meeting the supply granted takes place in Committee of Ways and Means, which frames resolutions for the employment of the sums available in the Consolidated Fund for this purpose, and for replenishing it by further taxation or by the renewal of existing taxes. On constitutional grounds the income

[1] Standing Orders, Nos. 69, 70. On Nov. 11, 1912, on report a resolution on Home Rule finance was amended; on a motion to rescind on Nov. 13 disorder broke out, and the house had to be adjourned; later a new resolution was accepted: Ullswater, *A Speaker's Commentaries*, ii. 132 ff.

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tax and the tea duty are kept on an annual basis. The committee receives for its guidance from the Chancellor of the Exchequer an account of the finance of the year to come, and an intimation of what taxes may be necessary to make good any gap between estimated revenue and expenditure. The Committee therefore frames resolutions which are reported to and approved by the house, and these finally take shape in the Appropriation Act and the Finance Act [1] respectively.

The Committee agrees on the day of the Chancellor's speech to resolutions renewing or imposing taxation, and for a considerable time the legality of claiming payment under these resolutions was unchallenged. In *Bowles* v. *Bank of England*,[2] however, it was pointed out that the practice lacked legal foundation, and accordingly the Provisional Collection of Taxes Act, 1913, authorised the practice by giving statutory force to any resolution varying an existing tax or renewing a tax imposed during the previous year if the resolution declares that this is expedient. The resolution must be accepted by the house on report within ten sitting days, and the Bill confirming it read a second time within twenty sitting days and finally become law within four months of the date of the resolution. The Act covers only income tax and duties of customs or excise.

Formerly every stage of a money Bill had to be taken on a separate day, but since 1919 a resolution authorising the issue of money out of the Consolidated Fund reported from the Committee of Ways and Means may be considered forthwith by the house, and the consideration on report and third reading of a Bill ordered to be brought on upon such a resolution may be taken as soon as the Bill is

[1] This term was introduced in 1894.

[2] [1913] 1 Ch. 57.

reported from Committee of the whole house.[1] It is, however, clear that the interposition of the committee and report stage in Ways and Means between the committee and report on Supply and the consequent Bill is a rather idle waste of time.

The Appropriation Bill is preceded earlier in the session by a Consolidated Fund Bill which is passed before March 31, in order to meet any supplementary estimates for the year about to close and to provide votes on account for the services for the year about to open. Some votes for the defence services and a vote on account for all the branches of the Civil Service are taken; they must go through Supply and Ways and Means and then be embodied in the Act, which passes through the regular procedure and sent up to the Lords, where under the Parliament Act, 1911, it cannot be amended and is hastily sent back to the Commons, for, contrary to normal practice, at the time when assent is to be given, such Bills are handed at the bar of the Lords by the Speaker to the Clerk of the Parliaments.

The form of enacting differs from that usual in ordinary legislation. In the Appropriation Act it runs: "We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted", etc. In the case of the Finance Act, the essential words run: "Towards raising the necessary supplies to defray Your Majesty's public expenses and making an addition to the public revenue, have freely and voluntarily resolved to give and

[1] Standing Order, No. 70.

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grant to Your Majesty the several duties hereinafter mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted ".

6. *Private Bill Legislation*

It is significant of the respect paid to property that from an early date we find care being taken to secure that private interests should not be lightly jeopardised. The modern procedure was devised largely because of the large number of Bills for railways presented in 1844–5. The subjects which may be dealt with in this manner are very wide ; not only private persons, as well as companies, may apply but also local government authorities, and the topics dealt with include names, naturalisation, estates, formerly but now very seldom divorce, bridges, canals, gas, electricity, ferries, fisheries, docks, harbours, drainage, land enclosure, motor roads, navigation, piers, reservoirs, sewers, streets, subways, tramways, waterworks, burial-grounds, gaols, county or court houses, stipendiary magistrates, etc.

The line of demarcation between private Bills and public Bills is not absolute. The house may decide to treat any Bill as a public Bill, but public Bills which seem to be subject to the rules as to private Bills are scrutinised after order has been made for second reading by the examiners of private Bills and, if the examiner for the Commons reports that the orders have not been complied with, the Select Committee on Standing Orders examines the Bill, and, if they hold that the orders should not be waived, the order for second readings is discharged.[1] The Committee consists of the Chairman of Ways and Means and his deputy, and two persons chosen by the Chairman from a panel selected by the Committee of Selection, and is no doubt a serious

[1] Standing Order (Private Business), No. 216.

tribunal.[1] But the Commons can of course suspend their standing orders for any Bill.

The procedure demands preliminary steps to take care that persons interested shall have due notice; advertisements must appear in October and November, owners and occupiers of any lands affected must be notified by December 5; and plans deposited with local authorities by November 20. A petition with a copy of the Bill must be lodged with the Committee and Private Bill Office by November 27, and printed copies of the Bill at the Treasury and General Post Office by December 4. Memorials by those who desire to oppose on the ground that the standing orders have not been obeyed are lodged at the Office, and on December 18 examiners representing the Lords and the Commons determine whether the orders have been complied with. On or before January 8 the Chairman of Ways and Means and the Chairman of Committees decide in which house each Bill will be introduced. The procedure in either case is similar; that of the Commons may very briefly be summarised.

The petition is sent to the Office with an endorsement that the orders have been complied with or not; it is one day later presented to the house by the clerk of the Private Bill Office, and is either deemed to have been read a first time or is referred to the Select Committee on Standing Orders, if the orders have not been complied with. That body may waive compliance, when the Bill may be presented and held as read.

The second reading follows not less than three or more than seven days after first reading. It is not normally opposed, unless some principle is involved, as a question of public amenity or municipal trading, in which case an instruction may be given to strike some clauses out of the

[1] Standing Order (Private Business), No. 205.

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Bill. If passed, then general approval is accorded, conditionally on the proof of the allegations set out in the petition.

The Bill then goes to the Committee of Selection which assigns it to a Select Committee of four members (five in the Lords) who act judicially; hence no member whose constituents are interested sits. The Chairmen of Ways and Means and of Committees can make recommendations, and Government departments can offer suggestions which must be considered by the Committee and noted in its report. Unopposed Bills go to the Committee on such Bills,[1] and joint committees with the Lords are possible.

In committee witnesses are examined and cross-examined and counsel plead the case on either side. The first point is to decide if the petitioners have made out a case for legislation; if so, the preamble is held to be proved; then the Bill is examined clause by clause and amendments made, and new clauses added if necessary to meet the views of opponents. In many cases the terms of the Bill are adjusted in close co-operation between counsel and their clients. When passed in committee, it is reported to the house, where it passes through a consideration stage on which amendments may be made. Then it is read a third time and sent to the Lords, where amendments are not common, though rejection is possible. The Parliament Act, 1911, has no application to such measures.

If the right to oppose is questioned, it falls to be decided by a court of referees[2] for the Commons, selected from the Chairman of Ways and Means, his deputy, not less than seven members chosen by the Speaker, and his counsel, for the Lords by the Chairman of Committees.

Considerable importance attaches to the activities of certain officers in regard to these Bills. The Chairman of

[1] Standing Order (Private Business), No. 111.

[2] *Ibid.* No. 95.

Ways and Means in the Commons is given the opportunity to study private Bills before consideration by a committee, and after amendments are made, but the chief supervision is that of the Speaker's counsel, who goes through the Bills, notes any suggestions from Government departments, brings to the notice of the agent for the Bill any amendments which seem necessary, and calls the attention of the Chairman of Ways and Means to any matters of importance. The Chairman of Committees in the Lords devotes considerable time and trouble to such Bills, and is in regular communication with the Chairman of Ways and Means with regard to them. He indicates amendments which he desires to be made to the promoters or their agents, and he has great power of persuasion, as it rests with him to move second and third readings in the Lords, which he would not do if his suggestions were not in effect met.

The advantages of the procedure are obvious and they save Britain from the grave disadvantages of legislatures in America, where members devote their energies not to the furthering of important public causes but to securing the interests of their constituents or organisations in their constituencies; there is evidence that the evil of the political "boss" is largely due to his activity as a private Bill broker. The Commons is not anxious to intervene regarding such Bills, either on second reading or by giving instructions, and, though more action has possibly been taken in these regards of late years, it certainly has not fundamentally affected the position that the Bills are dealt with in a judicial spirit.

It must be added that matters of general importance will not be permitted to be dealt with by private Bill. Thus in 1939 the London County Council's effort to secure powers to rate land values, raising a revenue of some

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£3,000,000, and thus being able to reduce the ordinary rates by perhaps a shilling, was defeated, the Speaker ruling that it could not go forward in that form, while later an effort to put it forward as a public Bill failed on the refusal of the majority in the Commons even to allow the project to be introduced.[1]

7. *Bills to confirm Provisional Orders*

As an alternative to the older mode of procedure by private Bill has been established the right of Government departments to make orders which are turned into Acts by being scheduled to an Act promoted in Parliament by the department. These powers depend on statute, and the object is to give effect to schemes or proposals put forward by local authorities or companies, etc., covering such matters as the making of piers, harbours, tramways, the use of electric lighting, the regulation and enclosure of commons, the creation of local government or sanitary districts, the extension of borough boundaries, and so on. The orders are usually grouped together by the department so that several may be covered by one Bill.

On first reading, the Bills presented by the department are referred to the examiners of private Bills to ascertain if the standing orders are complied with. On second reading, they stand referred to the Committee of Selection, which sends Bills which are opposed to a Select Committee, where they are handled as are private Bills, and, if unopposed, to the Committee on Unopposed Bills.[2] Normally they are not opposed, as the department is trusted to secure public interests. The Bills are not within the ambit of the Parliament Act, 1911.

[1] Cf, Lowell, *Govt. of England*, i. 391.

[2] Standing Orders (Private Business), Nos. 80, 81, 159, 225, 244.

In place of such orders there is now a tendency to allow Government departments to legislate under statute without the confirmation by Parliament involved in this procedure, which gives the opportunity for opposition by interests concerned. Thus in 1896 the construction of light railways, which are analogous to tramways, was not made subject to statutory confirmation,[1] and in 1888 the alteration of county or borough boundaries was made subject to confirmation, that of urban or rural districts or parishes was permitted subject to the order being laid on the table of both houses. An interesting use of this mode of action is found in the Copyright Act, 1911, which allows the Board of Trade to make orders for altering the rate of royalties on records, etc., thus giving those interested an opportunity to make their voices heard in Parliament. In the same way, the Pilotage Act, 1913, in some cases allows orders to be made on application without confirmation by Parliament; in other cases confirmation is required, especially if an order is petitioned against by some person with interests involved. The Gas Regulation Act, 1920, allows the Board of Trade to make on application orders, which under the Gas and Water Works Facilities Act, 1870, required confirmation, without any such formality.

A procedure analogous to this is provided for Scotland by the Private Legislation Procedure (Scotland) Acts, 1899 and 1933. The place of private Bills is taken there by petitions addressed to the Secretary of State for Scotland asking for the making of an order in the form of a draft submitted. These proposals are examined by the Chairman of Ways and Means and the Chairman of Committees in

[1] 59 & 60 Vict. c 48; application to Light Railway Commissioners for issue of order confirmed by Board of Trade. Now under the Railways Act, 1921, the Minister of Transport makes and confirms orders.

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the Lords, who report whether the matter should be allowed to proceed in this way or whether private Bill procedure is necessary. The latter is held requisite if important principles are raised or English interests may be affected. Thus the Caledonian Power Bill was compelled to go through private Bill procedure because Welsh interests opposed it in the interest of a carbide calcium factory, which was desired for Wales, and the Bill was defeated in 1937 and 1938 by English votes against those of a large majority of Scotsmen.

Orders thus made can have no effect until given statutory validity, but occasionally they contain clauses with retrospective effect[1] which can hardly be ruled out as invalid, as Parliament has clearly power to legislate with retrospective effect. It may, however, be assumed that this *modus operandi* would not be used to prejudice private rights.

8. *Ecclesiastical Measures*

Yet another form of legislative procedure is presented by Church measures. These are prepared under a procedure, later described,[2] by the National Assembly of the Church of England and become eligible to receive the royal assent on the passing of resolutions by the two houses, which have no power to modify or amend, and, if either dislikes any portion of a measure, it must either waive its objections or reject in the hope that the Assembly may recast the measure in the light of the views of the house as expressed in the debate.

[1] Lanarkshire County Council Order Confirmation Act, 1922 (12 Geo. V. c. i); North Berwick Burgh Extension Order Confirmation Act, 1923 (13 & 14 Geo. V. c. liv.). The Acts of 1899 and 1933 are consolidated as 26 Geo. V. & 1 Edw. VIII. c. 52.

[2] Chap. XXVI, § 1.

9. *The Royal Assent*

The assent of the Crown can be given in person; in that case he would appear in the Lords and all Bills passed by the houses would necessarily be assented to by him. But it is now usual for his assent to be given by commission in the form of letters patent, but the statute of Henry VIII for the attainder of Queen Catherine Howard requires that the sign-manual should be affixed also,[1] and the rule is complied with, the one exception being in 1811 when George III was insane.[2] In 1876 the curious question was raised as to the validity of assent by commission, the Queen being absent on the Continent, but it was held that the statute of 2 William and Mary had given efficacy to acts done by the King when absent from the realm, and it was not thought necessary to appoint Lords Justices. Full power to deal with absence or illness is now given by the Regency Act, 1937.

The Commissioners, in the presence of the Commons headed by the Speaker carrying the Appropriation or other money Bill, announce their commission, which is duly read, and then declare that the King has assented, and require the Clerk of the Parliaments to pronounce the usual forms, which he does, the Clerk of the Crown reading the titles. The Appropriation Bill is assented to thus: "Le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veult". To public Bills which include for this purpose local Bills, the assent is: "Le roy le veult". To private Bills in the narrower sense of the term, that is Bills affecting private persons such as name or estates or divorce Bills, the assent is: "Soit fait comme il est désiré".

[1] 33 Hen. VIII. c. 21.

[2] Feb. 5, 1811; May, *Const. Hist.* i. 144.

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The Acts of Parliament are published as public Acts, on the one hand, and as local and private Acts on the other. Public and local Acts agree in being judicially noticed, while private Acts must be specially pleaded.

In addition to the royal assent required for all Acts, in certain cases the consent of the Crown to legislation being passed is requisite. This applies to all Bills of any kind affecting the King's property interests or dealing with his prerogatives. Thus it is necessary that at some stage before third reading[1] his consent should be given to such Bills as the Government of India Bill, 1935, or Bills to limit the prerogative to create peers, or to declare war.[2]

Refusal of assent, given in the polite terms, "Le roy s'avisera", has not happened since 1707, when Queen Anne refused assent to the Scotch Militia Bill. So long as the House of Lords preserved complete authority, the possibility of refusal might be ruled out of the bounds of practicability after the establishment of the doctrine of ministerial responsibility for public policy. The passing of the Parliament Act, 1911, revived the issue,[3] since the House of Lords became liable to be overridden, and an effort was made during the controversy over Home Rule for Ireland to insist that the King was now expected to exercise the right of refusing assent to matters not sufficiently considered by the people which the Lords had been supposed to exercise. It is clear that the position created by the Act involves no such assumption. The attitude of the Crown must be governed by the general principle that the advice of the ministry can be refused, and ministers be thus driven to resign or be dismissed, only if the sovereign can obtain another ministry to homologate his action and to obtain

[1] In 1909 Lord Lansdowne first secured an address to the Crown asking permission to introduce his second chamber proceedings (March 31).

[2] Cf. the Peace Bill, No. 32 of 1936–7; No. 35 of 1937–8.

[3] Cf. Esher, *Journals*, iii. 156 f.

for it the support of the Commons, either with or without an election. In practice the King would probably, if he determined to act, remove his ministry before the issue of assent was actually arrived at.

The refusal of ministers to present a Bill duly passed by both houses for royal assent may be deemed beyond the realm of possibility at the present day; if they disliked anything in a measure, they could hold it over to be presented for assent together with an amending Act. Refusal to present for assent, or advice to refuse assent, might be resorted to in the case of a private Bill found to contain some obnoxious clause which had slipped through both houses, but that is not a very likely contingency. But assent might be withheld if it were found that a Bill had been wrongly supposed to have been duly presented to both houses and dealt with therein.[1]

Occasionally a Bill has received royal assent, though it has not been duly passed, as in the case of two Eastern Counties Railways Bills in 1844, when the Queen assented to one of the two which the Lords had not actually passed.[2] That was set right by another Bill, necessarily so, for there appears to be no power in the courts to question in any way the validity of a measure assented to by the Crown.[3] In the case of subordinate legislatures such questioning, of course, is inevitable, but it appears very doubtful how far even in their case the courts will investigate questions as to the due observation of special forms, *e.g.* passing by absolute majorities, if the irregularity is not patent on the face of the Act itself.

[1] On March 9, 1937, the Commons requested the return of the Ministry of Health Provisional Order Confirmation (Earsdon Joint Hospital District) Bill as it had been sent up to the Lords though not read a third time.

[2] See 7 Vict. c. xix. and for another case 6 & 7 Vict. c. lxxvi.

[3] *Edinburgh and Dalkeith Railway Co.* v. *Wauchope* (1842), 8 Cl. & F. at p. 723.

10. *Parliamentary Inquiries*

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It is an essential characteristic of the Parliamentary system that the House of Commons does not attempt to intervene in the detailed conduct of the executive government, but that it is content in the main to allow the executive to act subject to its right to investigate cases of failure on its part. The plan of appointing a committee to enquire can be traced back to 1689, when an investigation was thus conducted into the conduct of the war, as a result of which an unfavourable report on the conduct of the Governor of Londonderry was given, and the house addressed the Crown with a request for his being sent to London for trial on a charge of treason.[1] The practice, however, suffered for a long time because neither the house nor any committee had power to examine witnesses on oath; this authority was given in 1770 to the committees which investigated up to 1868 election petitions, then extended to committees on private Bills, and in 1871 the Parliamentary Witnesses Oaths Act provided for the power of the house to examine on oath witnesses at the bar, and for that of committees. If a witness refuses to answer, he is guilty of contempt and can be dealt with on this account, but there is no doubt that the procedure is not very effective if the witness is reluctant.[2]

On the value of committees opinion differs widely. A committee may investigate the working of a department, or the question of bringing under the control of the executive some specific piece of business, or the conduct of an individual, or the causes of an apparent or real disaster. But the fact that a committee is essentially political in outlook does not necessarily or even probably help it to be an

[1] Hallam, *Hist.* iii. 143.

[2] Mr. Kirkwood's case, 152 *Com. Journ.* 361; Mr. Maxse, 167 *ibid.* 543.

efficient means of arriving rapidly and effectively at the truth. There will always be some members who never rid themselves of the feeling that they should take care to safeguard the party interest, while too often the report suggests that the members have divided on party considerations rather than as a result of convictions based on the evidence. The enquiry into the condition of the army before Sebastopol [1] and into the conduct of those departments of Government whose duty it had been to administer to the wants of the army which Mr. Roebuck carried in 1855, resulted first in the fall of the Aberdeen Government, and then, when Lord Palmerston [2] decided to proceed with it, to the retirement of Mr. Gladstone, Sir J. Graham, and Mr. S. Herbert. The objections to the procedure were based on the contention that the enquiry would paralyse the operations of the departments at home while engaged in aiding the forces, that it could not be conducted with fairness to the officers on the spot, and that it implied the intention of the Commons to interfere directly in the actual control of operations. It is quite unnecessary to take the argument as convincing in so far as it applied to past transactions which could be fully investigated; no doubt, while military operations are actually in progress, it is unwise to add to the difficulties by instituting an enquiry. A more real objection is the point of the difficulty of impartiality of investigation, and in the case of the Mesopotamian and Dardanelles campaigns, the step taken by Parliament in 1916 was to set up Special Commissions [3] with expert members as well as Parliamentarians who could more readily appreciate the military considerations to be borne in mind.

In the case of the allegations of *The Times* against Mr.

[1] For Gladstone's view, see 136 *Hansard*, 3 s. 1837.

[2] Bell, ii. 115 ff.

[3] Cf. Asquith, 84 *H.C. Deb.* 5 s. 1236; Spender, *Lord Oxford*, ii. 294 f.

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Parnell, the Government declined to appoint a Parliamentary committee,[1] and instead insisted on giving the matter to a tribunal of three judges. Whether the plan was wholly successful was much discussed, and remains open to dispute. The investigation into the South African War was carried on by a Royal Commission whose report was sufficiently depressing,[2] but the enquiry into the reconstitution of the War Office which it rendered pressing was entrusted to a trio of officers specially trusted by the King.[3] The enquiry by the Commons into the dealings in Marconi shares [4] imputed to certain Liberal ministers certainly was unsatisfactory in its purely political outcome. The Liberals on the Committee took a much more favourable view of the transaction than the Conservatives, and the length of the proceedings compared unfavourably with the comparative effectiveness of those later directed in the House of Lords [5] into the conduct of the Master of Elibank in his capacity of custodian of the party funds. One thing that was relatively satisfactory was the proof that the ministers were foolish but not morally defective.

In 1921 the Tribunals of Inquiry (Evidence) Act provided a simple procedure. If both houses resolve that it is expedient that a tribunal be established for enquiring into a definite matter of urgent public importance and a tribunal is appointed by the Crown or by a Secretary of State, the instrument of appointment may confer on the tribunal full power to examine witnesses on oath and to compel the production of documents, persons who refuse to give testimony or produce documents being subject to the authority of the High Court to make suitable orders regarding them. The advantages of this measure over

[1] Spender, *op. cit.* i. 58-62.
[2] *Parl. Pap.* Cd. 1789.
[3] Lee, *Edward VII*, ii. 194 ff.
[4] 42 *H.C. Deb.* 5 s. 667 ff.; 54 *ibid.* 391 ff., 542 ff.
[5] 15 *H.L. Deb.* 5 s. 412 ff.

the procedure by Parliamentary committee were conspicuously displayed in the case of Mr. J. H. Thomas and Sir A. Butt in the matter of budget disclosure in 1936.[1] The report of the Committee of judicial character which was set up was clear and conclusive, and the resignations of the two members whose conduct was impugned terminated an episode which, carried out under a Parliamentary enquiry, must have been far longer and far less convincing in its outcome. In June 1939 a judge with three expert assessors was appointed to examine the *Thetis* disaster.

11. *Suggestions for Devolution of Powers to relieve Parliament*

It is frequently urged that the pressure on the time of the House of Commons is excessive, that the house cannot spare time for the exercise of adequate control over the ministry, and the course of public affairs, and that its capacity to deal with legislation and finance is overtaxed. Private members, therefore, have no suitable opportunity for promoting legislation, and the habit of giving excessive powers of delegation to the executive is directly fostered, since it is better to have legislation than to leave matters which need regulation without it.

As regards delegation of legislative powers, it will be shown elsewhere that it is often essential, and that it would not be desirable to ask the Commons as a whole to deal with technical issues such as so largely form the topic of this form of legislation. If a Government department can do its work better than the Commons, to insist on asking the Commons to do it is clearly unwise. But there remains the question whether the same principle that things should be done by those best qualified to do them does not suggest

[1] *Parl. Pap.* Cmd. 5184.

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that Parliament might delegate part of its functions to other authorities, especially if there can be adduced grounds of other kinds for such devolution.

Such grounds do exist in the sense of nationality which exists in some degree in Wales and Scotland and which has effected so complete a change in regard to the relations of Ireland to the United Kingdom. It is significant that the Speaker's Conference on Devolution [1] was the outcome of an effort to do justice to the claims of the several national outlooks in the country by a system which would give local home rule in a sufficiently generous manner as to prevent separatist doctrines being pressed. The difficulties of arriving at any accord were shown by the fact that the Speaker proposed that there should be no idea of electing separate legislatures for the centre and the three units, England, Scotland, and Wales. Instead, the members of the Commons for these areas would serve with a Council of peers as the local legislature, thus solving the question of preventing the probability of serious disputes between the local and central legislatures. Mr. Murray Macdonald's scheme, on the other hand, adopted the traditional principle of giving each unit a legislature of its own, and it may be said at once that only such a legislature would have any chance of meeting the demands of national feeling.

The subjects which were deemed suitable for transfer were the regulation of internal and commercial undertakings, professions and societies; order and good government; ecclesiastical matters; agriculture and land; judiciary and minor legal matters; education; local government and municipal undertakings; and public health. But this list would not satisfy a good deal of autonomist feeling, and in fact the later developments of

[1] *Parl. Pap.* Cmd. 692 (1920); Ullswater, *A Speaker's Commentaries*, ii. 267 ff.

the movement in Scotland have tended in the direction of seeking a much wider autonomy. The supporters of this movement would desire to see Scotland made into a Dominion with membership of the League of Nations, and, while it is recognised that such matters as defence and tariffs must be arranged with England, the arrangements would not be entrusted to a single Parliament, but would be rather a matter of negotiation and agreement. The details of the settlement have not been agreed upon by the Scottish National party, but mere devolution would hardly be welcomed now. On the other hand, Scottish labour is hostile to anything which would impair the strength derived from connection with the great trade unions in England, and, despite lip service by the Labour party to the idea of devolution, it is reasonably certain that, if labour were in power, there would be found insuperable practical reasons for refusing to give effect to the project in any form.

There is no doubt some feeling of nationality in Wales, but not enough to render a home rule movement of great force. In England the position is unfavourable, for the essence of devolution is that it should be welcomed, and, unless powers can be given to regions in England, the gain from freedom from Scots and Welsh business would be minimal. Hence the suggestion of Mr. Ramsay Muir[1] to carve up England into areas which should be more or less one in interests, such as London, the South East, Wessex, Wales, the North West, the North East, East Anglia, and Mercia, and to set up in each group of counties a legislature with powers over agriculture and fisheries, public health, housing, education, local government, order, police and prisons. There might be a degree of co-ordination of these several legislative activities through the

[1] *How Britain is Governed* (1930).

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Home Office, or the houses of Parliament or the upper chamber, if it were reconstituted by election by the local legislatures. New life would be instilled into these regions; there would at last be something to counteract the strength of attraction of London, and impoverishment of the North would cease. So in Scotland the modern tendency under which all Scottish industries, the railways, and finance tend to be controlled from London would cease, and there would be some chance of a truly national legislature dealing effectively with the needs of the depopulated North in which English legislators are chiefly concerned as affording, if undeveloped, opportunities for sport.

The difficulties of devolution are, however, serious.[1] There is the objection that not only control of labour, but education, public health, transport and development of power, are all subjects which are best treated on a single footing for the whole of Great Britain. There would be loss of efficiency in serious measure by partition of control, and it would probably far outweigh any gain which might be derived from the possibility of better adaptation to local needs, or the opportunity for experiment, which is one of the merits claimed for a set of regions. Secondly, it is admitted on all hands that there should be reserved to the centre control over foreign affairs. Imperial relations, defence, excise and customs, and the regulation of trade and industry, while the Post Office cannot conveniently be broken up. Now under modern conditions it is practically impossible to separate the control of agriculture from that of trade and tariffs, and Imperial relations, and conventions on labour conditions might run counter to local efforts to regulate commercial undertakings. It is, of course, true that in Canada there is the utmost difficulty in adopting even so simple a convention as that of

[1] Finer, *Modern Govt*, ii. 880 ff.

Washington, 1919, regarding hours of labour, because the provinces control local labour conditions. Thirdly, the difficulty of finance is insuperable, for, if finance is to be obtained largely from grants from the central Parliament, that Parliament will insist on supervision of the use of its grants, and the powers of local units will be seriously circumscribed with resulting friction. On the other hand, to give financial responsibility to the local units would raise grave difficulties, and both Scotland and Wales might find themselves distinctly poorer under the change. The issue is hotly disputed in Scotland, and is not really capable of solution *a priori*, for there are no sufficient data which can be relied upon to give any guidance, and it is possible that this point should not be stressed. But there would obviously be many objections if in regions in England there were varieties of imposts and income taxes were subject to regional variation. Fourthly, the difficulties as to separation of powers are very serious. It would no doubt be necessary to refuse to limit the paramount authority of the central Parliament, and there would thus be no right in any judiciary to declare central Acts invalid because of excess of power; thus there would be avoided the worst difficulties of federalism such as have weakened it so greatly in Canada and even Australia as an instrument for national progress. Yet it would be vexatious to have local legislation liable to challenge in the courts, while to leave it free except for a possible overriding by central legislation would not be very satisfactory. We need not take seriously the idea that either the central or local legislatures would use their powers to injure the instrumentalities of the other; such things may be possible in continents under federation, not in a small island, but complications enough exist in Government without adding to them.

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Further, it must be recognised that the saving of time from devolution would be minimal. Granted that some time would *prima facie* be saved — it has been estimated that it would not exceed 8 per cent or less on the plan of the Speaker's Conference — that time might be more than lost by the necessity of central discussion of such issues as the financial relations with the provinces, which would probably cause as much trouble as they do in Canada; if there were differential rates of income tax, problems of migration of men and industry from one area to another might result in appeals to Parliament for intervention; if strikes were favoured or repressed by drastic means, there would certainly be fierce demands for intervention; and so forth. The problems to be faced by Parliament are such, it may be concluded, that, so far as time is concerned, mere regional devolution would mean little. What could be done, it is suggested, is to relieve Parliament of a good deal of work which arises out of the dislike to concede powers to local areas, which should be reorganised. They should then be permitted to develop municipal functions as they please; adopt the system of a municipal bank, as in Birmingham; purchase systems of transport, run municipal laundries, bakeries, and so on; all without the expensive necessity of fighting at Westminster before Select Committees, or having their measures rejected on second reading,[1] because the majority in the Commons for the time being dislike municipal trading or are disinclined to add further to the burdens placed on the ratepayers for the benefit of those who wish to use the rates as a means of equalising incomes.

A different plan, therefore, does not seek to rely on local devolution, but to divide the business of legislation between a political Parliament which would be concerned

[1] On March 10, 1939, the Commons by 156 to 96 refused to give a second reading, for a tenth time, to a Local Authorities (Enabling) Bill.

with foreign affairs, defence, Imperial relations, justice, and police, and an economic Parliament which would cover the fields of economics and social relations. Both would be popularly elected but might be differentiated by franchise, time of election, constituencies, duration of session, and so on. The political estimates would be voted by the economic Parliament *en bloc*; if a disagreement arose, a joint sitting could determine. The scheme seems to be impossible of acceptance, because it would appear hopeless to avoid deadlocks; foreign relations and economic and social interests are vitally intertwined, as also are Imperial questions.

A reduced form of this functional theory of devolution is presented in the scheme which in 1933 was mooted to have established some machinery to do the work, which had been discussed in 1919 by the National Industrial Conference and in 1923 by the Conference on Industrial Relations. A body might be set up composed of 40 members of the Commons, 20 peers, 100 representatives of capital, 100 of trade unions with 40 experts, to whom would be referred all Bills on economic issues, and who would study the problems of the further extension of co-operation in industry between capital and labour. It is true that such a body might discuss effectively such issues as the Coal Mines Bill of 1938 or the Cinematograph Films Bill; but the difficulties of finding an effective method of securing representation are obvious, and the fact that the Council would have only advisory power would probably render it difficult to secure a suitable membership whose views would carry sufficient weight with Parliament substantially to shorten debate. Nevertheless the scheme, which was given a blessing by Mr. Churchill in his Romanes lecture on *Parliamentary Government and the Economic Problem*, may well deserve more serious consideration than it has yet been

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allowed. Issues of personnel might prove soluble, if there were any real desire to solve them.

There is, ruling out devolution, no doubt that the position of private members who have useful legislation to suggest, which the Government hesitates to take up as an official responsibility, might well be improved. The existing system leaves far too much to the chance of the ballot and to the chapter of accidents thereafter. It has been suggested that the proper procedure would be for private members who had Bills, in whose support they could produce a minimum number of signatures, should be entitled to have these Bills sent to a Select Committee for full examination, the taking of evidence and report; such matters as the abolition of the death penalty or the establishment of a minimum wage or the reform of the marriage laws might thus be fully dealt with, and the Commons would have useful guidance either to accept or reject the results of the work of the Committee. The private members might find useful work to do, public opinion would be kept interested and would be enlightened, and, even if the results of the Committee were negative, the issue would have been considerably clarified. If there were too many Bills with sufficient support, there could be the ballot to decide precedence. In any case the procedure would plainly be much superior to the present haphazard method, which results in the introduction of Bills which have no possible chance of passing, so that the time spent thereon is largely wasted, for, knowing that Bills are not likely to go further, many members simply take the opportunity to have a holiday and the press spares no space for report. Under such a procedure it might be possible to expect that any useful measure such as that of 1939 to secure a reasonable right of access to mountains could be put in a shape in which it would have a suitable chance of passing.

An alternative scheme may be mentioned, which aims at securing the improvement not merely of legislation desired by private members, but also the co-operation of such members in the general activities of the State. It has no doubt been inspired by the practice of the London County Council, in which members of very different political views, once elected, find useful spheres of activity, and are freed from the feeling of uselessness which assails many private members of Parliament, even on the Government side, and which more widely affects all members of the Opposition, when circumstances render its attainment of power uncertain for any time that can be foreseen.

One means of control by the Commons over the administration and legislation of the Government has been mooted with some frequency of late years—the appointment of committees to each great department of State.[1] Each committee would keep in touch with the administration of the department and on matters of importance which arose in the course of that administration. It would be authorised to make suggestions on policy, which the minister would then examine and might adopt in whole or part, knowing that, if he did so, he could rely on the members of the committee to support any innovation from opposition in the Commons, or even to prevent such opposition arising. Bills to be promoted by the department would come before it for discussion in confidence, so that the minister could, without lack of prestige, withdraw or modify parts which proved open to real criticism. It is not suggested that the members would have any executive control or that they should be able to interfere, but they should be entitled to ask for, and receive, information. They should be helpful in clearing up issues of legislation before and after introduction into Parliament, for much time is wasted by

[1] Cf. for the Colonial Office, Common Debates, June 7 and 12, 1939.

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members who do not understand measures effectively. Moreover, they could be employed to criticise rules which the minister has statutory power to make, and one of the real dangers of delegated legislation would thus disappear. The members might also play a part in connection with the relations of the official and staff sides of the department councils under the Whitley scheme, and supply a mediatory element, which would be entitled to ask the two sides to remember the interest of the general public in the two aspects of such discussions, the individual profit of the Civil servant and the advantages of contentment in that service, and the need for wise conservation of the resources of the State in view of the enormous burdens imposed upon it by the risk of war, and the necessity of preparations to meet it.

CHAPTER IX

THE HOUSE OF LORDS

1. *The Composition of the House*

At the outset of Queen Victoria's reign the House of Lords was composed of hereditary peers of the United Kingdom, of hereditary peers who were not hereditary lords of Parliament, made up of the 16 representative peers of Scotland elected for each Parliament and the 28 representative Irish peers, elected for life, and lords of Parliament without hereditary character, the 26 spiritual lords, who held office so long as they retained their episcopal duties.

The position of hereditary peers received in important points further definition in 1856[1] when the attempt was made by prerogative to create a life peerage, authorising its holder to sit and vote in the Lords and to take part in its judicial proceedings. Reliance was placed on instances adduced by Prynne to show that the issue of a writ of summons did not have the effect of creating a hereditary peerage of Parliament, but against this Dr. Stubbs[2] has contended that there had never been a baron created for life only, without a provision as to the remainder or right of succession after death. Prynne's list[3] was held to include judges mistaken for peers, and others who were summoned only to councils which were not true Parliaments.

[1] *Wensleydale Peerage Case* (1856), 5 H.L.C. 958.

[2] *Const. Hist.* iii. 454 f.; Pyke, *Const. Hist. of House of Lords*, pp. 376-9.

[3] *Reg.* i. 332 f.

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Of others the explanation may be that there were no descendants of the first peer, or again the son may have been a minor and have died or been forgotten before he came of age. Whatever be the value of these arguments, it is reasonably clear that the authenticated instances of life peerages were either grants for life of a higher rank to men already entitled to summons; grants expressly excluding the right to sit in the Lords; and grants to women, mainly the favourites of Charles II and James II, of George I and George II. It was then a fair argument that to revive a practice four hundred years old was as unconstitutional as it would have been in 1832 to revive the obsolete power of sending writs to new constituencies and withholding them from others, and thus solving the problem of reform over the heads of the Lords.

The Committee of Privileges adopted the view that a Lord of Parliament must be a hereditary peer, and that a writ of summons creates a hereditary peerage as laid down in 1673 in the *Clifton Case*,[1] if as was added in the *Freschville Case*[2] in 1677, the seat is duly taken.

In 1861 a further issue of great importance was raised by Sir M. Berkeley who claimed a writ of summons in virtue of his holding of the castle of the barony of Berkeley and of there being in this case precedent for the disposition by deed of a barony by tenure, while the writ had shifted with tenure. It was proved that Thomas Lord Berkeley under Edward III with royal licence had settled the castle upon himself for his life with remainder to his son in tail male; when in the third generation the line failed, the barony and the writ of summons in fact went to the nearest male heir. Secondly, under Henry VII William Lord Berkeley settled the territorial barony on the heirs of his body, with remainder to Henry VII and the heirs of his body with a

[1] Collins' Baronies, 287.

[2] Lords' Rep. iii. 2.

reversion to his own right heirs. Under this on his death childless, the lands passed to Henry VII and his brother was never summoned, though on Edward VI's death the barony revived. But these precedents did not touch devise by will, and the claim was naturally dismissed; baronies by tenure were patently so remote that revival would have been unwise.[1]

In 1876 it was definitely decided that the King cannot create a peerage with limitations contrary to the general law of England as regards descent. This ran counter to the decision in the *Devon Peerage Case*[2] in 1831 which held good a grant to a man and his heirs male of an earldom, though such a grant differs from a grant in fee by the limitation to male heirs and from a grant in tail because of the absence of reference to procreation. In the *Wiltes Peerage Case*[3] the House of Lords had ruled to the contrary. This view was open to the objection that a peerage by writ was distinctly held by Coke and Cruise,[4] commenting on him, to have the peculiarity that it passed to heirs lineal only, not to heirs collateral, a species of estate not known to the law except in the case of an office of honour. But in the *Buckhurst Peerage Case*[5] in 1876 it was ruled that the attempt to limit by patent the barony of Buckhurst so that, if it happened to fall to the holder of the earldom of De la Warr, it would shift to the person who would be entitled to it, if the earl were dead without issue, was invalid.

In the *Norfolk Peerage Case*[6] the issue was decided that a peer cannot surrender his peerage to the King. Lord Mowbray claimed the earldom of Norfolk on the basis of a surrender by Roger le Bygod to Edward I and a regrant by

[1] 8 H.L.C. 21.
[2] 2 Dow & Cl. 200.
[3] (1869), L.R. 4 H.L. 126.
[4] Co. Litt. 16*b*; Cruise on Dignities, p. 100.
[5] 2 App. Cas. 1.
[6] [1907] A.C. 10.

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Edward II to Thomas de Brotherton, from whom he could establish descent. But the Committee for Privileges insisted on regarding the grant of the earldom invalid, reaffirming the decisions in the *Grey de Ruthyn Peerage Case* [1] in 1640 and its reaffirmation in the *Purbeck Peerage Case* [2] in 1678. The idea of permitting surrender of peerages was revived in 1919, but the House of Commons by 169 to 56 votes declined to grant even permission for the consideration of the measure. None the less it remains anomalous that, in the case of a hereditary honour, there is no possibility now of extinction save by a private Act of Parliament, unless the law is changed. The old rule of corruption of the blood disappeared in 1870.[3]

In the case of peerages by writ, descent is to heirs general, so that, if a peer dies leaving more than one daughter, the peerage falls into abeyance, unless the King chooses to grant it in favour of one of the co-heirs, or unless in process of time the peerage comes to be vested in a single descendant of the last holder. There has been discussion as to the desirability of defining the issue so as to permit descent automatically to the eldest daughter and her descendants, but the question has never been carried further.

Peerages are now invariably created by letters patent, which contain a limitation to heirs male of the body, but a special remainder may be included, which takes effect as a new grant on the death of the original grantee; well-known cases are those of Lord Strathcona and Mount Royal, and of the Earl of Balfour, in which the peerage went to the daughter and the brother of the first peer respectively. But such remainders were not regarded with much approval by Edward VII or George V, and they will not lightly be conceded.

The growth of the peerage throughout the century since

[1] Collins, 256. [2] *Ibid.* 293. [3] 32 & 33 Vict. c. 23.

1837 has been steady; at the end of 1938 [1] there were 719 hereditary peers in the Lords, while adding the Lords of Appeal, the archbishops and bishops, the Scottish and Irish representative peers the total came to 783; there were 24 minor peers and 21 peeresses in their own right.

The position of peeresses in their own right is anomalous. There is no logical reason why they should not have the right to vote and but for the energy of Lord Birkenhead it would have been conceded by the Committee for Privileges in Lady Rhondda's case in 1922.[2] Since then, though the matter was debated in the Lords in 1930 with negative results, no effort to change the position has been attempted. There is widespread reluctance to deal in any partial way with reform of the house.

There seems no reason to doubt that an alien is not entitled to a writ of summons, even though he is a peer; to become eligible he must be naturalised; the Act of Settlement, 1701, provides that no person born out of the kingdom, unless born of English parents, should, even if naturalised, be a member of either house of Parliament. It is clear that this clause is restricted in effect [3] by the British Nationality and Status of Aliens Act, 1914, but that does not affect the position where there has been no naturalisation, and Lord Reay, who held a Dutch barony and did not come within the statutes affecting nationality of persons born out of the realm, was naturalised accordingly.

Nor can a writ of summons be issued to a bankrupt peer, for such a peer may not under the Bankruptcy Act, 1883 (Section 32), sit or vote in the Lords, and the Bankruptcy Disqualification Act, 1871 (Section 8), forbids the issue of a summons to any person who may not sit nor vote.

[1] In 1893 out of 567 on the roll 493 were hereditary peers, including minors.

[2] [1922] 2 A.C. 339.

[3] *R.* v. *Speyer*, [1916] 2 K.B. 858.

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Under the Bankruptcy Act, 1914 (Section 106 (1)) the court must inform at once the Speaker of the Lords and the Clerk of the Crown in Chancery of the bankruptcy of any peer.

In other cases peers may not sit even if summoned. An infant is excluded by a standing order of May 22, 1685, and any person found guilty of treason or felony and sentenced to penal servitude or imprisonment with hard labour for any term or with imprisonment for twelve months may not sit unless pardoned or unless the sentence has been served; this was imposed by the Forfeiture Act, 1870, when the old corruption of blood was abolished. The Lords may also in their judicial capacity sentence a person to disqualification for sitting, as in the case of the impeachment of Lord Middlesex,[1] but the Crown no doubt could pardon after sentence. Peers must take the usual oath, as revised in the Parliamentary Oaths Act, 1866, modified by the Promissory Oaths Act, 1868, and the Oaths Acts of 1888 and 1909.

By an extraordinary measure passed under war conditions, the Titles Deprivation Act, 1917, authority was given to remove from the roll of the peerage any peer reported by a Committee of the Privy Council appointed for that purpose to have adhered to the King's enemies. But power was given to his successor to petition the Crown for a restoration of the right to summons. The power was duly exercised.[2]

A peer on creation receives letters patent and a writ of summons; on introduction, when two peers of his rank sponsor him, he presents both instruments to the Chancellor and they are recorded in the *Journals*; a fresh summons is issued for each Parliament. When a peer succeeds on

[1] 3 *Lords' Journ.* 382; Gardiner, *Hist.* v. 229 f.

[2] Dukes of Albany, Cumberland, and Brunswick, and Viscount Taaffe: Order in Council, March 28, 1919. (S.R. & O., 1919, No. 475, p. 498).

the death of his predecessor, and is of full age, he becomes entitled to a writ of summons, and it is arguable, and indeed probably true, that it becomes the duty [1] of the Chancellor to issue such a writ to any peer whose title is plain, even if he deliberately declines to apply for a writ. But in most cases the Chancellor is approached and evidence adduced to satisfy him of the right. The peer normally can easily prove his descent from the last peer, and by the *Journals* that he took his place, and by the patent that the peerage devolves on him. If the Chancellor is satisfied, he issues the writ; if he is not, the peer petitions the King through the Home Secretary and the Attorney-General reports; normally a favourable report will ensure the issue of the writ. If no such report is given, or if doubt remains, the King sends petition and report to the Lords, and the matter is dealt with by the Committee of Privileges, which is not bound by its own decisions as is a court of law. Without such a reference, the house has no authority to deal with a claim. If a writ were withheld from a peer who had been summoned and sat, it might be possible for the house to address the King to ask that a writ be issued, as it did successfully in the case of the Earl of Bristol [2] in 1626. But there is no redress available if the Crown is not satisfied, and no reference is made to the Lords; this difficulty arose in the case of Lord Sinha, the son of the first Indian peer.

2. *The Scottish and Irish Representative Peers*

The position of the Scots representative peers remains unaltered save in a minor respect. Under the Act of Union, 1707, there is, when a new Parliament is summoned, a Proclamation issued under the great seal commanding the

[1] *H.C. Pap.* 278, 1894, p. 21 (Clerk of Crown in Chancery's evidence).
[2] Gardiner, *Hist.* vi. 91, 94.

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peers of Scotland to meet; at Holyrood they gather and a roll is called; the peers read out lists of sixteen peers and proxies are handed in. The Lord Clerk Register finds who are elected, sends the return to the Clerk of the Crown in Chancery and by him it goes to the Clerk of the House of Lords. The elected peer then takes the oath and is admitted to sit on the strength of the list. It is plain that, as there is no power to compel those who answer to the roll to establish their right, there is risk of persons unqualified voting. That is reduced by an Act of 1847 [1] which provides that peerages in respect of which no vote has been given since 1800 shall be struck off the roll, and no vote be received in respect thereof unless on direction by the Lords. If the right to vote of any person is disputed, two peers may enter a protest which is sent to the Clerk of the Parliaments and then, if application is made, investigated by the Committee of Privileges. If a particular person establishes his right to a peerage, no vote during his lifetime can be received from any other person. It is unlikely that any abuse can arise, and, as Scots peers one by one receive United Kingdom peerages, the number will ultimately fall to that of the representatives, though the Lords may ere then have ceased to function as a house of Parliament. The election arouses hardly any interest, and peers once elected are seldom displaced.

If a representative peer is given a United Kingdom peerage, it seems right that he should be regarded as having vacated his place as a representative peer, and so a Committee of Privileges held in 1786, but this is doubted and an instance to the contrary is recorded in the Parliament of 1886–92.[2]

[1] 10 & 11 Vict. c. 52.

[2] Pike, *Const. Hist. of House of Lords*, p. 362; *Parl. Hist.* xxvi. 596. So also in 1736.

The view of the Lords that a Scots peer cannot, if given a peerage of the United Kingdom, be summoned to the Lords, which excluded the Duke of Hamilton as Duke of Brandon in 1711,[1] was obviously absurd, and it was negatived in 1782 by a unanimous opinion of the judges when asked to advise by the Lords in favour of the then holder of the two peerages.

While no revolutionary change has been made in the case of the Scottish peers, their Irish confrères have suffered a very different fate. The 28 elected representative peers were chosen for life by the whole body of Irish peers, the procedure depending on the issue of a writ to the Lord Chancellor of Ireland requiring the election of a successor to a representative peer on death. The powers of the Lord Chancellor were transferred on abolition of that office under the Government of Ireland Act, 1920, to the Lord-Lieutenant, but, that officer also having ceased to exist on the creation of the Irish Free State, the machinery of election has failed and the number of peers had by the end of 1938 fallen to fifteen. There seems no probability of legislation to secure replacement. To those already elected a writ of summons is sent for each Parliament.

While the Crown has no power to create a peer of Scotland the right to do so in the case of Ireland exists under conditions. The Crown may create one peerage for every three that become extinct, until the number falls to one hundred whereat it may afterwards be kept. It is sometimes convenient to create such a peerage for a man who wishes to be able to be elected to the Commons, as in the case of Lord Curzon when he became Viceroy. Whether a title should now be conferred on a person ordinarily resident in Eire may now be doubted, and such action would

[1] *Parl. Hist.* vi. 1047; 36 *Lords' Journ.* 517 (June 6, 1782). They can vote for representative peers; 39 *ibid.* 726 (June 6, 1793).

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at least be imprudent. The grant of peerages of any kind for services rendered otherwise than directly to the United Kingdom to persons resident in the Dominions is clearly a matter in which the concurrence of the Dominion Government is constitutionally desirable.[1]

3. *The Lords Spiritual*

The right of the episcopate to representation in the House of Lords was definitely stereotyped in 1878 by the Bishoprics Act, which limits the number of representatives to the 2 archbishops and 24 bishops.[2] Those of London, Durham, and Winchester are entitled to seats *ex officio*; in other cases on the occurrence of a vacancy, the senior bishop who has not become entitled to a writ receives it. In 1801 to 1869 an archbishop and three bishops from Ireland sat, but the Irish Church Act[3] terminated this representation, and similarly as regards Wales, the Welsh Church Act, 1914.[4]

The fact that the bishops are in fact or potentially members of the Lords helps to explain the control over their appointment which is insisted on by the Crown.[5] It takes the form of the sending by the Crown of a *congé d'élire* to the dean and chapter accompanied by a letter missive, giving the name of the person whose election is desired. If the appointment is not made within twelve days after the receipt of the *congé d'élire*, the Crown may appoint by letters patent, as has been done of course in the case of new bishoprics where no dean and chapter existed.

[1] This is enacted in the Constitution of Eire, 1937, Art. 40 (2).

[2] 41 & 42 Vict. c. 68. The rule was repeated in the later Acts creating bishoprics (1894–1917); and was begun by 10 & 11 Vict. c. 108, s. 2 (Manchester).

[3] 32 & 33 Vict. c. 42, s. 13.

[4] 4 & 5 Geo. V. c. 91, s. 2.

[5] 25 Hen. VIII. c. 20.

This, however, will become impossible with the creation of new chapters.

The consent of the appointee must be formally signified before a notary and he must make oath and fealty to the sovereign. Confirmation of the election follows before the vicar-general of the province, letters patent having been issued to the archbishop of the province in which the see lies. In the case of an archbishop, four bishops or one archbishop and two bishops act. The proctor for dean and chapter presents the patent requiring confirmation of the election, and requests the calling of opposers. But, if opposition is offered, the opposers cannot be heard. The Court of Queen's Bench, on the occasion of the appointment of Dr. Hampden to the see of Hereford, was equally divided on the issue whether a *mandamus* could issue ordering a hearing, and a *mandamus* was refused,[1] while in the later case of Dr. Gore [2] the court ruled that a *mandamus* would not lie, as the archbishop had no jurisdiction to hear objections to the doctrines held by the appointee before appointment. It seems clear, therefore, that the whole is an idle form. The vicar-general confirms to him his spiritualities and decrees his enthronement; consecration follows, and he does homage to the King for the temporalities of his see and takes an oath of fealty, which normally is administered by the Home Secretary, but in George V's illness was administered by the Prime Minister.

Whatever may have been the case in the past, bishops sit in Parliament by virtue of their spiritual office, and since 1692 at least it has been laid down by the Lords that they are not peers, for they are not of trial by nobility. Nor can they sit on the trial of peers. The Bishops Resignation Act, 1869, permits resignation, which carries with it

[1] *R.* v. *Archbishop of Canterbury* (1848), 11 Q.B. 483.
[2] *Ibid.* [1902] 2 K.B. 503.

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loss of a seat in the Lords, but rank, dignity and privilege are retained.

4. *The Lords of Appeal in Ordinary*

The appointment of Lords of Parliament entitled to sit in the Lords for all purposes so long as they continued to exercise judicial functions therein, was arranged in 1876,[1] and in 1887 their position was improved by the enactment of their right to sit and vote even after resignation of their office as Lords of Appeal in Ordinary. Their salary is £6000 a year, with judicial tenure. It has not been judicially decided whether they are peers to the extent that they are entitled to trial by their peers, and the matter may be doubted.

5. *The Officers of the House*

The Lord Chancellor is by prescription the Speaker of the Lords; in his absence his place is taken by deputies, of whom there are always several, appointed by commission; if all were away, the Lords elect their Speaker. As a relic of older days before the Lords became differentiated strictly from the high officers of the King, the Woolsack (now restuffed with wool to correspond with its name) is reckoned outside the house, and the Speaker's office can be discharged thence by a commoner, when there has been no chancellor, but a Lord Keeper, or the great seal has been in commission. Before being formally introduced as a peer, the Lord Chancellor is wont to take his seat on the Woolsack. His authority as Speaker is limited; considerable annoyance has been caused from time to time by assertions

[1] 39 & 40 Vict. c. 59; 50 & 51 Vict. c. 70. Their number was four under the Act of 1876; six under 3 & 4 Geo. V. c. 21; seven 19 Geo. V. c. 8. See 227 *Hansard*, 3 s. 908 ff. A peer may practise before the Lords in their appellate jurisdiction only: *Kinross (Lord), In re*, [1905] A.C. 468.

of the right to check or curtail debate, and instances of this usurpation of power have been few. It is indeed one of the merits of the Lords that there should be wide freedom of speech and, if the Government were to stifle criticism therein, the fate of the Lords would be accelerated with the loss of respect which would ensue. The Lords, unlike the Commons, claim the right of overruling their Speaker forthwith on issues of their proceedings. The decorum of the chamber is not to be lessened by " personal, sharp, or taxing speeches ", and as a rule this desideratum is obeyed.[1]

The officers of the house include the Clerk of the Parliaments, who is charged with keeping the records of proceedings and judgments and who pronounces the words of assent to Bills; the Gentleman Usher of the Black Rod, who has functions much less than, but analogous to those of the Serjeant-at-arms of the Commons, and the Serjeant-at-arms who is especially the attendant on the Chancellor.

6. *The Privileges of the Lords*

The Privileges of the Lords differ from those of the Commons in that they are not formally claimed by the Speaker, but assumed to exist independently without grant.

The Lords, like the Commons, claim freedom from arrest within the usual period of privilege of Parliament, except in case of treason, felony, or refusing to give security to keep the peace, and this privilege is asserted to apply to their servants during the session and twenty days before and after.[2] Freedom of speech is theirs, but it is clearly undesirable that peers who are Civil servants should avail

[1] Fitzmaurice, *Granville*, ii. 109 f.; 211 *Hansard*, 3 s. 1839; Standing Order, No. 28 (June 13, 1626). The Ballot Bill, 1872, was the cause for controversy.

[2] Standing Orders, Nos. 57-60.

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themselves of the right, except in so far as it may be approved by their political chiefs. Lord Esher, who was not a Civil servant, evidently met some criticism for his attitude to the Government when he was a member of the Committee of Imperial Defence on a permanent basis of anomalous character.[1] The position of the Lords of Appeal is disputed, but Lord Carson asserted the right to full political activity if he deemed it in the public interest.

Each peer has the privilege of access to the sovereign, but the rules of constitutional government render it impossible for the Crown, when granting such access, to make any but a formal reply, and the assertion of the right seems to be obsolescent.[2]

The Lords can commit for contempt indefinitely, but it seems that prorogation ends an indefinite commitment as in the Commons, but it can also fix a definite term. It could fine, but does not do so.

Up to 1868 the right of voting by proxy was maintained by the Lords, but by Standing Order of March 31 it was abandoned. The practice of recording protests by individual members seems to be now rapidly obsolescent.

The house also has the right to exclude unqualified persons, as it did in the case of Lord Wensleydale when he held only a life peerage, and as it did when it refused to admit the claim of Lady Rhondda to sit. But, as we have seen, it can pronounce on claims to old peerages only on reference by the King.

The judicial functions of the Lords are dealt with elsewhere.

[1] *Journals*, iii. 160. Lord Carson claimed the right outside Parliament to denounce the treachery of the Government to Irish loyalists in 1922; Lord Birkenhead violently attacked his action: *Birkenhead*, ii. 210 f.

[2] *Letters of Queen Victoria*, 1 s. i. 431.

CHAPTER X

THE RELATIONS OF THE HOUSE OF LORDS AND THE HOUSE OF COMMONS

1. *The Relations of the Houses prior to 1906*

At the accession of Queen Victoria the ultimate supremacy of the House of Commons over the upper chamber had been revealed in the struggle over reform. The final agreement of William IV [1] to grant "permission to Earl Grey and to his Chancellor, Lord Brougham, to create such a number of peers as will be sufficient to ensure the passing of the Reform Bill — first calling up peers' eldest sons" was not achieved until the King had been satisfied that no alternative ministry to that of Earl Grey could be formed, and that he had no possible choice but to yield. The argument of Lord Grey was unanswerable; if the Lords could not be compelled to give way, then the country must be held to be governed by an uncontrollable oligarchy.

The resistance of the Lords to reform was based on very important considerations. The creations of W. Pitt had added largely to its numbers, adding to the great nobles numbers of the rich commercial classes on whose support he relied, small landowners, bankers, merchants, nabobs, army contractors, lawyers, soldiers, and seamen. He had thus created an assembly essentially conservative in its outlook, extremely eager to resist any attacks on property, and thus highly sensitive to a movement which

[1] May 17, 1832; May, *Const. Hist.* i. 210; *Earl Grey's Corr.* ii. 434.

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struck at their rights in respect of control of seats in the Commons, and the profits thence resulting, and threatened to create a legislature which they could not dominate, and which might use its sovereign power to limit in the common interest those rights of property which they so highly prized. The fact that resistance had been defeated did not leave the peers at all crushed. Rather they were determined to secure as far as possible the interests of their order, and, shortly after the passing of reform, they readily manifested their ability and determination to maintain their rights. Nor, of course, was their action in their eyes selfish; their position and power they regarded as essential to the welfare of the country.

Nonetheless the house did not incur serious unpopularity for many years. Lord Derby, in opposing the second reading of the Corn Importation Bill in 1846, indicated in well-chosen terms the function which he would ascribe to it: "It is to interpose a salutary obstacle to rash and inconsiderate legislation; it is to protect the people from the consequences of their own imprudence. It never has been the course of this house to resist a continued and deliberately formed public opinion. Your Lordships always have bowed, and always will bow, to the expression of such an opinion; but it is yours to check hasty legislation leading to irreparable evils." Lord Lyndhurst took a similar line on the Oaths Bill of 1858, claiming the right to check inconsiderate, hasty, and undigested legislation, but disclaiming resistance to the opinion of the Commons, when backed by the opinion of the people, especially in affecting the constitution of that house and popular rights.

In one respect the position of the Lords was so obviously open to criticism that a determined effort was made by the Government in 1855–6 to deal with it. The composi-

tion of the house for judicial purposes needed strengthening, and an effort was made to revive the former right of creating life peerages by conferring such a peerage on Sir James Parke, one of the barons of the Exchequer, but the issue was decided against the right by the Committee of Privileges, which denied that his patent could enable him to sit in Parliament under the usual writ of summons thither.[1] The merits of the decision may be questioned, but the attempt to remedy the alleged lack of prerogative power by the passing of an Act failed of success. The difficulty as to the strengthening of the Lords was got over by the grant of a hereditary peerage to Lord Wensleydale, but it was clear that the Lords was still inadequate for its high judicial duties. Its jurisdiction, therefore, was to have been taken away by the Appellate Jurisdiction Act, 1873, but the advent to power of a Conservative Government saved it from extinction. Instead the Appellate Jurisdiction Act, 1876, added two — later to be four — Lords of Appeal in ordinary with the right to sit and vote, but during the tenure of that office only. But in 1887[2] the right to sit and vote was given for life, and the children of such peers were by royal warrant in August 1898 given precedence immediately after the younger children of hereditary barons. The number of such peers was raised by subsequent legislation to seven.[3] Of the interest constitutionally of this innovation there can be no doubt, and it is worthy of note that these peers have regarded themselves as fully entitled if they think fit to take a full part in the non-judicial work of the House of Lords, Lord Sumner in special asserting his discretion in the matter, *e.g.* as regards Indian policy.

[1] May, *Const. Hist.* i. 198 ff.; *Wensleydale Peerage Case*, 5 H.L.C. 958.
[2] 50 & 51 Vict. c. 70.
[3] 3 & 4 Geo. V. c. 21, s. 1; 19 Geo. V. c. 5.

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In 1860 there arose a definite clash of authority between the two houses. The Commons had long claimed the initiative in money bills, and had asserted in 1671 and again in 1678 their claim that no alteration should be made in Bills granting aids and supplies to the Crown. The Commons, however, had not asserted absolutely that the right to reject was denied,[1] and occasional cases of its exercise had been recorded. But in 1860 the ministry in its scheme of finance proposed to readjust taxation, increasing, on the one hand, the property tax and stamp duties but reducing the duty on paper. Though these arrangements were intended to operate as a whole, the measures were sent up in separate Bills and the Lords decided to reject the repeal of the paper duties. In this action they were no doubt encouraged by the obvious indifference of Lord Palmerston,[2] even if we do not go so far as to say that he rather welcomed the action of the Lords. Mr. Gladstone, however, took a very different view of this action, and insisted on redress. Lord Palmerston was reluctant to act drastically, but he was forced to consent to resolutions which set forth the privileges of the Commons in matters of taxation, and which, without denying the abstract power of the Lords to reject money Bills, asserted that the Commons had always it in their power so to frame money Bills as to make the right of the Lords to reject difficult, if not impossible, to exercise. In 1861 the meaning of this claim was revealed. The house included the financial measures of the year in a single Bill, which the House of Lords could reject only at the cost of bringing the whole finance of the year to a standstill and naturally no such rashness appealed to the house.[3] The issue thus successfully settled was normally deemed to have disposed of the question for good.

[1] Cf. in 1671, Hatsell, *Precedents*, iii. 405, 422 f.

[2] Bell, ii. 258 ff.

[3] *Ibid.* ii. 284 ff.

The powers of the Lords as to general legislation remained unaffected by this surrender in the realm of finance, which by history was essentially admitted to be the preserve of the Commons, and in which the Lords might fairly be held to have been the aggressors in the late contest. The convention that the Lords would not resist what was shown to be the will of the people remained in being, and, when that will was really expressed, that it was not to be resisted was argued effectively by Lord Cairns when he deprecated refusal to pass the Irish Church Disestablishment Bill. But the difficulty was obviously that the Lords were the judges whether the will of the country had been expressed at all, they might doubt whether the measure sent up to them by the Commons represented with any accuracy that will, and they might claim that it was necessary to have that will further elucidated by reference to the electorate. They could, it is clear, claim that by such reference back they were really conserving the interests of the people from misunderstanding or misrepresentation by their representatives.

In 1884 the Lords had the opportunity to press their views in these regards. They were asked to pass a Bill largely to increase the electorate, but they were not informed in detail of the mode in which full effect to this increase would be given by redistribution of seats. Lord Salisbury [1] seems for a moment to have thought that he might go so far as to insist that the electorate should be consulted on the issue of redistribution, and that the Commons should not press forward legislation on the franchise, until it had received a clear mandate on franchise and redistribution as a whole. This extreme position could not have been maintained, and with the aid of the intervention of the Queen it was found possible to arrive at a

[1] 290 *Hansard*, 3 s. 468 f.; Morley, *Gladstone*, iii. 130 ff.

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compromise, under which the principles of redistribution were virtually agreed upon by the leaders of the Opposition before the Franchise Bill was accepted by the Lords, while the Redistribution Bill next year followed the lines already agreed to.

The relations between Commons and Lords were now to be severely strained by the issue of Home Rule. The Fenian conspiracy for the establishment of an Irish Republic had failed of its immediate aim, but it had established a tradition in favour of autonomy and from the Amnesty Association formed in 1868 in order to obtain clemency for the Fenians, imprisoned on charges arising out of their abortive rebellion, sprang a Home Government Association of Ireland which was supported by Catholics and Protestants alike and by men of all political points of view. Its aim was to secure for Ireland its own Parliament to control its internal affairs under a federal system which would leave to the Imperial Parliament full authority over all Imperial and foreign relations and the defence and stability of the Empire. The success of the movement was immediate: four Home Rulers were elected, including Mr. Butt, at by-elections in 1871, and two more next year. In 1873 the Home Rule League was founded to further the objects expressed, and Mr. Butt met the issue whether Irish members should be retained at Westminster by the suggestion that they should attend for Imperial issues only. Later he definitely adhered to a federal system for England, Scotland, and Ireland alike.

Mr. Butt in 1874 was at the head of a body of 58 Home Rulers, moderate men, friendly to the Empire, and he made a bid for the favour of the British Parliament, not merely for his scheme of devolution, but for immediate remedial legislation raising no constitutional issues. His demands went on both heads unheeded; the Fenian movement had

no love for a loyal subject, and the Roman Catholic Church distrusted a Protestant. This failure was the opportunity given to Mr. Parnell to introduce other aims and tactics. If constitutional agitation were despised, the Commons would find men who were prepared to see that it did not work if it would not listen to and alleviate Irish wrongs. In 1877 obstruction gravely impeded the course of the South Africa Bill offering the possibility of federation to an indifferent or hostile South Africa and of the Mutiny Bill. Mr. Butt condemned these tactics, and in revenge Mr. Parnell secured in September his election in lieu of his rival as head of the Home Rule Confederation of Great Britain. He now became the real leader of the movement, and won a distinct success when he forced on the Government in 1879 the creation of a definitely Roman Catholic University. Moreover, in the same year he accepted the Presidentship of the newly founded Land League, which reflected the gravity of the agricultural depression in Ireland and aimed at lowering of rents and peasant ownership. A successful visit to the United States gave him funds and prestige through the Irish influence in American politics, and, while Lord Beaconsfield denounced in his electoral manifesto the dangers of Home Rule, Mr. Gladstone expressed approval of local government in Ireland, Scotland, Wales, and portions of England, subject only to the supreme authority of the Imperial Parliament. Mr. Butt had died in 1879, and in the elections Mr. Parnell succeeded in securing the allegiance of the majority of Irish Home Rule members, was chosen leader by 23 votes to 18 for Mr. Shaw, and marked the occasion by taking up his position on the Opposition benches.

The Government made a well-meant effort to meet the needs of the situation in Ireland by a Compensation for Disturbances Bill which aimed at the modest reform of

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giving compensation to peasants evicted for causes beyond their control preventing payment of rent, and the Lords marked their hostility to any diminution of the absolute rights of property by refusing this modest measure leave to pass. Their action played into the hands of the Home Rulers. Farmers and priests were now united in support of Mr. Parnell and the Land League, and evictions were answered by outrages. The ordinary law proved insufficient, and in January 1881, after unprecedented scenes of obstruction, a Bill for the suspension of the Habeas Corpus Act was duly passed. But Mr. Gladstone also passed a Land Act to give to a tribunal the right to fix fair rents, to assure fixity of tenure to those who paid such rents, and to authorise them to sell their interest in their holdings. The measure was not as successful as had been hoped, while the arrest under the Coercion Act of Mr. Parnell and the suppression of the Land League merely left the direction of the agitation in the hands of leaders more hostile to Britain.

In 1882 an arrangement was patched up with Mr. Parnell, then in Kilmainham prison, under which he and others were released on the understanding that he would use his efforts to stop the no-rent campaign and to discourage intimidation and outrages, if the Government were prepared to deal satisfactorily with the issue of arrears, which was being so operated as largely to nullify the intentions of the Land Act. The release of the prisoners was deemed unsatisfactory by the Chief Secretary, Mr. Forster, and he and the Lord-Lieutenant, Lord Cowper, resigned, being replaced by Lord Spencer and Lord Frederick Cavendish. The murder of the latter along with the unpopular Under-Secretary, Mr. Burke, in Phoenix Park, a Fenian outrage, inflicted the gravest injury on the Irish cause. A fresh Crimes Act and an Arrears Act in 1882 armed the Government with wider powers to deal with crime and

solved some problems of the land agitation. The place of the Land League as a centre of the movement for self-government was taken by the National League, whose aims were self-government and land reform on the basis of the purchase of their holdings by tenants. Comparative calm was restored by Lord Spencer's administration, while in 1883 Mr. Gladstone moved nearer to Home Rule, and Mr. Childers,[1] the Chancellor of the Exchequer, became a convert to federal Home Rule. Mr. Chamberlain in 1885 proposed a scheme for a National Council or Central Board in Dublin with power to deal with education, the poor-law, and sanitation, to make by-laws, to raise funds and to pass Bills which would become law on sanction of the Imperial Parliament. This plan, blessed by Mr. Parnell and the Irish bishops, was recommended by Mr. Gladstone, but rejected by the peers in the Cabinet and Lord Hartington.

Grave difficulties were involved in the failure to agree, for Mr. Chamberlain and Sir C. Dilke[2] were anxious to resign rather than renew the Crimes Act of 1882. It was, however, at last agreed to do so in a modified form, to press on with land purchase, and to extend local government. This decision was punished in June by a defeat on the budget inflicted by the Conservatives with Irish aid. The Conservatives then entered upon negotiations with Mr. Parnell which seemed to promise the Irish Conservative aid in obtaining Home Rule, Lord Carnarvon as Lord-Lieutenant actually having an interview with him in London which convinced the Irish leader that he could raise his terms, as both parties in England seemed to need his support. He then stood out for National independence. The Irish vote was given to Conservatives in the British contests, but in Ireland the victory of Home Rule was complete; even in

[1] *Life*, ii. 230.

[2] Spender, *Campbell-Bannerman*, i. 85 f.

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Ulster eighteen Home Rulers were returned against seventeen Conservatives, while Liberals and Moderate Home Rulers disappeared, and Mr. Parnell, with 86 members, could decide issues for the Liberal majority over Conservatives which was also 86. If self-determination had then been in honour, the case for freedom for Ireland was proved. Mr. Gladstone held the result a full justification for Home Rule, but he thought that it could best be conceded by the Conservative Government with Liberal aid, and he offered his co-operation to that end, only to meet with a cold refusal, the Conservatives having now no need of the Irish vote. The leaders, however, were divided between coercion and the proposals of Lord R. Churchill and Sir M. Hicks Beach to destroy Mr. Parnell's power by a generous land policy and educational concessions, gratifying to the Roman Catholic Church, but the policy of coercion prevailed, and Lord Carnarvon resigned. On January 28, 1886, the ministry was rejected by a majority of 79 votes, the occasion being Mr. Jesse Collings' amendment in favour of allotments.

Mr. Gladstone was called upon to form a new ministry. His tentative proposals were rejected by Lord Hartington, who declined to consider a separate legislature; but Mr. Chamberlain consented to enter the Cabinet without finally committing himself. But he resigned when his own desire, that the Irish members should be retained at Westminister and that the Imperial Government should retain control of customs, the judicature, and the police, was rejected. The Bill, however, introduced on April 8, reserved customs and excise and negatived any idea of a volunteer army, while excluding Irish representatives from Westminster, but imposing on Ireland a fifteenth of the whole revenue as a contribution to Imperial charges. Mr. Chamberlain asserted his readiness to have federal

government on the Canadian model,[1] but insisted on destroying the Bill, which therefore failed to pass by 341 to 311 votes. It is recorded that Lord Carson lived to regret the untimely destruction of a measure which might have kept Ireland within the Empire.

The dissolution which followed [2] gave to the Conservatives the duty of dealing with the situation. In Ireland a plan of campaign started which extorted the reduction of many rents, and in 1887 a Land Act was passed on the demand of Ulster, which not only admitted leaseholders to the benefit of the Act of 1881 but authorised revision of judicial rents fixed before 1886, though the new Irish Secretary, Mr. Balfour, had denounced such action as folly and madness, and the Prime Minister had declared it dishonest. But the resignation of Lord R. Churchill led to stern measures against coercion, and the Prevention of Crimes Bill was carried through by the free use of the closure, while a Round Table Conference failed to reunite the Liberals, mainly, it would seem, for personal reasons. A period of strong government ensured under Mr. Balfour, which had no really lasting result save to strengthen the Irish determination to overthrow British domination. Mr. Parnell was savagely attacked by *The Times*, and it was suggested that he had written a letter condoning the Phoenix Park murders. When he demanded a Select Committee, it was refused, and a Commission of three judges created before whom the forgery of the incriminating letter was conclusively proved, and, though the report alleged condonation of intimidation, the result of the proceedings undoubtedly favoured the Home Rule cause. But the gain thence was destroyed by divorce

[1] 306 *Hansard*, 3 s. 697.

[2] Conservatives 316, Gladstonians 191, Irish Home Rulers 85, Liberal Unionists 78.

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proceedings[1] against Mr. Parnell in 1890, no doubt planned to ruin his influence, and a split in his followers gravely weakened the cause, while he himself died in October 1891 still fighting with undiminished courage for his ideals.

In 1892 the Government produced, but did not press,[2] a Bill to give a slight measure of local self-government to Ireland, and the dissolution of June gave the Liberals 274 seats, the Nationalists 81, so that there was a possible majority of 40 only over the 315 Conservatives and Liberal Unionists. The new Home Rule Bill was carefully framed; it retained the Irish members, reduced to 80, at Westminster for Imperial purposes only, but this was altered in the Commons to retain them for all. The third reading passed by 301 to 267 votes, but seven days later it was rejected in the Lords by 419 to 41 votes. The verdict of the Lords aroused no popular emotion, and the upper houses proceeded so to mutilate in 1894 the Employers' Liability Bill that the ministry decided to lay it aside, and even the Parish Councils Bill was severely handled. Mr. Gladstone would have taken the opportunity to attack the Lords, but his colleagues were reluctant and hostile to his anxiety to reduce defence costs. His resignation therefore followed, but the Lords showed a certain amount of discretion in refusing to reject the Finance Bill by which Sir W. Harcourt introduced the essential principle of death duties, much to the annoyance of many peers.

At the election of 1895 following on the fall of the ministry, the issue of the House of Lords attracted scant attention. Lord Rosebery would have liked to fight on it, but others were indifferent, and relations between the

[1] See H. Harrison, *Parnell, Joseph Chamberlain and Mr. Garvin*, for a final elucidation of this episode.

[2] Mr. Balfour showed indifference, ranking the measure as of less value than his Crimes Act! Dugdale, i. 206.

houses assumed their normal aspect of homologation by the Lords of proposals sent up from the Commons by a Conservative Government. Irish hostility remained, but was rendered less effective by disagreements between three rival leaders, terminated only in 1900 when the party at Westminster agreed to elect Mr. Redmond leader, and the resources of the United Irish League formed in 1897 were placed at his disposal. The Government practised conciliation by a Land Act of 1896. It was instigated to further paternal benevolence by the report of the Royal Commission on the Financial Relations between Great Britain and Ireland, which reported that Ireland was overtaxed, and the proportion of tax revenue should be a twentieth as opposed to an actual one-eleventh of that of Great Britain. Hence a Local Government Act of 1898 was followed next year by the creation of an Agricultural Council with substantial revenues. But far bolder plans were under consideration in 1902, when Mr. Wyndham as Chief Secretary obtained the services of Sir A. Macdonnell on unusual terms [1] to devise a settlement of the land question, which was largely effected by the Land Purchase Act of 1903 under which British credit and a gift of £12,000,000 were made available to enable tenants to buy out their landlords on fair terms. There followed a curious episode, when Sir A. Macdonnell engaged in discussions with a newly created Irish Reform Association under Lord Dunraven which aimed at the grant of a wide measure of devolution. This, however, aroused the fear and anger of the rigid Unionists, and Mr. Wyndham [2] had to repudiate the policy. He, however, was driven to resign in 1905, leaving Sir A. Macdonnell undisturbed in his office as

[1] Cf. 141 *Hansard*, 4 s. 324 ff., 461, 650, 979 f., 985; 142 *ibid.* 1225; 144 *ibid.* 647 f., 1278 f.; Halévy, *Hist. 1895–1905*, pp. 394 ff.

[2] Dugdale, *Balfour*, i. 415 ff.

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Under-Secretary. It might have seemed natural for the Liberals to have resumed their policy of Home Rule, but the election of 1905 was unquestionably fought on the understanding that this particular subject would not be taken up by the ministry.[1]

2. *The Passing of the Parliament Act, 1911, and its Consequences*

The Lords, confronted by the enormous majority of the Liberals in the Commons, might have been expected, on the principles expressed by Lord Cairns in 1869, to have refrained from exaggerated hostility to the measures sent up to them, especially when they had not to confront a demand for Home Rule. An Irish Councils Bill was indeed prepared by Mr. Birrell which would have made an experiment in control by a partly elected body of eight important departments, but it was rejected as inadequate by Mr. Redmond and the Irish National Convention, and dropped. But the Lords shared the opinion ascribed to Mr. Balfour that, even if the battle were lost for the day in the Commons, the Unionists still controlled the destinies of the country. Their attitude is in part explained by the fact that, since the split on Home Rule, the wealthier members of the Liberal connection in the Lords had passed over to the Conservative faith, and that recent creations had added to the house men of combative disposition without any hereditary instinct for the limits within which an upper chamber would be well to work. Nor was it unimportant that the ex-Lord Chancellor, though not an hereditary peer, was utterly Conservative and quite ready, despite his venerable age, to start a fight on any issue.

At the end of the session of 1906 the Government had

[1] Spender, *Campbell-Bannerman*, ii. 180 ff.

lost on second reading its Plural Voting Bill, and had had to abandon its Education Bill, though at the mediation of the King it had made concessions which had satisfied not merely the Irish Nationalists but the Duke of Devonshire.[1] To dissolve was possible, but there was no precedent for dissolution at the bidding of the Lords, and the precedent would be disastrous. Moreover, the electorate would resent having a new election forthwith, when the ministry had not brought forward proposals on many points for which it had voted at the general election. To resign would be to create a deplorable and most unnecessary precedent. To submit would ruin the ministry; to propose House of Lords reform would be to plough the sand; and the course left was to resolve "that, in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other house to alter or reject Bills passed by this house should be so restricted by law as to secure that, within the limits of a single Parliament, the final decision of the Commons shall prevail." This motion was passed in June 1907 by 385 to 100 votes. Sir H. Campbell-Bannerman stressed the fact that, under the constitution as operated by the late Government, important issues of education and licensing had been accepted without any effort on the part of the Lords to ascertain whether the projects represented the will of the people, who in fact had not been consulted thereon, and that it was impossible to allow the Lords to set up a claim to dictate to the Commons what the people wanted. His own plan was one under which a Bill not accepted by the Lords should form the subject of a conference between small numbers of members of both houses and should be passed over the heads of the Lords after three such passings and conferences. The proposals were not then pressed;

[1] Lee, *Edward VII*, ii. 455-65.

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the Labour party wished simple abolition of the Lords, moderate Liberals a democratic reconstitution of the upper chamber with joint sittings to break deadlocks.[1] The delay in further action emboldened the Lords to reject measures dealing with Scottish land in 1907 [2] and to reject the Licensing Bill and Education Bill of 1908, much to the chagrin of the ministry whose impotence to retaliate was derided, while by-elections suggested that its failure was regarded without regret in the country at large.

So far the Lords had acted in matters of general legislation, and thus had remained within the boundaries indicated by Mr. Balfour in 1907 [3] when he insisted that the Lords had no claim to be the equal or superior of the Commons, whose financial authority enabled it and it alone to decide the fate of ministries. The budget of 1909 was framed to make good the gap between revenue and expenditure produced by the grant of old-age pensions in 1908, and the increased naval expenditure compelled by the German rivalry of the British fleet. It, therefore, sought to claim for the State a share in the unearned increment accruing to land because of its monopoly value, and thus struck hard at the magnates of the Lords, who instead had largely been won over to the merits of tariff reform, which would, they held, increase the wealth of agriculturists, protect manufacturers, and enable both to pay larger wages in order to meet the demand for increased remuneration which would be put forward by the workers, whose food and manufactures would become dearer as the result of protection. By a constitutional innovation on November 30, 1909, the Lords by 350 votes to 75 decided that it could not assent to the budget. The Conservatives were not

[1] Spender, *Campbell-Bannerman*, ii. 350 ff.

[2] On small holdings and land valuation; Spender, ii. 346-8.

[3] Cf. May, *Const. Hist.* iii. 349 f.

wholly united; Lords St. Aldwyn, Balfour of Burleigh, and Rosebery did not vote.

The Government naturally declined the offer to pass the non-controversial items of the budget if sent up separately. The usual supply had been voted in the autumn and duly appropriated by the Appropriation Act. To meet the sums there were available the permanent taxes, and the usual Treasury power to borrow to meet any deficiency. The new taxes, of course, could not be levied nor the income tax, and tea duty could not be insisted upon. But, as it was certain that in any event they would be legalised *ex post facto*, they were normally paid, and in the long run the loss to the state proved small.[1]

The reply to the action of the Lords was a declaration by the Commons that the action of the Lords was a breach of the constitution and a usurpation of the privileges of the House of Commons, and a warning by the Prime Minister that a controversy had been raised which must go to the electorate and decide much more than the budget. The electoral contest which followed was keen; the Premier denounced the claim of the Lords as unconstitutional on the grounds (1) that they claimed to control taxation; (2) that they asserted the right to compel a dissolution; and (3) that they thus assumed the right to make or unmake the executive government. The result gave Liberals 275, Labour 40, Irish Nationalists 82, and Unionists 273.[2] In the country districts the ministers lost many seats, but held the industrial districts. The issues chiefly contested were the constitutional position of the Lords, the merits of the budget, and the question of tariff reform, and on the first point authorities as great as Sir F. Pollock and Sir W. Anson were diametrically opposed. So many different

[1] Spender, *Lord Oxford*, i. 275. The net loss was only £1,300,000.

[2] A variant view gives 274 Liberals, 41 Labour, 272 Conservatives.

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motives were at work that the verdict could be, and was, very variously interpreted. An Irish split had given a small party of ten headed by Mr. O'Brien, who professed disbelief in the Liberal intentions, while the rest of the Irish Nationalists disliked the whisky tax, and Mr. Redmond was driven to demand that the veto of the Lords be dealt with before the budget was taken up. On February 28 Mr. Asquith gave notice of the substance of the Government proposals, and on March 29 proceeded to move them successfully. They embodied the principles of the complete control of the Commons over money Bills, the power of passing a Bill over the heads of the Lords after three rejections, and the curtailment of the duration of Parliament to five years. After the resolutions had been passed, a Bill was introduced containing the assertion in the preamble of the reconstitution of the upper chamber on a popular instead of a hereditary base, and Mr. Asquith, in view of the Irish party's demands, explained that, if the Lords declined to pass the Bill, advice would be tendered to the Crown. "If", he went on, "we do not find ourselves in a position to secure that statutory effect shall be given to this policy in this Parliament, we shall then either resign our offices or recommend the dissolution of Parliament. And let me add this, that in no case would we recommend a dissolution except under such conditions as will secure that in the new Parliament the judgment of the people as expressed in the elections will be carried into law."[1] This satisfied the Irish, who allowed the budget to pass, and the Lords did not attempt to oppose. The issue, however, was postponed by the King's death on May 6, 1910.

The death of the King rendered appeasement suitable and a conference of eight members met twenty-one times from June 17 to November 10, but failed to reach accord;

[1] April 14, 1910; Spender, *Lord Oxford*, i. 279.

it was rumoured that, while it was agreed that differences between the houses should be dealt with by joint sittings, there was no agreement as to the proportions in which the houses should be represented thereat. The Government now acted as had been promised. They said:[1] "His Majesty's ministers cannot take the responsibility of advising a dissolution, unless they may understand that, in the event of the policy of the Government being approved by an adequate majority in the new House of Commons, His Majesty will be ready to exercise his constitutional powers (which may involve the prerogative of creating peers), if needed, to secure that effect shall be given to the decision of the country. His Majesty's ministers are fully alive to the importance of keeping the name of the King out of the sphere of party and electoral controversy. They take upon themselves, as is their duty, the entire and exclusive responsibility for the policy which they will place before the electorate. His Majesty will doubtless agree that it would be unadvisable in the interests of the state that any communication of the intentions of the Crown should be made public unless and until the actual occasion should arise." The King accepted the advice on November 16 after verbal discussion with Mr. Asquith and Lord Crewe, on the understanding that the Bill would be submitted to the Lords before dissolution took place.

This step was duly taken on November 21, but the Lords, in view of the short time at their disposal, adjourned the debate on the second day of the second reading, and instead passed resolutions in favour of settling differences over Bills twice passed by the Commons by joint sitting, with, however, a referendum on matters of great gravity which had not been adequately submitted for the judgment of the people, and of the renunciation of authority by the

[1] Nov. 15, 1910; Spender, i. 297; Newton, *Lansdowne*, p. 410.

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Lords to deal with money Bills purely financial in character, that point to be settled by a Joint Committee of both houses under the Speaker of the Commons, who would have a casting vote only. This proposal was supplemented by proposals passed just before on the motion of Lord Rosebery, which asserted that the Lords should consist of Lords of Parliament chosen by the whole body of hereditary peers from among themselves and by nomination by the Crown; sitting by virtue of offices and of qualifications held by them; and chosen from outside. These revolutionary proposals were sent to the Commons on November 25, and the election followed. The Liberals won 272 seats, Labour 42, Irish Nationalists 84, with 8 Independents, and Conservatives 271. The fundamental difference between the new and the old house was that the Government had a clear and definite policy to implement and enthusiasm for the task. Read a second time on March 2, the Parliament Bill passed on May 15 by 362 to 241 votes, the amendments in favour of excluding from its ambit important constitutional changes being rejected firmly by the ministry, which claimed that it had a mandate for the Bill as it stood.

The Lords on their part passed on second reading a Bill presented on May 8 by Lord Lansdowne to reconstitute the house.[1] It was to be reduced to 350 members, 100 elected by the peers, but from those qualified by political office, or other qualification; 120 members elected from outside by members of the Commons for electoral districts, these two categories sitting for twelve years; as also 100 members nominated by the ministry in proportion to the strength of parties in the Commons. The princes of the blood, the archbishops[2] and law lords were to sit without election. Peers not lords of Parliament

[1] Cf. Spender, *Oxford*, i. 307 ff. The Lords were very cold.

[2] Five bishops were to be elected by the episcopate.

might be elected to the Commons, and, except in the case of Cabinet or ex-Cabinet ministers, not more than five hereditary peerages might be created in one year. The last provision, it will be seen, was intended to entrench the Lords in full security against any possibility of swamping, and involved a most serious curtailment of the prerogative of the Crown.

The Parliament Bill received serious change at the hands of the Lords. At the instance of Lord Cromer they demanded that money Bills should be open to examination by a Committee to determine what Bills were really money Bills, and the definition offered was narrow; the proposal was revolutionary and indefensible. The other demands included efforts to compel a referendum on Bills to affect the succession to the Crown [1] or to establish subordinate legislatures, or which in the opinion of a joint committee raised an issue of great gravity, on which the judgment of the country had not been sufficiently ascertained. On July 20 [2] Mr. Asquith intimated to Mr. Balfour the fact that the King would be advised to exercise his prerogative to secure the passage of the Bill in substantially the same form as that in which it left the Commons, and that the King had signified that it would be his duty to accord assent.[3] The anger of the Opposition at the news led to the Premier being shouted down on July 24, a deliberate piece of disorder for which Lord Hugh Cecil must bear much of the discredit.[4] Lord Lansdowne realised that it would be folly further to resist, but Lord Halsbury, Lord Milner, Lord Selborne, and Mr. Austen Chamberlain persisted in opposition, the latter having tried to persuade Mr. Balfour that he should be willing to accept the

[1] This would have been a danger in Dec. 1936.

[2] Spender, *Lord Oxford*, i. 312 f.; Newton, *Lansdowne*, pp. 417 f.

[3] July 17, in reply to Cabinet memo., July 14; Spender, ii. 310.

[4] Spender, ii. 312 ff.

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responsibility of forming a ministry if the King would consent to refuse to accept the advice of his Government. Mr. Joseph Chamberlain, now hopelessly incapacitated, was induced to bless the policy of no surrender, just as he had urged the rejection of the budget — acts of which he would have been incapable in the days of his health. On August 7 Mr. Balfour moved a vote of censure on ministers for their unconstitutional advice to the King, but it was rejected by a majority of 119, while next day in the Lords an identical motion was duly passed. The Bill itself was considered by the Commons, and an amendment omitting from its scope Bills to extend the duration of Parliament was accepted, while the Speaker was to consult, before certifying a money Bill, two members of the chairmen's panel selected by the Committee of Selection. Sent back to the Lords, it was finally passed on August 10 by 131 to 114 votes. The majority included the Archbishops and 11 bishops and 37 Unionist peers, whose decision to vote had been arrived at at the last moment as a result of the formal announcement made to the Lords by Lord Morley. "If the Bill should be defeated to-night, His Majesty will assent to the creation of peers sufficient in number to guard against any possible combination of the different parties in opposition by which the Parliament Bill might be exposed a second time to defeat".[1] The warning was directed against the impression in some quarters that any creation of peers would be small, leaving the peers with a large Conservative majority to bide the time when a victory of the party might place them in a position to legislate to undo what had to be conceded for the moment. The knowledge that some four hundred peers might be created was a definite ground for yielding; it was perfectly clear that the Lords could never recover

[1] Spender, *Lord Oxford*, ii. 325. For a list of proposed peers, *ibid.* 329-31.

from such a blow at its traditions and prestige.

The measure thus passed definitely subjects the Lords to the Commons in matters of finance. In respect of a money Bill, the assent of the Crown may be given, if the Commons does not direct to the contrary, provided the Bill is sent up to the Lords at least one month before the end of the session, if the Lords do not pass it within one month after it has been sent up. A money Bill is defined to cover any measure containing only provisions dealing with taxation, the imposition of charges on the consolidated fund or on money provided by Parliament; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan, or repayment thereof, and incidental matters, but local taxation and local revenues are not included therein. The Speaker must endorse on any such Bill a certificate of its character, and must consult if practicable two members of the chairmen's panel. His certificate may not be challenged in any court of law. In the case of other Bills, other than money Bills or a Bill to extend the duration of Parliament beyond five years, presentation for the royal assent may take place if the Bill has thrice in successive sessions, whether of one Parliament or not, been rejected by the Lords. But a Bill must be sent up to the Lords not less than a month before the end of the session, and a period of two years must elapse between the date of second reading in the first of the sessions and the date of final passage in the third session. Only such changes may be made in a Bill as are certified by the Speaker[1] to be necessary through lapse of time, or to represent amendments made by the Lords, and any amendments made by the Lords in the third session and agreed to by the Commons shall be inserted in the Bill

[1] *His authority in this case also is final*: 1 & 2 Geo. V. c. 13, s. 3.

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as presented for assent. It is also possible for the Commons in the second or third sessions to send up amendments which the Lords may approve, and which then are treated as Lords amendments accepted by the Commons, but this is without prejudice to the position if the bill is rejected by the Lords. The duration of Parliament is reduced to five years, undoubtedly a very considerable concession, but one in fundamental agreement with the principle of democracy, which renders it right that the electorate should be given frequent opportunities of passing a verdict on the actions and proposals of the ministry. It is arguable that three years is too brief a period to allow of useful work by a Government, and it may be that five is preferable to four.

There are certain points of difficulty which have arisen or may present themselves in the working of the measure. One is purely technical; the Speaker at the time was perturbed lest the procedure regarding money Bills might be rendered unworkable by the failure of the Lords to return to the Commons the original Bill certified by himself as a money Bill, so that it would not be possible to present it for the royal assent. It may safely be said that such action on the part of the Lords would be a mere trick which would be met by presenting for assent a fresh copy of the Bill duly certified, and no court would venture to call in question the validity of the assent. More important is the question whether the Speaker's view of what a money Bill was might not deprive the Act of much of its potency. In December 1911 [1] the Speaker decided that, in virtue of certain amendments introduced therein, the Finance Bill could not be certified by him as a money Bill. It had been proposed [2] to provide that no amendment might be allowed to such a Bill as in the view of the Speaker would remove it from the

[1] 32 *H.C. Deb.* 5 s. 2707.

[2] 24 *H.C. Deb.* 5 s. 387 ff.

category, but that had not been pressed. It followed,[1] therefore, from the ruling in 1911 that the famous Finance Bill of 1909 might not have fallen within the class of money Bills proper; so that the Lords might not have acted unconstitutionally in rejecting it. Whether this view could have been justified by the terms respecting the liquor traffic or one clause regarding land valuation is conjectural. The ruling resulted in 1913 in the bringing forward of fiscal proposals in a double form, a Finance Bill dealing with taxation pure and simple, and a Revenue Bill containing alterations of general law. In 1914 an attempt to include certain fiscal reforms in the Finance Bill led to a ruling of the Speaker which caused great inconvenience.[2] Other cases since have occurred in which the Speaker has not certified the Finance Bill. Could the Commons overrule his judgment? The answer seems in the negative. But it might without breach of law displace him as Speaker as an *ultima ratio* in a crisis.[3]

That the action of the King throughout was wise can hardly be doubted. The crucial moment for him was in November 1910 when he was asked to give a pledge in respect of dissolution, and if he had finally refused — he seems to have at first declined[4] — the position would have simply been that he must have replaced Mr. Asquith by Mr. Balfour and given the latter the dissolution which he had refused to the former, with the result of a campaign in the country where the people against the King and the

[1] Ullswater, *A Speaker's Commentaries*, ii. 103. Cf. 10 *H.L. Deb.* 5 s. 1137.

[2] 63 *H.C. Deb.* 5 s. 567 ff.; 64 *ibid.* 175 f.

[3] Ullswater (ii. 112 ff.) holds that, if the Lords simply postponed in the third session dealing with a bill, it could not be held to be rejected until prorogation, and so could only be presented for assent at the beginning of the next session. This seems a narrow view, and the Lords did not try the trick.

[4] Esher, *Journals*, iii. 33 f. (Nov. 19, 1910). He insisted on this view, Aug. 11, 1911; *ibid.* 56 f.

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Lords would have been the cry, while Ireland would have been roused to bitter personal hostility to the throne. As Lord Esher then saw, "there was only one possible and prudent course for a young monarch — *i.e.* to abide strictly within the constitution and to take the official advice of his responsible ministers". But ministers were guilty of a serious blunder when they determined to keep secret the royal promise. Mr. Balfour, as late as July 5, 1911,[1] was discussing what attitude he would adopt if the King were asked to create peers and declined to do so, offering to Mr. Balfour the commission to form a ministry. This was a wholly undesirable position in which to place the King, and it is impossible to treat it as a desirable precedent. Very possibly it might be simpler for the ministry to take such a step, but to allow the electorate to go to the polls quite ignorant that its verdict for the ministry would mean the coercion of the peers, was improper, and it avails nothing to say that the result would have been the same if the electorate had known. It may even be that the electorate would have given a more decided majority for the ministry, if the true state of affairs had been revealed. But in any case to trust the people is the only sound procedure for democrats, and in their action on this head the ministry gravely erred. The King was thus for months placed in the position that vital decisions were concealed from the Opposition, to which he might at any moment have to turn for an alternative ministry, and which might have gravely embarrassed him by reluctance to take office under him.

The promise of reconstitution of the House of Lords contained in the Parliament Act remained unfulfilled. The ministry indeed took up the task, but it found that all schemes possible presented grave difficulties, and, pressed as

[1] Esher, iii. 54-6, corrected his error; this was the earliest intimation of the decision of Nov. 16, 1910.

was the Cabinet with other issues, it neither had leisure nor driving force sufficient to secure the determination on a measure which they could ask the Commons to pass and press upon the upper house. They had instead to set about the task of carrying through such projects as might be possible before a new election by the use of the Parliament Bill, and they decided on two of special interest. The Bill for the Disestablishment of the Church of England in Wales was a measure commended by fundamental considerations of equity. The Church was not the Church of the majority of the people, and the Education Act of 1902 had made definitely unpopular the influence of that Church in educational matters. To disestablish the Church, therefore, was a decision to which no very genuine opposition could be offered if any regard were to be had to the wishes of the majority of the people. It is true that Mr. F. E. Smith [1] was aroused to amazing energy of denunciation, but his views commanded little respect, as the depth of his religious convictions was widely doubted, and, so far as can be judged from his life and opinions in general, not without cause. The objections of the ecclesiastical dignitaries of the Church were, on the other hand, sincere and deserved respect, but in the long run the only tenable plea was that the temporal interests of the Church should be duly provided for, and that could be arranged without grave difficulty. That the measure [2] should have to be passed by the procedure of the Parliament Act should have been unnecessary, and is explained in part by the state of feeling regarding the other proposal of the Government then in dispute. Though the Act did not take immediate effect,[3] after the war it was not attempted to prevent its operation,[4] and the

[1] See Somervell, *George V*, p. 57, for G. K. Chesterton's skit.
[2] 4 & 5 Geo. V. c. 91.
[3] 4 & 5 Geo. V. c. 88.
[4] 9 & 10 Geo. V. c. 65; only minor changes were made.

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welfare of the Church seems clearly to have been promoted by its receiving full autonomy, while preserving the profit derived from complete communion with the Church of England. There is, in effect, sufficient difference between the Welsh and the English to render autonomy profitable and effective.

The position was fundamentally different as regards the issue of Home Rule, for on it was to depend the question whether Ireland was to remain effectively a territory of the British Crown. The Government owed the Parliament Bill to the aid of the Irish Nationalists, and it was under a plain obligation to proceed with the Government of Ireland Bill, which it introduced in 1912 with the determination to make it law in 1914 under the Parliament Act. The measure was on the wonted lines, but it did not contemplate the exclusion of the Irish members from Westminster, and the powers which it permitted to the Irish Parliament remained essentially subordinate powers, leaving unchallenged the supremacy of the Imperial Parliament. In the light of later history it might have been well for the Empire had it proved possible to accept the measure, but the Protestants of Ulster determined that they could accept nothing which placed them under legislation enacted by a Parliament in which they must be in a minority. Leaders were not lacking to promise to aid them in resistance ; it was contemplated that, if the Bill should become law, a Government would be set up in Ulster which would refuse to submit to any Irish Government created under the Act. Volunteers were enrolled prepared to serve under the guidance of Sir E. Carson and Mr. F. E. Smith, and advice on preparations was gladly provided by Sir H. Wilson from the War Office with a singular disregard for the duties of loyalty incumbent on a servant of the Crown. This plain disloyalty should have been taken seriously by

the ministry, but Lord Esher is no doubt right in holding that there was grave failure to appreciate the seriousness of the situation by the members of the ministry.[1] Worst of all was the failure to take any action against the leaders;[2] Mr. Redmond was in part to blame for deprecating steps in this sense, but that forms no adequate excuse for a grave error of judgment, which was at the time widely condemned in unofficial Liberal circles. It was felt that, if the actions of the ringleaders were violations of law, they should be stigmatised as such, and the danger prevented of the rank and file of Ulster Protestants being led into disloyalty to the Crown by the example of the impunity of their leaders. Moreover, it was realised that the morale of the armed forces must suffer under such circumstances. The inevitable outcome of the inaction of the ministry was that against the Ulster volunteers National volunteers sprung up in large numbers in southern Ireland, and both sets engaged in drilling and other illegal activities.

In the Commons and Lords alike insufficient attention was given to the menacing features of the position and to the danger thence of civil war. The Conservatives made a fundamental blunder in seeking to deny to Ireland responsible government in its internal affairs, because they objected to the will of the majority prevailing over that of the minority, largely no doubt on religious grounds; they genuinely believed that a majority of the Roman Catholic faith would be certain to oppress Protestants. On the other hand, while it was absurd to demand that Ireland should be denied freedom on such a score, there was the question of Ulster, which might claim distinct treatment, for there was historically a centre of Protestantism

[1] *Journals*, iii. 133, 141, 145, 149.

[2] Oxford, *Fifty Years of Parliament*, ii. 139-42; Spender, *Lord Oxford*, ii. 22 ff.

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which could not be expected lightly to accept subjection to Roman Catholic supremacy. The obvious mode of solution was some form of exclusion for Ulster, but the Government was confronted on this head with the bitter opposition of the Irish party to any partition of Ireland. The genuineness of this hatred of partition is beyond question, even if it is in part not rational, and it was easy enough for the Government to hold that the resistance of Ulster was unreasonable; Lord Haldane in September 1913[1] was assured that a firm policy would succeed, and was prepared to give increased safeguards to Protestants as regards education and otherwise if talk of resistance were dropped. The danger of disloyalty in the army he discounted, and was prepared to refuse the resignation of any officer who declined to serve in the event of disturbances and to place him under arrest. He declined to accept the view that the dilemma was insoluble without bloodshed.

The King naturally was much troubled by so grave a situation, and Lord Esher[2] urged upon him the laying before his ministers of his difficulties and suggesting a dissolution in order to ascertain the will of the electorate, in view of the fact that the Home Rule Bill had not been before them at the dissolution of 1910. He stressed to the King his right to remonstrate and advise, even if as a constitutional monarch he might, if the ministry were adamant, have to give way:[3] "If the constitutional doctrines of ministerial responsibility mean anything at all, the King would have to sign his own death-warrant, if it was presented to him for signature by a minister commanding a majority in Parliament. If there is any tampering with this fundamental principle, the end of the

[1] Esher, *Journals*, iii. 139-41.

[2] *Ibid.* 132 (Sept. 11, 1913).

[3] *Ibid.* 128.

monarchy is in sight." On September 10 Lord Esher was told by the King of his desire to insist on an appeal to the country even if it involved the loss of his ministers, but it was pointed out that both Mr. Harcourt and Lord Morley had made it clear that in the event of dismissal the issue at a general election would not be Home Rule but "Is the country governed by the King or by the people?" and every minister, save perhaps Lord Crewe, would join in the attack. The King, however, was unwilling to take any initiative pending advice from his Prime Minister; it is clear that he was influenced by the fact that a member of his staff had signed the Ulster Covenant, and was ready to leave the household if the Bill was passed, and join his friends in Ireland. The ministry, in Lord Esher's view,[1] and the Opposition alike were trying to use the King; the former asking him to accept the Home Rule Bill without reference to the people, the latter seeking under Sir W. Anson's advice to compel a dissolution either by the King dismissing his ministers, or by saying at once that he would not assent to the Home Rule Bill. Lord Esher preferred as much fairer Sir E. Carson's attitude of defiance of the ministry without seeking to drag the King into the fray. Lord Curzon[2] believed that the issue must be solved in battle on the soil of Ireland — a curious prediction fated to come to fruition in a manner very different from that anticipated by its author. But he deprecated early action in this sense, as he doubted whether any support would be given in Britain to Sir E. Carson if he set up a provisional Government before the Bill was passed. Lord Esher naturally pointed out that to force the King to assent or dismiss ministers was definitely unfair, but Lord Curzon was not prepared to do more than admit that he could not advise the King to

[1] *Journals*, iii. 134.

[2] *Ibid.* iii. 135 f.

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refuse signature if the Bill was passed a third time. The King, it seems, had come to regret his giving of guarantees in November 1910.[1] In December the ministry, tardily, and with doubt on the part of some of its members,[2] decided to prohibit further importation of arms into Ireland, though the means of prevention were far from adequate. Lord Esher[3] felt no confidence in the belief that the issue could be settled by discussions between the Government and Opposition, and changed his view so that he urged that the King should insist on a dissolution, and, if the ministry refused, should ask some neutral statesman, such as Lord Rosebery, to undertake a dissolution for the purpose only of eliciting the view of the electorate. Lord Stamfordham wisely stressed the disadvantage of the King appearing to take sides and the certainty that he would be bitterly assailed, and Lord Esher admitted that no immediate action was called for; the country expected from the declarations of ministers that some compromise would be achieved. In fact Mr. Asquith and Mr. Bonar Law sought for an accommodation, but the demand for the exclusion of Ulster from the Bill was one hard to consider. The King was anxious to avoid any constitutional impasse; he had been warned by some of the best and wisest of the Opposition that his interference would destroy the Unionist party, for, if it succeeded for the moment, the day would inevitably come when they, the King's party, would be beaten, and the King with them. The King was perplexed by the suggestion[4] that the enacting clauses of the Parliament Act had revived the royal right to refuse assent by eliminating the House of Lords as a constitutional check, and his position was naturally rendered more difficult by Lord Halsbury's

[1] *Journals*, iii. 133, 145.
[2] *Ibid.* iii. 145.
[3] *Ibid.* iii. 147 ff.
[4] *Ibid.* iii. 156.

insistence on November 5 that the royal right to refuse assent was fully operative. It is true that Lord Halsbury's dictum was unacceptable, because it implied that the sovereign approved every Act to which assent was given, but, in view of Lord Halsbury's position, it was difficult for him wholly to ignore the assertion. Lord Esher therefore asked Mr. Asquith [1] to show that the veto was obsolete, and had not been revived by the Parliament Act as regards Bills passed thereunder, and that, while the King still possessed the power of dismissing his ministers, he could not dictate policy, whether in the form of a dissolution of Parliament or otherwise. It was desirable also to emphasise the peril of dismissing ministers unless the King was sure that the confidence of the constituencies had been forfeited by the Parliamentary majority. Mr. Asquith's reply [2] no doubt gave the essence of his views as developed in a memorandum recorded in his biography. The system of responsible government had proved its worth; it rested on the right of the Crown to dismiss if it thought fit, but that involved grave dangers, as had been seen in the action of William IV, even though that was not a clear case of dismissal. The precedent had never been followed by Queen Victoria or Edward VII, and it would be unwise to break the tradition which sheltered the Crown from criticism and attack.

The position was complicated in March by the refusal of Brigadier-General H. Gough and 57 officers serving at the Curragh [3] to contemplate service against the Ulster Volunteers, when the issue was very stupidly put to them by Sir A. Paget. The episode was completely mismanaged by the Secretary of State for War and the Army Council.

[1] See Esher, *Journals*, iii. 156 f. Contrast Fox, *Halsbury*, pp. 267 ff.

[2] Cf. Spender, *Lord Oxford*, ii. 29-31.

[3] *Ibid.* ii. 41 ff.; Halévy, *Hist. 1905–15*, pp. 546-8.

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The officers, who had tendered their resignations, were reinstated, but the fatal error was made of giving a pledge that it was not the intention of the ministry to use the force in order to deal with unrest in Ulster arising from political causes. This made matters worse than before, and in the Commons a warning was given by a Labour member [1] that if officers could choose whether to carry out orders to preserve peace or not, then the rank and file would be equally entitled to refuse to act if called upon to deal with industrial unrest. The Government was saved from a very difficult position by the assurances of the Prime Minister [2] that he would not permit the army to dictate policy, and by his insisting on the promulgation of the rule that officers and men must not be asked whether they would act in a given manner in any particular circumstances. Plainly to admit the possibility of refusal to obey orders legally given would be to turn the armed forces into a dangerous menace to the people. But the mischief was done; the authority of the Crown was defied by the introduction of arms for the Ulster Volunteers at Larne in defiance of the authorities, in April, while the National Volunteers imitated their rivals, not unsuccessfully, at Howth in July. In the latter case, however, a collision between the troops and a Dublin mob resulted in several deaths, an episode which embittered relations and was clearly unpardonable. Enforcement of the law against Nationalists, while Ulster Volunteers violated it at pleasure, marked the incompetence of the Irish administration in the highest degree.

The ministry determined, in view of the attitude of Ulster and the grave dangers of the use of force, to com-

[1] John Ward, cf. J. H. Thomas, 60 *H.C. Deb.* 5 s. 80 f.

[2] Colonel Seely resigned, and Mr. Asquith took over the War Office, being elected unopposed; Spender, ii. 45. Lord Haldane gave a wrong undertaking in the Lords, and very improperly sought to conceal it by altering the report: Maurice, pp. 342 ff.

promise. The original Bill must pass, but would be accompanied by an amending Bill giving six years' option for counties to take themselves out of the Act. This proposal clearly had merits. It secured that a general election would take place before any idea of inclusion would arise, and it was clearly possible that two elections might intervene. The whole case for the Opposition was thus undermined, and Mr. Asquith became entitled to hold that the King could not take exception to being asked to assent to two such Bills. The King himself expected that Mr. Asquith and Lord Crewe would thus safeguard [1] his position, but the difficulties of securing an amending Bill such as the Commons could accept after examination by the Lords proved extreme, and on July 20 it was announced that the King had summoned a conference of two members from the Government, the Opposition, the Irish Nationalists, and the Ulster Unionists to meet at Buckingham Palace in an effort at accord; the full responsibility for the conference and for the terms of the King's opening address was duly accepted by Mr. Asquith, but there were complaints that he had exceeded his functions in the action taken. It is a curious example of human lack of prescience that, as late as July 30, Lord Esher [2] was still regretting that Sir E. Carson had not set up his provisional Government of Ulster and thus destroyed the Home Rule Bill. The advent of war resulted in a compromise; the King was asked to assent to the original Bill, but also to another which postponed its operation. It was never fated to come into force.

3. *Proposals for Reform*

The war saw for the time being the end of serious friction between the houses, and constitution-making was out of

[1] Esher, *Journals*, iii. 170 f. (June 15, 1914). [2] *Ibid.* iii. 173, 174.

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the question. But the issue could not be dropped, and a Conference on the Reform of the Second Chamber was duly set up in 1917, the membership being thirty, representative of the different parties, and Lord Bryce presided. Final agreement proved impossible, and the scheme, which represented the nearest approach to general acceptance, was marked by many compromises which rendered it complex and in some measure unsatisfactory.[1]

The functions of a second chamber were necessarily examined as the indispensable preliminary to any plans for its construction, and it was agreed that they should include: (1) the examination and revision of Bills sent from the Commons, especially in view of the rules curtailing debate in that body; (2) the initiation of Bills dealing with subjects of a practically non-controversial character, which might have an easier passage through the Commons if discussed and put in shape; (3) the interposition of so much delay and no more in the passing of a Bill into law as to enable the opinion of the nation to be adequately expressed; this would be specially needed as regards Bills affecting the fundamentals of the constitution, or introducing new principles of legislation, or raising issues whereon the opinion of the country might appear to be almost equally divided; and (4) free and full discussion of large and important questions such as those of foreign policy at moments when the House of Commons could not find time for them. Such debates would be more useful if conducted in an assembly where divisions did not involve the fate of the executive Government.

The arguments in favour of these functions are obviously of different value. The doctrine of the right of the Lords to delay legislation rests on certain assumptions, the fundamental principle being that the function of the Lords is not

[1] *Parl. Pap.* Cd. 9038.

to thwart the will of the people, but to ensure that it shall be given full play. A general election is fought on some mandate or other, but issues may be dealt with by the Commons which were hardly placed seriously or effectively before the electorate, and, even if so placed, the form in which they are to be dealt with may differ in substance from that contemplated by the electorate. Again, it is no doubt true that a section of a party, by persistently pressing its particular thesis, may succeed in having it taken up by the party as a portion of its programme, despite the fact that the majority of the party might not wish it to be passed into law, and might not really resent the action of the Lords in refusing to accept the project. In another form the argument insists that a general election can never produce a real representation of the public will; man has various interests, as producer, as consumer, as a social unit, as a political unit, and the mandate obtained at an election is one which may quite well misrepresent the real views of the people, and the Lords may wisely intervene to prevent this being done, not indeed by negativing the proposal, but by postponing its action and allowing time for reflection on the part of the electorate. But it must be admitted that the value of the restraint is restricted to legislation not promoted by a Conservative Government, for that is accepted by the Lords with complete docility, unless it seems to affect property unduly, when some amendment may be pressed, though not as a rule anything very substantial.[1] In the second place, there is but little evidence of any undue rapidity in the passing of important legislative reforms.[2] Education was established on a national scale by a long series of measures from 1813 to 1870, and the later reforms were not very precipitate. Education, it may be added, is

[1] *E.g.* the drastic Coal Bill of 1938.

[2] Cf. H. J. Laski, *Parl. Govt.* pp. 116 ff.

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a classical illustration of one-sided intervention by the Lords, for the Bill of 1902 was passed without hesitation, though assuredly it did not represent the will of the people. The process of electoral reform was slow and painful, and again it may be noted the Lords accepted the full grant of the suffrage to women without any assurance that it was the will of the people; it sufficed that Mr. Baldwin had promised it in his election address in 1924. Irish Home Rule was decidedly in the air after the seventies, but it was rejected by the Commons in 1886, by the Lords in 1893, and put on the statute-book only over the head of the upper chamber in 1914, and even then only together with a Bill postponing its action. Employers' liability and compensation for workers were long delayed after their justice was a commonplace; factory legislation has lagged far behind the demands of competent Commissions, and the time to place on the statute book even the most reasonable recommendations of such bodies is often portentous as in the case of divorce reform, and even the Matrimonial Causes Act of 1937 owed its passage to accident and good fortune rather than to the Government of the day. On the other hand, the Lords accept hastily and without due consideration such measures as the Trade Disputes and Trade Unions Act, 1927, curtailing the slow-won rights of trade unions, and the Incitement to Disaffection Act, 1934, despite its undue width of terminology.

It follows, therefore, that the argument in favour of delay by a second chamber has no attractions for the Labour party as applied to the House of Lords. The idea of constructing a house which would exercise properly such a power has not yet been seriously taken up in any effective manner, though it was this point which deeply engaged the attention of the Conference under Lord Bryce and evoked its scheme of reconstituting the house.

The Conference decided against direct election by large constituencies, as in Australia, on the simple ground that it was not desirable to create a chamber which could have any claim to rival the authority of the Commons on the ground that it derived its authority from election by the people; and it rejected nomination on the inevitable ground that this would involve the probability of political nominations, such as are invariable in Canada and New Zealand. There remained election by local authorities, the representatives of which might be grouped together for this purpose on the analogy of the mode of election of French Senators, but the project fell on three grounds. The local elections would thus be made definitely political in tendency, which was undesirable. The Liberal and Labour members objected to the county councils as representing essentially a Conservative standpoint, and there was the risk that the members thus elected might challenge the Commons on the score that they spoke for the people.

There remained election by the Commons, as economical and as preventing any possibility of rivalry in power. To secure an impartial choice was evidently impossible, and finally the plan was adopted of grouping the members in territorial areas, thirteen in number, and giving them the duty of acting by proportional representation; the members were to sit for twelve years. The hereditary peers were to be represented by 81 members chosen by a body of ten, five representing the upper, five the lower chamber, chosen by the Committee of Selection and the Speaker respectively; the number of hereditary peers was to fall to 30, but the mode of choice of the 81 would remain. Five bishops might sit and the law lords. No sitting member of the Commons might be chosen.

The Conference met objections to the powers of the Speaker as to money Bills by giving the decision to a

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Committee of seven members from either house chosen at the beginning of each Parliament with authority to decide on broad social and political grounds whether Bills apparently money Bills were really of a different character, and were intended to effect sweeping social changes. As the Speaker had established his sole right of decision and had unquestionably proved impartiality by refusing already to certify three Finance Bills, the suggestion of change was unwise. For deadlocks on other Bills a complex system of Free Conferences was invented, remarkable authority to decide the form of Bills being given to that body. This part of the scheme was so patently impracticable and constitutionally indefensible that the scheme as a whole never received any serious consideration.

In July 1922[1] there were discussed proposals by the Government which laid down that, in addition to the peers of the blood royal, spiritual and law lords, the house should contain members elected from outside directly or indirectly and hereditary peers elected by their order; they were to have a limited period of service but might be re-elected. The number contemplated was 350. Without details of mode of election or of numbers of the different classes, the scheme seemed of little value, but plainly the result would be to give the house a predominantly Conservative character which would disable it from exercising fairly the function of delay. It was not proposed to alter the powers of the two houses as laid down in the Parliament Act, a fact which ensured the hostility of those peers who desired reform and whose interest was largely in the issue of powers; to secure a restoration of authority would justify acceptance of change of personnel, but not if the old state of affairs was to stand. The decision as to a money Bill was to be given to a committee of fourteen,

[1] 51 *H.L. Deb.* 5 s. 524 ff., 642 ff., 783 ff., 963 ff.; 52 *ibid.* 261 ff.

seven elected at the beginning of each Parliament by either house, with the Speaker as chairman. Such a body would obviously have had a permanent bias in favour of the Lords. A vital change exempted from the powers of the Parliament Act legislation affecting the constitution of the new house or its powers, and the restriction of the numbers of the house put an end to the possibility of overriding it by the creation of peers. It is not surprising that so undemocratic a measure made no progress in that Parliament.

The Conservatives at the party conference of 1924 pressed for the reform of the composition and powers of the Lords, so that no far-reaching constitutional or legal change could be effected by the Commons without the express consent of the electorate. But this demand received no real support from Mr. Baldwin. Lord Birkenhead brought in resolutions in 1925, and Lord Cave in 1927,[1] but nothing resulted. Lord Clarendon in 1928 as a private member pressed for reform in the constitution only, suggesting 150 peers elected by proportional representation by the peers, 150 persons nominated according to the proportional strength of parties in the Commons, to sit for life, and a limited number of peers nominated in each Parliament by the Crown. In 1932 Lord Salisbury put forward a variant of the same idea : a house of about 300 members, 150 elected for twelve years by the peers, 150 nominated for a like period by the Government, vacancies to be filled as they arose. The definition of money Bill would be decided by a committee, while the constitution of the new house would be exempt from the application of the Parliament Act. Not more than twelve new peerages could be created in any one year, a pre-

[1] 67 *H.L. Deb.* 5 s. 755 ff., 862 ff., 952 ff. ; 68 *ibid.* 664 ff. ; 208 *H.C. Deb.* 5 s. 1285 ff.

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caution necessary to prevent the swamping of the whole electorate by a Labour Government. The plan did not even receive general Conservative assent, and was, of course, wholly unacceptable to Labour. Progress with change was, of course, negatived under the National Government of 1931–5 as Mr. Baldwin declined to undertake revision, and his influence prevented the matter being made an issue at the election of 1935.

It is clear that no possibility exists of agreement on the topic. No system of nomination or nomination combined with election could fail to give the Lords a decidedly Conservative majority, and election whether on territorial or functional grounds would create serious difficulties, and would raise claims in the new chamber to rival the Commons. Choice by functional groups certainly has little merit, for it is clear that there is no special reason why experts should be in any way valuable in deciding issues generally. Their use was found not in the main German Economic Council so much as on its committees, where experts on one subject dealt with it as such. The Labour view is divided, though a single chamber holds the field. The arguments in favour of it are based on the fundamental view that the creation of a body with powers to delay is a contradiction to the democratic system. In practice, it is argued, the second chamber is an instrument of capitalism for defeating or seriously delaying the destruction of the capitalist system in favour of socialism. It is denied that experience in other countries is really relevant, and the dangers of rash legislation are minimised on the ground that the legislators have to remember that they desire a renewal of their mandate and must go before the public to obtain it. There must, however, be noted the danger that a single chamber may, in case of difficulties arising in its work and the possibility of an unfavourable verdict at the

polls, decide on extension of its life, and that there may thus arise a tyranny as undesirable as that of capitalism. There is no certainty that the members who, say five years before, did express the will of the people continue to do so effectively later.

If a second chamber is accepted at all by Labour, it would have to be a mere revising body without powers more than sufficient for this end, though it could naturally enough perform the function of considering non-party measures, and sending them down for acceptance by the Commons and the duty of discussing Imperial and foreign problems. Such a house would be small, say a hundred members, elected by each new House of Commons in proportion to the number of members in each party therein. To prevent misuse of the closure by the Commons, it might be provided that the Speaker would be empowered to require that no Bill should be deemed to have been duly passed unless fair consideration had been given to amendments. But even so much authority might be deemed dangerous. At any rate no Labour proposal for reform of the Lords would leave it with any real power to delay seriously legislation of the Commons. This is an essential side of the policy of Labour, because it contemplates that the socialisation of the economic and financial system of the country could be effected only by the assumption by the executive under an Emergency Powers Act of powers forthwith to control the banks and finance houses, the argument being that, if time were allowed, the capitalists in opposition would use these agencies to thwart the will of the Commons.

PART V

PARTIES AND POLITICAL OPINION

CHAPTER XI

POLITICAL PARTIES AND PARLIAMENT

1. *The Party System*

THE modern party system as the essential condition of the working of democracy can be traced only to the Reform Act of 1832 which altered essentially the whole relation of the Crown to the people. Parties existed from the period of the Stuarts, but the opposition was between those who supported the Crown and those who were rather united by their desire to uphold the authority and the supremacy of Parliament. When in 1679 the Country party encouraged petitions asking for the assembling of Parliament, and the Court organised as a counterblast addresses expressing abhorrence at the action of the petitioners, the contest was between supporters of prerogative and of Parliament, not between two rival parties in Parliament. Nor under the Hanoverians was there room for the evolution of the modern divisions; what chance it had of development was stemmed by the effort of George III to abolish party, a project in which in 1766–8 he had the aid of Lord Chatham.[1] It is fair, no doubt, to say that not until 1831 in the case of the Reform Bill do we find the spectacle of two incipient parties laying before the people rival policies, on which they were asked by their votes to decide.

[1] Burke, on the other hand, recognised that "party divisions, whether on the whole operating for good or evil, are things inseparable from free government".

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The earliest form of party organisation seems to have been meetings outside Parliament of those of one political faith, such as are recorded as early as 1640 when opposition to the King was in the air. There are instances later of such meetings both of governmental and Opposition members; it seems to have been usual for the Government to meet its supporters to impart to them the matters to be included in the King's Speech giving the programme for the session; in 1769 Mr. Burke records the dining together of the minority at the Thatched House, and the social habit implied had no doubt a sequel in the foundation of the Carlton and other political clubs of the Victorian period, meetings at which for specific political ends have persisted to the present day. In Parliament itself unity of action fell to be promoted by the Patronage Secretary, who had in his hands the means by which members could be kept to their allegiance, and who could be expected to assist in winning elections.

Even in the eighteenth century there is evidence of efforts to organise elections; Wharton, Walpole, and the Pelhams, and E. Burke in various ways, were active, and modern conditions are suggested by the record of Lord Holland that the Whigs in 1807 raised a few hundred pounds to print handbills and to manage the press. We hear also of a central fund whence aid might be given to deserving candidates, and there was activity in this respect on the eve of reform, when a Parliamentary Candidate Society was given accommodation at the Whig headquarters in order that it might recommend to the constituencies candidates who had sound views on reform. The Tories were not backward; they raised a central fund for the election of 1834, and Lord Granville Somerset undertook electoral organisation in Sir R. Peel's interest. There existed also before 1832 a central organisation at

Westminster whose aim it was to return members pledged to reform to Parliament.

The Act of 1832, by requiring registration of electors, resulted in the appearance of local organisations both Conservative and Liberal. The purpose of the registration societies which sprang up was to secure that voters of the proper political complexion should be placed on the roll, and that those of other faiths should be struck off whenever possible, and the complexity of the franchise rendered their activities both necessary and difficult. The next step was the canvassing of voters at the time of elections and making sure that they would go to the poll. But the nomination of candidates was not claimed; they still came forward spontaneously, or were brought forward by local men of influence who might be members of the associations, but who acted individually. For central purposes the Whips at first sufficed, but, after the defeat of his party in 1852, Mr. Disraeli [1] secured the services of Mr. Philip Rose to undertake the improvement of party organisation. Some associations extended their functions to cover the securing the election of members of Parliament, and to place on the local council members of the association, as was done at Liverpool in 1848.

The essential step in the development of party organisation was taken after the Act of 1867 and was due to the fact that it created a number of three member constituencies in which the elector could cast two votes only. The Radicals of Birmingham realised that, though they had control of three-fifths of the votes in the town, this would not avail them to return three members under the new system without careful planning. The Birmingham Liberal Association at that time was, like associations generally, a self-constituted election committee, but it was now transformed

[1] Monypenny and Buckle, i. 1298, 1331, 1607.

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into a representative body to which every Liberal subscribing a shilling was eligible, while the officers and an executive committee were to be chosen at an annual meeting. Ward committees were set up, and to the executive committee, and members elected by ward committees, acting as a general committee, was given the nomination of three members to stand as candidates for the Commons. By careful directions to members of the party in each ward how to cast their two votes, the whole three seats were secured for the Liberal cause. Mr. Chamberlain and his able lieutenant, Mr. Schnadhorst, in 1873 revised the constitution to make it more democratic still, no subscription being asked for, and in this form it succeeded in holding the representation of the city for Liberals, and in operating successfully in respect of the elections for the school boards, which under the Act of 1870 were conducted on the base of the cumulative vote, each elector being allowed to allocate at will all his votes. The organisation proved to the end of his career loyal to Mr. Chamberlain and followed him into opposition to Home Rule in 1886, and into the demand for preferential trade in 1903. Control of the city council was combined with that of Parliamentary representation, and success in municipal life was to prove to many members of the association the gate to entrance to the House of Commons.

It was natural that the example of Birmingham should be widely copied and that it should be the object of both praise and blame. Undoubtedly associations limit freedom of view and individuality, but they are plainly the only method by which political tenets can be made effective through the return to the Commons of men ready to carry them into effect if they have the necessary power. It is true that in the main the associations tend to fall under the control of a few members. But that is simply because these

are the enthusiasts who are willing to give time and energy or to spend money to further the objectives of the party. The tendency to stagnation may be admitted, especially when the same officers and executives are annually re-elected. What is important is that the example of Birmingham was readily followed in making the constitutions of the associations democratic; in principle they follow the rule that all who profess the party principles shall be eligible for membership, and that the officers and executive committees shall be elected. It is expected that those who join these bodies shall accept majority decisions, and on the whole the rule is obeyed.

The outcome of the activity of Mr. Chamberlain was the decision in May 1877 to create a federation as a means of organising the party so as to assure the direct participation of members in the direction and in the selection of those particular measures of reform and progress to which priority should be given. It was made clear that the object was to formulate policy and to exert gentle pressure on the leaders to give effect to it. The immediate incentive was the success of the Conservatives in the election of 1874, which was attributed to their better organisation. The constitution of the Federation was framed on the lines which in essence have remained operative, the annual meeting of a great representative Council, and more frequent meetings of a General Committee. The latter had the duty of promoting the formation of affiliated associations of representative character, and of submitting to the associations political questions on which united action might be desirable. The Council at first was cautious in pressing reforms, and the association only grew to include local associations step by step, but the fact that Mr. Chamberlain was its president enhanced his influence and led to his entry into the Cabinet in 1880.

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Though he resigned the presidency, his influence in the federation stirred it to positive suggestions, and in 1881 the Committee took up the work of inducing local associations to press on members the duty of supporting the Irish Land proposals of the ministry. Its growing activities met with a serious difficulty in May 1886, when the Council passed a motion approving *simpliciter* the Home Rule Bill. Thereafter, it was definitely in the hands of the official Liberals, and its headquarters were moved from Birmingham to London side by side with the Liberal Central Association, the body which acted with the party Whips in controlling the party. Of the latter, Mr. Schnadhorst, Secretary of the Federation, became honorary secretary, and the two bodies arranged to maintain a publication department. At the same time the constitution of the federation was slightly altered, the most important point being the creation of district federations, especially for Wales and the Home Counties and London, which as such should have distinct representation on the governing bodies. The aim of the changes was fulfilled; from 256 before the Home Rule split, the number of associations rose by 1888 to 716. In 1889 the Council decided that it could not allow amendments to resolutions put by the General Committee on the agenda. In 1890 procedure was defined, and a General Purposes Committee consisting of the officers of the federation and up to twenty members chosen by the General Committee; that body received resolutions from the associations, and, in the light of discussions by the General Committee and at special conferences, prepared resolutions to be formally adopted at the annual meetings of the Council.

The Newcastle meeting of October 1891 thus adopted a formidable list of topics: Home Rule, manhood suffrage, the disestablishment of the Churches of Scotland and

Wales, local veto, parish councils, and workers' compensation for accidents. The programme was accepted by Mr. Gladstone[1] with a warning as to patience, but it unquestionably proved a serious burden on the hapless ministry of 1892 with its poor majority of forty. As Lord Rosebery stressed in 1895, a fundamental difficulty lay in the fact that, with so many subjects to attack, there was bitter discontent from those who found their own pet project necessarily postponed, while others were being undertaken. In 1896, as the result of experience, there was set up an Executive Committee charged with preparation of business for the Council and the General Committee, with the intention that such resolutions as the latter might pass should be so limited in number and chosen as to fall within the sphere of practicability. From the Executive Committee were excluded members of Parliament, for the double purpose of rendering the Committee more independent and of freeing members from too great dependence on the Committee. The general trend of events thenceforth was in favour of diminishing the functions of the federation in framing policy and of leaving it to the party leaders.

The main outline of the organisation persisted through the vicissitudes[2] of the party, but much complexity resulted from efforts in 1923 and 1925 to concert action[3] with Mr. Lloyd George, who had the valuable advantage of having at his disposal a large fund amassed during the war and post-war period, in part by the sale of honours. In 1936 the organisation was renewed as the Liberal party, with the usual Council and Assembly. It works through four standing committees, and the executives of

[1] Report of 1898, pp. 40 f., 54 f.

[2] The Liberal (Imperialist) League threatened to disrupt the party in 1902; Spender, *Campbell-Bannerman*, ii. 30 ff.

[3] Spender, *Lord Oxford*, ii. 258 ff.

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the League of Young Liberals and of the Women's Liberal Federation rank as committees. It is proposed to make the resolutions of the Assembly the method for determining the essential policy of the party.

Funds for Liberal purposes, especially to meet the cost of fighting elections, used to be provided by wealthy members of Parliament and other supporters; free trade caused many manufacturers to contribute generously to maintain in power a party whose tariff policy suited their interests. The lack of prospect of success at the elections has naturally limited seriously the source of funds. Hence each association is encouraged to provide funds for its own expenses and for the purpose of fighting elections. The Council itself raises funds so far as possible, and works in close harmony with the Liberal Central Organisation. For Scotland there is the Scottish Liberal Federation which in the main is constructed on the same principle of local associations and a central body.

Conservative organisation ran parallel with and in part anticipated Liberal organisation. The Act of 1867 stimulated activity and resulted *inter alia* in the appearance of working men's Conservative Associations. It also produced at once the National Union of Conservative and Constitutional Associations, with a party Congress, known as the Conference, a Council, and a president and other officers elected by the Conference. The federation for a brief period assumed an interesting aspect when Lord R. Churchill [1] in 1883–4 tried to use it for his own aggrandisement in the party at the expense in the first instance of Sir Stafford Northcote, and later of Lord Salisbury himself. His success was personal only, and the effort to convert the

[1] Lowell, *Govt. of England*, i. 556 ff. For Disraeli's establishment of a central office under John Gorst, see Monypenny and Buckle, ii. 523 ff. He started the register of aspirants whence constituencies could choose.

union into a powerful instrument for the formulation of policy came to nothing. The Union was, when the struggle was over, reconstituted in 1886, the chief change being the creation of divisional organisations intermediate between the Union and the associations. Moreover, it was provided that associations should be automatically members, so that in 1888 there were eleven hundred associations affiliated. In 1906 a fresh change strengthened the Central Council by placing on it direct representation of counties and boroughs. The organisation has suffered since then only minor changes. The discussion of resolutions originally conducted in private became public from 1890, but the value attached to such resolutions has from the first been minimal. Thus for years resolutions in favour of preferential trade or protection, women's suffrage, and like reforms remained undealt with, and the efforts of the Union to impress on ministers the need of reform of the House of Lords shattered themselves on the firm indifference of Mr. Baldwin.

The functions performed by the Union are, however, important, and have increased since the Liberal Unionist organisation was merged with it in 1912. A central office [1] is maintained which acts with important effects in electioneering activities. As in the case of the Liberals the local association has the right to determine the person who is to stand, but its autonomy is complete only if there is no need for aid from other than local funds. If there is, the candidate requires to be approved by a Standing Advisory Committee as finally established in 1938, whose purpose is not to dictate to local associations but to aid them in securing in case of difficulty suitable candidates. The organisation aids in the formation of, and helps by advice

[1] The chairman is appointed by the leader; his power is shown in Sir G. Younger's success in destroying the coalition of 1919–22; Birkenhead, *Birkenhead*, ii. 127 ff., 168 f., 178 f.

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and funds if necessary, local associations, publishes literature, conducts research into political issues, distributes information, and prepares the party for ready action in the event of a general election becoming imminent.

The organisation of the Labour party naturally was much later in date. Labour representation was sought first at the election of 1868, but in vain. The Trades Union Congress then intervened, and created a Labour Representation League which ran thirteen candidates at the election of 1874, but with the ill-success connected with that number. But, with the redress of the grievances of the unions, the movement slumbered, though the miners' unions in Durham, Northumberland, and South Wales were able to obtain a few seats, often with the tacit approval of the local Liberal Associations. Representation was favoured by the Social Democratic Federation from 1881 and by the Fabian Society formed in 1883, but it was only in 1891 that the Independent Labour party came into being with a definite policy of socialisation in the form of collective ownership and control of the means of production, distribution, and exchange. In 1895 it put up 28 candidates, all of whom were unsuccessful, including Mr. Keir Hardie, who had been an M.P. from 1892. Vain efforts to merge the Independent Labour party with the Social Democratic Federation were followed by a recommendation of the Trades Union Congress in 1899 favouring a convention to determine the creation of a Labour Representation Committee. This body was renamed in 1906 the Labour party; that year saw 56 members returned as Labour representatives. The party constitution provided for an annual Conference to be attended by delegates from trade unions, socialist societies, trades councils, and local representation committees, while the executive committee was composed of nine members elected by the unions, three by societies, and

one by the trades councils and committees. Candidates for Parliament must be approved by the Committee but nominated locally, and must accept the constitution of the party, agree to abide by the decisions of the Parliamentary party in carrying out the aims of the constitution, must stand as Labour candidates only, refrain from identifying themselves with any other party, and must not oppose any candidate recognised by the committee. They must, of course, join the Parliamentary party if elected. The pledge to obey party decisions was imposed in 1903, and obedience was enforced by the fact that funds were found for the payment of a salary of £200 to members of Parliament from the party funds.

The reason for the rapid success of Labour in 1906 was largely the resentment felt by the workers for the decision of the House of Lords finding that trade unions could be held liable for wrongful actions of their officials in the case of strikes,[1] coupled with the agitation against the introduction of Chinese labour into the mines of South Africa, and the knowledge that in his plans for imperial preference Mr. Chamberlain contemplated the laying of duties on food. The return of 29 members [2] by the Labour Representation Committee provided the nucleus of the new Labour party ; one other member joined, while 26 members remained aloof forming a Liberal Labour group, whose fate was shortly to disappear as such, a result practically inevitable since they had no separate Parliamentary organisation.

The party constitution was such as to restrict greatly its appeal to the public at large, but the passage of the Representation of the People Act, 1918, was followed by a

[1] Halévy, *Hist. 1895–1905*, pp. 270 ff.

[2] The formation of the Parliamentary party is recorded by Clynes, *Memoirs*, i. 110 f.

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special conference at Nottingham which resolved on a new constitution, the essence of which was to add to affiliated organisations those men and women who were individual members of a local Labour party and who subscribed to the constitution and programme of the party. The party at the same time made a careful effort to secure the accession to the party of workers by brain no less than by hand, and opened its membership to practically every element of the population. This involved the reorganisation of local Labour parties where they existed, and their establishment in the many constituencies which had no such parties. The local party became a working alliance of individual members and of members of the affiliated trade unions and socialist societies in the constituency; some voters belonging to it simply as individuals, others as members of affiliated bodies, while in areas where no local party could be established its functions might be performed by a local trades council. It was in agricultural areas naturally that most difficulty was found in setting up local parties, and even yet it is here that the party organisation has still much to do. In 1927 the Co-operative Union Congress voted for a formal alliance with the Labour party, and thereafter local co-operative societies could take their place as local units of the party. As usual women, who had under the former régime had scant opportunity to be members of the party, were specially catered for by providing women's sections of the local parties.

The party's essential organ is the annual Conference, with which lies the power to amend the party constitution and its standing orders. The trade unions and other affiliated societies are entitled to send one delegate for each thousand members in respect of whom fees are paid; each local Labour party and trades council in a constituency sends one delegate, and an additional woman delegate may

be sent from any constituency in which the number of affiliated and individual women members exceeds 500. Delegates must be officials or *bona fide* due-paying members of the organisations which they represent, and their presence implies acceptance of the principles of the party. The work of the Conference is to hear the annual report of the Executive Committee which can be discussed and referred back, and to discuss resolutions which emanate from the affiliated bodies and other units.

At the Blackpool Conference of October 1927 the Executive Committee was authorised to prepare a statement of the principles approved by the party Conference which would constitute a programme of legislative and administrative action for a Labour Government. Unfortunately, in the view of some of the party, Mr. MacDonald persuaded the Committee to produce a complete presentation of the faith of the party, instead of a brief list of practicable measures to be enacted by a Labour Government, if established after the next general election. The resulting pamphlet, *Labour and the Nation*, is thus a statement of the colossal task of transforming capitalism into Socialism. It was accepted by the Birmingham Conference in 1928, and since 1929 affiliated associations have been required to accept the principles and policy of the party, to conform to its constitution and to its standing orders, and to submit their rules to the Executive Committee of the party. This decision led to considerable difficulty, in view of the desire of a considerable number of the intelligentsia of the Labour party to co-operate with the Communist party, despite the fact that they were not prepared to accept its dogmas involving the denial of democracy and the advocacy of a dictatorship of the proletariat. Hence in 1931 there was a definite disaffiliation of the Independent Labour party, which refused to repudiate

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Communist ideals, and in 1937 a modified form of the effort to work together with Communists in the shape of the Socialist League, whose moving spirit was Sir Stafford Cripps, was emphatically disowned by the party Conference. But the blow was softened by alterations in the party Executive, which enabled the leaders of the League to obtain seats thereon, no doubt with a view to convert their fellow members to share their enthusiasm for co-operation with Communism. The motive for this search for co-operation was no doubt furnished in part by the temporary success in France of M. Blum's formation of a Government of the Popular Front based on the common interests of Radicals, Socialists, and Communists. Even when in 1938 the French combination broke down under the stress of foreign affairs, there remained supporters of Labour who would gladly have formed with Liberals, Communists, and perhaps some Unionists a popular front to oppose resistance to further encroachments by the totalitarian States after the collapse of Mr. Chamberlain's resistance to aggression at Munich. But the rule that co-operation must be officially denied was firmly enforced,[1] though in Kinross and West Perthshire the workers insisted on affording as individuals loyal support to the Duchess of Atholl in recognition of her struggle for the Spanish Government.

As in the case of the other parties, Scotland is specially treated, an advisory council being established in 1915 to perform for Scotland functions analogous to those performed by the Executive Committee for the Labour party generally.

While in the other parties there is no very close connection between the organisation and the Parlia-

[1] As in the expulsion of Sir S. Cripps from the party. At the Holderness election of Feb. 1939 the refusal of Labour to co-operate lost the Liberals the chance of victory. See the declaration of the executive, March 4, 1939.

mentary party, the Labour party has, since the events of 1929, strengthened the cohesion of the movement. On important issues, policy must be discussed by the Executive Committee with the executive chosen by the Parliamentary party, and with the General Council of the Trades Union Congress; thus on March 25, 1938, a Conference of these bodies in London denounced the attitude of Mr. Chamberlain towards Czechoslovakia and the League of Nations, and demanded that the League Assembly should be forthwith convened to consider the issue. The doubts shown by the Conference as to the intentions of the Prime Minister proved in September to be only too well founded.

Relations with the Trades Union Council are not wholly simple. The funds of the Labour party are in essence derived from the trade unions. The right to make a levy therein for political purposes was long assumed to exist; it was challenged in the *Osborne Case* [1] and declared to be invalid; there were, it is patent, grave difficulties in the way of holding it right that a man who joined a trade union, virtually under compulsion, as a means of earning his livelihood in the occupation which he desired to follow, should be compelled to contribute to funds to be used for political purposes in which he might feel little interest. No doubt a majority vote was necessary for the levy, but men were reluctant to stand out in opposition. The Trade Union Act, 1913, regularised the position by permitting levies for political purposes, while giving a right to individuals to withhold contributions. This was in practice so invidious to exercise that it was necessary by the Trade Disputes and Trade Unions Act, 1927, passed after the general strike of 1926, to modify the procedure, so that the political levy is imposed only on those members

[1] *Osborne* v. *Amalgamated Society of Railway Servants*, [1910] A.C. 87.

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who declare their readiness to contribute. But it may be doubted if the new procedure is wholly satisfactory to protect members from indirect compulsion.

The normal work of the party organisation is performed by the Executive Committee which controls the central office. The Committee is elected annually by the Conference; prior to 1918 eleven out of sixteen members were representatives of the trade unions; the reform added seven members, the trade unions and socialist organisations were given thirteen, local parties five, women four, and the party treasurer served *ex officio*.[1] Nominations for the different categories are made by affiliated societies, who may put forward one candidate, or two if the number of members exceeds 500,000; by constituency organisations; and by affiliated organisations respectively. The election is by the full Conference by secret ballot. The restriction of the position of local parties was obvious, and was defended on the score that the funds necessary for the purposes of the party were essentially provided by the unions, the other units contributing comparatively little. But, after a struggle and considerable opposition, the number of members to represent the local parties was increased in 1937 to seven, and Sir S. Cripps[2] was immediately elected to the Committee, though this meant the dissolution of the Socialist League. The Conference chooses the Treasurer, whose influence in the Committee is often very great. The Committee seeks to secure that the decisions of the Conference

[1] Now twelve represent trade unions, one socialist, co-operative and professional organisations; five are women members.

[2] In 1939 he was ejected by the Executive Committee of the Labour party for disobedience to its decision not to allow any co-operation with the Liberal party; he declined to yield, and won sympathy in many Labour circles, including constituency organisations. But at Southport on May 29 his appeal was rejected by the Conference, which reasserted the doctrine that the party declined any alliance, and he and others submitted and asked to be taken back.

receive effect; it interprets the constitution, subject to an ultimate recourse to the Conference; it expels members and disaffiliates organisations which disobey the constitution; it strives to secure the presence in each constituency of a duly constituted organisation; and it supervises the many activities of the central office in London, which is under the immediate direction of the secretary to the party. The party maintains departments of research and information, for press and publicity, international information and legal advice, the last shared with the Trades Union Congress. Like the Conservative and Liberal parties it issues propaganda in the form of pamphlets and leaflets, but the experiment of running a purely Labour newspaper, the *Daily Herald*, proved ineffective, and was therefore modified by handing over control to an expert in newspaper work. Like the other parties, so far as funds permit, local organisers are maintained, partly at the expense of central funds, partly at local cost. The general fund of the party is supplemented by a special general election fund raised by special appeals when an election is pending, and for by-elections a special levy is asked.

In all three parties the local organisations take much the same shape, but without complete uniformity. The membership of the associations is open to any person who claims to be a supporter of the party, though in the case of Labour the assertion of support has to be more definite than in those of Liberal or Conservative affiliation. The organs of the local party are similar, a council or committee chosen by the members in mass meeting; in the Labour party dues are levied; elsewhere the practice varies. The activities of the associations vary according to local enthusiasm and available funds. Some politicians are sufficiently enthusiastic to spend money freely, sometimes in order to obtain nomination as candidate at an

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election, but there is no tendency to select local men for nomination, and thus there is less incentive than in the United States to seek control of an association. Discussion of issues of importance is common enough in meetings, and the local associations have the right to send up resolutions, from which a selection is made by the central executive for discussion at the annual Conference of the party as a whole. Continuous interest in political questions is kept alive by the existence and functioning of these bodies, especially when they employ paid agents. Keen divisions arise only in cases where there are party splits; they were conspicuous not so much in the Home Rule split in 1886, when the associations as a rule adhered to the Home Rule policy of Mr. Gladstone, as in 1918, and subsequent years in the Liberal party. A special organisation was operative for a time to return to Parliament candidates of the type approved by Mr. Lloyd George, and, when that schism was lessened, new difficulties grew up regarding the position of Liberals as supporters of the National Government in 1935, and a distinct organisation was created, as also for the National Labour movement after the break up of the Labour Government in 1931. The vitality of such bodies seems to be slight. The case of the Liberal Unionists from 1886 to 1912 differed considerably, because the party enjoyed the support of a very large number of men of high rank and much wealth,[1] who were willing to provide the party with generous funds for organisation and for fighting elections and so kept it long alive and effective, even after it joined forces in the ministry of 1895 with the Conservatives, and its *raison d'être* disappeared.

[1] Holland, *Devonshire*, ii. 377 f.

2. *Party Leadership*

The Whig party at the accession of Queen Victoria was under the leadership of Lord Melbourne, while Sir R. Peel had established his primacy in the Tory party by the fact that in 1834 it was he who consented to take responsibility for forming a ministry to replace that of Lord Melbourne on its resignation under the King's pressure. After Lord Melbourne's resignation in 1841, his growing ill-health paved the way for the rise to power of Lord John Russell, who had the advantage of presence in the Commons. Thus, when Sir R. Peel resigned in 1845 on the issue of the corn laws, the Queen felt that his health was such as to preclude her from imposing on him the effort to form a Government,[1] and turned to Lord John Russell. Though he then found it impossible to form a ministry, he was inevitably selected on the resignation of Sir R. Peel next year. His ministry from 1846 to 1852 was marked by the growing popularity of Lord Palmerston; his own position was undermined by his resignation in 1855 from Lord Aberdeen's Government, and on his failure to form a ministry on Lord Aberdeen's resignation and Lord Palmerston's success, the position of the latter as in effect leader of the Whigs and Liberals was assured until his death, when Lord John Russell took his place. The pre-eminent qualifications of Mr. Gladstone as leader assured in 1868 his selection by the Queen as Premier. But Lord Russell had already determined and had notified his determination to abandon the leadership of the party[2] when Lord Derby retired, and Mr. Gladstone had accepted his further decision not to take office in the administration which he evidently expected Mr. Gladstone to be asked to form. In point of fact the Queen solved the issue by not

[1] *Letters*, 1 s. ii. 51 f.

[2] Fitzmaurice, *Granville*, i. 517 f.

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asking Lord Russell to form a Government, while he finally declined a ministry without departmental duties offered by Mr. Gladstone.

After his defeat in 1874, Mr. Gladstone seldom appeared in the Commons, and made it clear that he intended to resign the leadership. His mantle should have fallen naturally on Mr. Cardwell, but he was tired and decided to take a peerage.[1] Efforts were made to induce Mr. Gladstone to resume effective leadership, but the appeal of the members of the ex-Cabinet failed. The suggestion was then strongly made by members of the Commons that a party meeting of the members should be called to decide the issue, exception being taken to any idea of the imposition of a leader without consultation.[2] Ultimately, after many manœuvres, a party meeting at the Reform Club on February 3, 1875, gave the leadership to Lord Hartington so far as the Commons was concerned. Mr. Gladstone, for his part, held firmly that Lord Granville was entitled to be leader on his resignation, but Lord Granville took the view that there could be no leader for the party as a whole, and that in due course, if the party were to win an election, Mr. Gladstone would have to be the one to form a ministry; this view was justified in 1880, after the leader in the Commons had had rather an exacting time in view of the gradual return of Mr. Gladstone to political activity. As has been mentioned, Lord Hartington was approached first by the Queen in 1880, but he never doubted that he could not act.[3]

No doubt that Mr. Gladstone was leader existed from 1880 to his resignation in 1894, and the Queen's selection of Lord Rosebery as Premier gave him the leadership until his resignation in October 1896[4] as a result of

[1] Fitzmaurice, *Granville*, ii. 137 f.
[2] *Ibid.* i. 134-59. [3] *Ibid.* i. 193 f.
[4] Spender, *Campbell-Bannerman*, i. 184 ff.

the difficulty of his relations with Sir W. Harcourt, who continued leader of the party in the Commons. Sir W. Harcourt, however, did not step into the leadership; the orthodox theory held that, if no ex-Prime Minister was available to lead, there could be leaders only in the two houses, and Lord Kimberley was chosen to lead the Lords. In December 1898 Sir W. Harcourt retired from a position of grave discomfort as the result of friction between the imperialistic elements in the ex-Cabinet and himself, and Mr. Morley likewise withdrew from the shadow Cabinet.[1] The remaining members, Sir H. H. Fowler, Mr. Asquith, and Mr. Bryce, pressed leadership on Sir H. Campbell-Bannerman, whose appointment was ratified by a meeting of Liberal M.P.'s at the Reform Club on February 6, 1899. His leadership, though full of difficulties in view of the bitterness caused by the South African War, led to his selection by King Edward. His obvious successor was Mr. Asquith, and he remained leader until in 1926 he felt driven by the flouting of his authority by Mr. Lloyd George, and the lack of support from the rest of the party, to retire.[2] This left the party without any leader of the whole body, the position reverting to leadership of the infinitesimal party in the Lords and the rapidly dwindling band in the Commons, which had the good fortune after the death of Sir D. Maclean and the fiasco of the Liberal participation in the National Government to secure the leadership of the energetic Sir Archibald Sinclair.

In the case of the Tories the change of policy by Sir R. Peel cost him, naturally, leadership of the party. The Protectionists secured as their leader in the Commons Lord George Bentinck. At the close of 1847 his desire to secure the removal of Jewish disabilities, and his speech and vote

[1] Spender, *Campbell-Bannerman*, i. 211 ff.
[2] *Ibid.*, *Lord Oxford*, ii. 361 ff.

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therefor, cost him the allegiance of the party, and he retired,[1] leaving no effective successor pending such time as the abilities of Mr. Disraeli could triumph over the dislike felt for his Jewish origin. He was prepared to support Lord Granby as leader, as desired by Lord G. Bentinck, but the latter refused, and a futile effort to give leadership to a triumvirate was speedily followed by Mr. Disraeli's accepted pre-eminence in the Commons.[2] Naturally the leadership in the Lords [3] and the most prominent part in the party remained with Lord Stanley. Not until his resignation in 1868 was the way open for Mr. Disraeli's attainment of the unquestioned control of the party whose leader he remained until his death. He had endeavoured to arrange for Lord Salisbury to take his place as leader in the Lords in 1881.[4] There followed a period with distinct leaders in either house, which was closed by the royal command to Lord Salisbury in 1885 to form a ministry. Lord Salisbury retained his leadership until resignation in 1902, when the royal favour gave Mr. Balfour his place. His troubles, however, were not delayed. His ministry was distracted by Mr. Chamberlain's advocacy of tariff changes, and the Unionists returned at the election of 1906 were overwhelmingly of Mr. Chamberlain's political views.[5] The controversy over the Parliament Bill added to the unrest in the party, and his reply to the press campaign of "B.M.G.," was the sudden resignation on November 8, 1911.[6] It is significant of the recognised status of the head of the Opposition that he intimated his resignation to His Majesty so that he might be aware of it before it appeared in the press.

His successor was not, as was natural, Mr. A. Chamber-

[1] Monypenny and Buckle, *Disraeli*, i. 896-8.
[2] *Ibid.* i. 945, 955 f.
[3] *Ibid.* i. 640; he went to the Lords in 1844.
[4] *Ibid.* ii. 1466-8.
[5] Halévy, *Hist. 1905–15*, pp. 12 f.
[6] *Ibid.* pp. 359 f.; Dugdale, *Balfour*, ii. 86 ff.

lain, who had reason to expect the office.[1] The rival claims of Mr. W. Long, a typical Conservative of the landed proprietor school, appeared formidable, and as a compromise the party in the Commons, on November 13, adopted Mr. Bonar Law without a contest. His position was retained until May 1921, when he resigned on the ground of ill-health and Mr. Chamberlain stepped into his place. The revolt, however, against Mr. Lloyd George's policy towards Greece and Ireland resulted at the famous Carlton Club meeting [2] in the dissociation of the majority of the Conservative party from ministerial policy, and Mr. Chamberlain, remaining loyal to his chief, resigned office and leadership alike. Mr. Bonar Law then accepted the duty of forming a ministry on the understanding that he would be elected head of the party, and this was hastily done at a meeting composed of the members of the Lords and Commons who accepted the Conservative Whip and of approved Parliamentary candidates. Mr. Baldwin also duly received election on the retirement of his predecessor as Prime Minister. When he in his turn decided to retire in 1937, care was taken to secure his successor's election as head of the party on May 31 at a meeting graced by the attendance not merely of peers, commoners, and approved candidates, but of the executive committee of the National Union of Conservative and Unionist Associations, which consists of elected representatives of the twelve areas into which England is divided for purposes of representation, and of Scotland and Northern Ireland. It is interesting to note the care taken thus to mark out the leader as chosen by those properly concerned, and not merely selected by the Crown.

The Labour party in effect adopts a like principle. The

[1] Chamberlain, *Politics from Inside*, pp. 322 f., 377 ff.

[2] Spender, *Great Britain*, p. 636.

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members of the Parliamentary Labour party select the leader of that party. In 1920 the post was accepted by Mr. Clynes, and it was natural to expect his re-election when the party met after the election of 1922 to choose their leader.[1] Success, however, was negatived by a narrow majority, through the activities of the Clyde group of extremists, who thus unconsciously paved the way for the *débâcle* of the party in 1931, and thus the choice of Premier after the election of 1923 inevitably fell on Mr. MacDonald. His desertion of his party, after leading them to disaster in 1931, led naturally to the selection in his place by the party of Mr. Henderson,[2] and the selection in 1931 of Mr. Attlee as deputy leader in the Commons was followed by his succession to the leadership.

On the secession of Liberals from Mr. Gladstone on the issue of Home Rule the leadership naturally was vested in the hands of Lord Hartington, who raised a fund of which he became trustee, to which subscriptions duly came in from the wealthy men of Unionist faith.[3] He held until 1904 the presidentship of the Liberal Unionist Association, a nominal body whose existence was represented only by a small office under the control of the Liberal Unionist Whips and a small nominated committee. A Liberal Unionist Council, a consultative body of leading members of the party, occasionally met. The split on Mr. Chamberlain's proposals secured the latter eventually a majority on the Council, and at a meeting of May 18, 1904, resolutions were carried for the merger of the Association and the Council into an active organisation, drawing its strength from the local Liberal Unionist Associations. The resignation of the Duke followed, and Mr. Chamberlain at once

[1] Clynes, *Memoirs*, ii. 329 ff.
[2] Chairman in 1908–10, and 1914–17.
[3] Holland, *Devonshire*, ii. 377 ff.

stood out as his successor in the leadership of the Liberal Unionists, who dissented from free trade. After the formation of the ministry of 1895 the distinction of Liberal Unionists and Conservatives had lost much of its *raison d'être*, but complete merger of organisations was delayed until 1912.[1]

In office the leader has the Cabinet to support him; in Opposition we find inevitably the tendency to form a council of discussion out of the members of the last Cabinet. Sir R. Peel made a precedent of importance, when, dismayed by the lack of harmony between the attitude of the party in the Lords and his supporters in the Commons on the Municipal Corporations Bill, he summoned the members of his late Cabinet to discuss their attitude towards the like measure for Ireland promoted by the ministry. There is, of course, a very wide freedom of action in these matters; members of a former Cabinet may be unwilling to co-operate, or it may be desirable to add to the number.[2] The leader of the Opposition may at his discretion, no doubt after ascertaining the views of his chief supporters, ask a prominent member of the party, who may have held merely junior ministerial office or not have been in office at all, to sit on the front bench, where by custom ex-members of the Cabinet are wont to sit. In the case of the Labour party such action necessarily requires the party executive's assent, as in the case of Mr. Henderson's selection to replace Sir S. Cripps when the latter ceased to be a member of the Parliamentary Labour party on his exclusion from the party by the National Executive. Or ex-ministers may be reluctant to work together. On the resignation by

[1] Chamberlain, *Politics from Inside*, pp. 417 ff., 476 f.

[2] Mr. Balfour asked Mr. Chaplin (dropped from the ministry in 1900) and Mr. F. E. Smith, not yet a minister, as well as the ex-law officers, Chief Party Whip, and party organiser: Dugdale, ii. 68.

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Sir W. Harcourt of his leadership in the Commons in 1898, Mr. Morley joined him in abstention from meetings of ex-ministers,[1] and, when he made overtures for their return to consultation, Sir H. Campbell-Bannerman was unable to accept the suggestion at the time.[2] Lord Rosebery in 1896 had equally and finally, as it turned out, cut himself adrift. On the other hand, when Mr. Gladstone retired in 1875 and ceased to take part in discussions of policy, the rest of his late Cabinet held together and endeavoured to secure some measure of co-operation with their former chief.[3] So long as Mr. Asquith retained the leadership the shadow Cabinet system was maintained in full operation, and his resignation of his leadership was evoked by the failure of Mr. Lloyd George to co-operate with that body in its attitude towards the disaster of the General Strike in 1926.[4] Mr. Balfour's leadership in Opposition from 1905 to 1911 was marked by frequent and very lively dissensions in his shadow Cabinet,[5] and the important decision to refuse compromise on the issue of the Lords was taken not at such a meeting but by a gathering of some twenty leaders at Lansdowne House.[6] It is curious to note that one of the most prominent members of Mr. Baldwin's ministry was not, after the defeat in 1929, invited to meetings of the heads of the late administration, though a peerage was duly conferred upon him; Lord Brentford clearly had reason to regret such treatment, for he had aided the party by his popular appeal.[7]

[1] Spender, *Campbell-Bannerman*, i. 208-15.
[2] *Ibid.* i. 309 f.
[3] Fitzmaurice, *Granville*, ii. 148 ff.
[4] Spender, *Lord Oxford*, ii. 358-71.
[5] Chamberlain, *Politics from Inside*, pp. 333, 335 f.
[6] *Ibid.* pp. 296 f.
[7] Taylor, p. 290.

3. *Party Control over Members of Parliament*

In the Labour party the degree of control exercised by the party over members of Parliament appears in the most developed form. The local constituency organisations unquestionably have the initiative in choice, and, though the local trade unionists may be anxious to secure the selection of their own protégé, they cannot count on ability to do so. But the central organisation is entitled to offer help if there is difficulty in finding a suitable candidate, and it has the final authority to approve candidates. Nor will the Executive Committee give the necessary imprimatur unless the candidate expressly agrees to stand as a Labour candidate pure and simple, promises in his electoral campaign to include in his address and to emphasise in his campaign the issues which the Committee has chosen, in consultation with the Parliamentary party and the Trades Union Council, to be stressed in the contest, and undertakes if elected to act in accordance with the party constitution and standing orders. It is plainly difficult for a Labour member to break such undertakings, and he has the assurance that, if he does so, he will have difficulty not merely with the local organisation, but with the Executive Committee which will refuse assent to a subsequent nomination, even if he can persuade the local body to condone his laches.

In the case of the Liberal and Conservative parties the principle of local nomination is equally in order, and the degree of control over that nomination by the central organisation is less direct. But it normally operates in some degree, and the organisation is always ready to suggest candidates if there is any doubt as to the suitability of a local man. If the candidate or the local association has not the necessary funds to pay election costs in whole

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or part, then central control becomes much more effective. By refusing to contribute, the candidature may be effectively banned. Or the candidature may be discouraged by the central organisation in view of its desire to make a deal with another party organisation, so that, for instance, the Prime Minister may be allowed a walk-over in his constituency, while the Opposition leader may similarly be unopposed in his.[1] More commonly such efforts have been made to prevent the splitting of Liberal and Labour votes, or sometimes of Conservative and Liberal votes. But such instances are rare, for the independence of local associations is highly stressed. Thus in December 1938, though the Liberal candidate in the Kinross and West Perthshire by-election was induced to stand down to allow the Duchess of Atholl a straight fight on the issue of the foreign policy of the Government, she was persuaded by the party leader, Sir Archibald Sinclair, to do so, and it was made clear that, if she had persisted in going to the poll, she would have had full official support.

An interesting point arose as early as 1878 in the case of Mr. W. E. Forster, a Liberal of the old school.[2] The local Liberal association demanded that any person who desired a nomination should agree, in submitting his name for consideration, that he would abide by the determination of the association. He succeeded in having the condition waived, but the question was revived when, in 1882, he left the ministry on the Irish policy issue, and was repeated until his death in 1886. The current practice is not formally to make such a requirement; as a matter of ordinary fairness, a man who submits his name may be presumed to be bound in honour to accept the decision of the association,

[1] *E.g.* Mr. Bonar Law and Mr. Asquith in the 1923 election, but the project failed.

[2] T. W. Reid, *Forster*, i. 519 ff., ii. 44 ff., 206 ff., 219 f.

though instances of rejected candidates standing as Independents are not very rare. What, however, is very rare is success on such occasions, for the existence of an organisation is almost essential for election to Parliament, and very few men can attempt to run as Independents with their own improvised organisation, still fewer to remain in Parliament by keeping up a semi-permanent organisation of this type.

The degree to which a member is bound by the opinions of his association was early a matter of dispute.[1] In pre-reform days there was very little independence for many members for the boroughs; if Mr. Burke was able to assert in his letter to the electors of Bristol that he was entitled not to carry out their wishes, but to express his opinion of what was best in the interests of the country as a whole, that could not be said of a member who owed his seat to the favour of some rich magnate; and even as late as 1857 we find Sir S. Northcote giving up his seat for Dudley when he found that he was practically the representative of Lord Ward. It seems to have been the idea of Mr. Chamberlain, when the National Liberal federation was founded, that constituents would be able to keep a closer control over the actions of their representatives, but it can hardly be said that the idea was ever translated into practice to any extent. It would have been different had the practice developed of selecting only local men and limiting the selection to members of the local association, who would thus have been bound by close ties to their members.

It is, of course, open to associations to ask for the resignation of members who fail to carry out the policy on which they were elected. The Liberal association in Newcastle in 1885 carried on a controversy with the redoubtable Mr. Joseph Cowen on this score, and, when

[1] Ostrogorski, *Democracy*, i. 230 ff.

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Sir Edward Clarke found himself unable to approve the governmental policy in the South African War, the Conservative association for Plymouth asked for his retirement, and he complied with the request.[1] Mr. Leonard Courtney rejected a suggestion of resignation for like action, on the score that he was a Liberal Unionist, and was pledged to support the Government only on the Home Rule issue. The proposal to ask him to resign was not carried in his association, but he was not renominated at the next election.[2] In like manner, while Mr. Duff Cooper's association in 1938 did not ask him to resign, it expressed continued faith in the Government from which he had resigned owing to his disapproval of the policy of surrender to Herr Hitler adopted at Munich. Mr. Eden, on the other hand, on his resignation in 1938, found his constituents perfectly satisfied with him, but Mr. Charles Emmott the year before fell foul of the East Surrey Unionist Association, and complained that he was denied a full opportunity of putting his case before the members generally.

Should a member resign when he differs from the policy of the Government he was elected to support? Precedent varies, and no simple rule is possible. Sir R. Peel, on deciding to introduce a Bill for Catholic emancipation, felt bound to resign his seat for Oxford, and was defeated, to his great regret, on seeking re-election.[3] But in the case of accepting the repeal of the corn laws he had no such compunction, while Mr. Disraeli censured him for his failure.[4] In the Parliament of 1895 Sir George Doughty abandoned the Liberal party, but stood for his constituency at Great Grimsby, and secured an increased majority.

[1] *The Times*, Feb. 10, 1900.
[2] *Ibid.* Feb. 23, 26; March 9, 15, 1900.
[3] Parker, *Peel*, ii. 88, 101 f.
[4] 83 *Hansard*, 3 s. 112.

On the other hand, in the next Parliament Sir Michael Foster retained his seat though becoming a supporter of the Liberal party, but he had warned his University constituency that he was not a strict party man.[1] Mr. Churchill also changed sides, and kept his seat without resignation. In the period from 1931 his attitude to the ministry was critical in the highest degree and he opposed energetically with many others the Government of India Bill, but without forfeiting the support of his constituents, who equally rallied to his criticisms of the Munich surrender.[2] The Duchess of Atholl took a slightly different attitude. While Mr. Churchill never gave up the party Whip, she renounced it in 1935 over the Indian policy of the ministry, and again in 1938. In the latter case she found that the local association was not prepared to support her at the general election which would normally fall in 1939, and she therefore challenged the party by resignation, whereupon she stood — unsuccessfully — as an Independent, receiving wide Unionist, Liberal, and Labour support, the latter parties not putting up candidates against her.

It is rare indeed that serious indignation is created by failure of a member to vote for some particular measure affecting his constituency, though it is not entirely unknown, as in the case of opposition to the Caledonian Power Bill in 1936–7.

In Parliament itself party control is exercised by the Whips. For the Government the work is done by the Parliamentary Secretary to the Treasury, formerly more appropriately styled Patronage Secretary from the mode by which he made effective his control over the forces

[1] *The Times*, Nov. 29, 1902; Jan. 2, 13, 17, 1903.

[2] On March 15, 1939, he complained of efforts in his constituency to silence him, but nonetheless showed how sound his views of Munich had been.

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which supported the Crown.[1] He has always had assistants, now the five (formerly three) Junior Lords of the Treasury and the political officers of the household, the Treasurer, Comptroller, and Vice-Chamberlain. The Opposition parties equally have Whips, who are not paid from public funds, and both sets have like duties in endeavouring to keep their forces effective.

The governmental Whips' duty of securing the presence of members for important divisions has increased in difficulty with the passage of time. Since 1867 ministries are no longer wont to regard defeats with comparative equanimity; legislation is deemed so essential a part of their functions that a defeat indicated that there is some failure in the loyalty of the party or that at best its members are becoming slack and uninterested, and that impairs the standing of the party. Hence notices of varying degrees of urgency, the most pressing being the three-line underscored Whip, are issued to urge attendance, and members who wish to be absent are expected, especially when the parties are nearly equal in strength, to arrange with the Whips for their absence, the Whips endeavouring to procure for them pairs with Opposition members in like case. Even great vigilance cannot rule out snap votes; the famous defeat of the Liberal party in 1895[2] on the cordite supply issue was brought about by the introduction at the critical moment of a score of Conservatives who had gone to the terrace from Palace Yard, thus evading the normal scrutiny of the Liberal Whip on watch at the usual door by which entrance to the house from Palace Yard is obtained.

The Whips have to keep in touch with the feelings of

[1] In the older parties an aristocratic Chief Whip was an asset of clear value.

[2] The Conservative defeat in 1904 is said to have been due to a ruse: Ullswater, *A Speaker's Commentaries*, ii. 12.

members, to know how far the Government is in effective control of its followers, and members who cannot vote for Government measures or must support amendment against them are expected to inform the Whips accordingly. With members who are becoming difficult the Whips can reason. A hint may also be given to the constituency organisation that influence thence might be prudently employed to recall the wanderer to the fold, but that is a measure to be applied with discretion and sparingly, for there is always the risk that the local organisers may resent what they think dictation. The bringing to bear of social influence has been common throughout political history; a recalcitrant may be brought back to loyalty by an invitation from an aristocratic leader, and members have been known to remain loyal, partly at least, in order that their wives or themselves may continue to enjoy social invitations. An important source of influence is the fact that many Conservative and Liberal members have to rely on assistance in their electoral campaigns from funds under the control of the Chief Whip. A member who has taken aid naturally feels ashamed to repay it by disloyalty, especially as he knows that the bounty will be withheld on the next occasion when it is needed. If, of course, the Whips find that on any point there is widespread dislike of the governmental proposals, it is their business to turn their powers of persuasion on the ministry, and induce it to alter its policy. A classical example is recorded in 1906, when the complex Bill of the ministry to safeguard within due limits the funds of trade unions had to be scrapped in favour of a much less carefully guarded measure,[1] simply because so many members of the Commons had pledged themselves during the election to

[1] Spender, *Campbell-Bannerman*, ii. 277 ff.; Halévy, *Hist. 1905–15*, pp. 92 ff., 356 f.

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drastic measures, and so were compelled to ask the Whips to secure a change of governmental policy. In 1937, again, despite the strength of the ministerial majority, the dislike felt for the effort of Mr. Chamberlain fairly to lay the burden of increased armaments on those firms which were drawing special profits thence resulted in such pressure from members that the scheme had to be abandoned, and the burden which would have fallen on wealthy Conservatives in great measure was transferred to the shoulders of the whole of the people. In 1938 in like manner the Milk Industry Bill had to be withdrawn because it was so bitterly criticised by the representatives of the farmers and others interested in the industry. In other cases the Government may consent to leave the matter to an open vote, the Whips not being appointed tellers in the division as they are, as a matter of course, by the Speaker if so requested. But such cases rarely occur.

In the ultimate issue obedience is enforced by the threat of a dissolution, and such a threat normally brings recalcitrant members to heel. No member normally desires to face a contest in which he will very probably find that the association which nominated him will not renominate him, or, if it does, he will have to meet such parts of his expenses as would normally be found by the central funds. If he seeks the nomination of the opposing party he may easily find that one of its own adherents will be preferred, unless he is of outstanding ability. It is not surprising therefore that modern conditions render the threat of a dissolution extremely effective, as was shown in rather an amusing manner by the vehemence with which Mr. Churchill denounced in October 1938 the idea that Mr. Chamberlain might decide to dissolve Parliament in order to obtain approval *ex post facto* of his policy at Munich.

Loyalty to party, however, is only dictated in minor degree by fear. It is much more due to the fact that those men who attain membership of the Commons are normally essentially party men, who are psychologically adverse to any breach with friends of like faith. Moreover, fidelity to party is the only method by which a member can normally expect to be able to attain any of the rewards which the party heads can give. The vulgar bribery of the past has been replaced by the grant of honours or posts to members or persons recommended by them, by membership of royal commissions or other bodies under governmental control, and by facilities for private legislation proposals in the event of the member being lucky enough to secure a place in the ballot for private members' Bills and to carry his measure on second reading. For a loyal adherent the Whips will find time in the governmental programme where for an opponent they could spare only regret at the fact that the crowded ministerial programme forbade any concession. An amendment from a friend of the ministry will be carefully weighed when the same proposal from the Opposition might be impatiently negatived. Moreover, there is always the hope that loyal service will lead to ministerial office, which is the goal of the ambitions of most members.

4. *The Historical Development of the Parties*

The Whig ministry of Lord Melbourne was far from enjoying the favour of William IV, who had reluctantly parted with Sir R. Peel, and who never gave it any real share of his confidence. The young Queen, on the other hand, found in Lord Melbourne a tower of strength and a quasi-paternal kindness. The ministry, however, was not strong either in the country, as the election of 1837 caused

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by the demise of the Crown showed, nor in Parliament. It had failed, partly through royal opposition, to satisfy the views of the Radicals, and the natural reaction after the great reform agitation told against it. In 1839 it should have been replaced by Sir R. Peel on its resignation in the face of the refusal of the Commons effectively to support its policy of enforcing in Jamaica the reform of prison administration and just treatment of the former slaves. It was saved only because the Queen was not willing to part with the ladies of the bedchamber, whose removal was reasonably enough made by Sir R. Peel a condition of his taking office.[1] He was, however, really not sorry to find a ground for refusal; he had experienced the disadvantages under William IV of a premature recall to office, and he knew he could bide his time. In 1841 he succeeded by one vote in securing a resolution of no confidence in the ministry; Lord Melbourne reluctantly, in deference to the wishes of his colleagues, dissolved, and was decidedly defeated.[2] Sir R. Peel had no difficulty in forming a Government, the Queen, happily married, raising no difficulty on the issue. His position, however, became grave in 1845[3] owing to the issue of Protection, and in 1845 he resigned, advising the Queen to send for Lord John Russell, who refused ultimately to form a ministry; Lord Palmerston would not serve except in the Foreign Office, and Lord Grey opposed his presence in that post. It fell, therefore, to Sir R. Peel to alter the principles on which he had been elected and to secure the repeal of the corn laws, deliberately refusing to seek a mandate from the electorate. For this he was punished by the dissident Conservatives, who combined with Whigs to defeat him on a Coercion Bill for Ireland. His resigna-

[1] *Letters of Queen Victoria*, 1 s. i. 154 ff. *Ibid.* i. 199 ff.

[3] *Ibid.* ii. 48 ff.

tion was followed by a weak Whig ministry under Lord John Russell, which failed in 1847 by a dissolution to attain material strength. The Peelites, however, lent it support, though in 1851 resignation seemed for a time inevitable. But the dismissal of Lord Palmerston in 1851 resulted in defeat in 1852 on a Militia Bill.

The Conservative ministry of Lord Derby strengthened itself at the election of 1852[1] but could not resist the combined forces of the Opposition groups, and fell on the budget. The coalition which ensued under Lord Aberdeen was too much a ministry of all the talents to endure, and, having drifted into the Crimean War, fell on Mr. Roebuck's motion to enquire into its conduct. There followed the taking of office by Lord Palmerston with Peelite support, though his decision to act on Mr. Roebuck's motion cost him Mr. Gladstone's aid. The ministry was thus mainly Whig and Liberal, but the intransigent Imperialism of Lord Palmerston, seen in his policy towards China, brought against him a combination of Peelites, Conservatives, and Radicals, which defeated him in 1857; he won a great victory at the polls when he dissolved, but in 1858 fell a victim to his desire to placate France by the Conspiracy to Murder Bill. The ministry of Lord Derby which followed was in a minority, but it carried on until 1859, when a defeat on reform decided a dissolution, which strengthened the party but did not give a majority.[2] The efforts to secure support from either Lord Palmerston or Mr. Gladstone miscarried, and Lord Palmerston held office from 1859 to 1865, supported by a combined body of Whigs, Liberals, and even a section of Radicals. His death followed on a victory won on an appeal virtually merely personal, though Mr. Gladstone was already insisting on further franchise reform. Lord Russell, who took

[1] Monypenny and Buckle, i. 1193 ff.

[2] *Ibid.* i. 1632 ff.

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his place, pressed forward a Reform Bill, but he had forgotten that his followers would not welcome a measure which meant redistribution of seats and an early electoral contest with all its expense and uncertainties, and the Conservatives, with the aid of those Whigs who disliked reform, were able to defeat him. Contrary to the wishes of Mr. Gladstone, he resigned, and a Conservative ministry took office. It was enabled, by wholesale sacrifice of principle, to dish the Whigs and concede a measure of reform which, it was held, but a sixth of the Commons really approved. In 1868 Lord Derby resigned, to be followed by Mr. Disraeli, who, defeated on the question of Irish Church Disestablishment, now revived by Mr. Gladstone, refused to resign, but expedited the completion of the new register of voters consequent on reform, and then unsuccessfully dissolved.[1] There ensued the great Liberal ministry of Mr. Gladstone which secured the disestablishment of the Irish Church, the abolition of purchase in the army, the opening of the universities to others than members of the Church of England, and other useful reforms, including important improvements in the position of trade unions. The defeat of the ministry in the general election of 1874 marked the gradual disintegration of his support in the Commons and the country alike. The Education Act of 1870 and the Licensing Act of 1872 had offended more interests than either conciliated, the acceptance of arbitration over the *Alabama* claims, and of the Russian demand for the modification of the Black Sea settlement of 1856, had given the impression of weakness in foreign policy. The ministry of Mr. Disraeli focused attention on success in this regard, and held up the Treaty of Berlin of 1878 for approval, but it suffered on the score of disasters in Afghanistan and South Africa,

[1] Monypenny and Buckle, ii. 431 ff.

while Mr. Gladstone assailed it for supineness in its attitude in 1877 to the massacres in Bulgaria. Its intention to press on with social reform was marked by useful measures of public health, but little more. Moreover, from 1877 the advent of Mr. Parnell into the political arena embarrassed the Commons by obstruction,[1] and raised in a difficult form the Irish question. In 1880, therefore, the election gave 347 Liberals, 240 Conservatives, and 64 Nationalists. The ministry was composed of men of great ability but of very different views. Mr. Chamberlain at the Board of Trade represented advanced Radical opinions, while Mr. Gladstone often aided him against their Whig colleagues. Mr. Chamberlain's programme in 1883, of disestablishment of the Church of England, manhood suffrage, equal electoral districts, and payment of members, was far before his time, while Lord R. Churchill was advocating a brand of Tory democracy in rivalry. The passing of a Reform Act was an important achievement, but the death of General Gordon added greatly to the unpopularity of a ministry already accused of having shown inadequate Imperial spirit in South Africa. The fall of the ministry was immediately due to the defection of Mr. Parnell on learning that it proposed to renew the Crimes Act, though the actual vote was on the budget. Lord Salisbury's brief ministry secured votes at the election of 1886 by hints of concessions to Ireland, and Mr. Gladstone fell on his effort to pass a Home Rule Bill, the result of which was the formation of the Liberal Unionist party with Mr. Chamberlain as a leading spirit.

The Conservative administration of 1886–92 depended on Liberal Unionist support for a majority; hence it gave a wide extension of land legislation for the benefit of

[1] See Monypenny and Buckle, ii. 839, for a picture of the former glories of the Commons.

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Irish tenants in 1887, created a new system of local government in 1888, and extended it next year to Scotland, converted the public debt, placed tithe payments on the owner, not occupiers, and gave free education in 1891. The Liberal party in the meantime developed large plans, including home rule for Ireland, disestablishment of the Church in Wales, electoral reform, payment of members, land reform, local veto in licensing, taxation of land values, and the ending or mending of the House of Lords. The election of 1892, in which the party was gravely hampered by the dissensions in Ireland over the divorce proceedings against Mr. Parnell, and his subsequent struggle for power, gave a majority of 40 only, and the Liberal Government of 1892–5 was doomed to futility in the rejection of the Home Rule Bill. It passed one major measure introducing death duties, and extended local self-government to the parishes. Its defeat in 1895 gave the Conservatives the opportunity to form an effective ministerial coalition with the Liberal Unionists, which had to face difficult problems of foreign politics, including the designs of Russia and Germany on China. Its implication in the South African War was followed by a khaki election in 1900, which gave it a new lease of life until 1905. In this period it effected great changes in the educational system of England, largely in favour of the Church of England, and conferred great benefits on holders of liquor licences who had been alienated from the Liberal party as far back as 1872. On the other hand, in 1903 a vehement dispute on the issue of protection promoted by Mr. Chamberlain led to the resignation not only of that statesman but also of the leading upholders of free trade, including the Duke of Devonshire, Lord G. Hamilton, Mr. Ritchie, and Lord Balfour of Burleigh. The introduction of Chinese labour in the Transvaal and the judgment

of the House of Lords in the Taff Vale Case, holding that trade unions were subject to actions in tort for matters done by their officers, annoyed the Labour party deeply. The result, therefore, of the resignation of Mr. Balfour without attempting a dissolution was disaster of the first magnitude.

The Liberal party enjoyed power until 1914, but its efforts were largely employed and exhausted in the struggle to secure the paramountcy of the Commons, which was achieved for finance and general legislation by the long fight over the Parliament Act, 1911, and in the following struggle over the Government of Ireland Bill. Two dissolutions were necessary to secure authority for the passing of the Finance Bill for 1909 and the Parliament Bill, and the former terminated the Liberal majority over all parties, which had allowed the Government to proceed, without compulsion, to homologate the views of the Irish Nationalists. There was thus revived the condition of three parties, no one able to do without the aid of another in the matter of controlling the house. This position was changed in 1915 by the formation of the first Coalition Government, for there was general agreement on placing the war above other considerations. This continued during the second Coalition, which lasted until 1922, though the dissolution of 1918[1] involved the creation of a helpless minority of Independent Liberal members numbering no more than 33, while Labour had 63 followers; the Coalition gained 526 seats with some five-ninths of the votes cast, and Irish Nationalists were virtually destroyed, 73 Sinn Feiners pledged not to sit in the Commons replacing

[1] Spender, *Great Britain*, pp. 575 ff. Ullswater (*A Speaker's Commentaries*, ii. 251 f.) gives the numbers as Liberals 26, Labour 59; the parties shared the front bench. Birkenhead, ii, 111, gives Unionists 342, Liberals 136, Independent Unionists 51, against Liberals 27, Labour 59, Independents 11, Nationalists 7.

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the former solid Nationalist force. But the half-hearted efforts to form a centre party from the Coalition counted for little, while the Labour party steadily grew in strength, being now wholly dissociated from the Liberals, and the independent Liberals strove to bring back unity in the party, which had been split by the coupon election of 1918. In the meantime the Conservative organisation, without too much regard for the views of the leaders in the Coalition, was working to restore the primacy of that party and its independence. The moment came when Mr. Bonar Law was induced to head a revolt, and to lead the new ministry which resulted from the decision of the party to refuse to enter a general election on a coalition basis.

The election gave the Conservatives 344 seats in a house of 615, Labour 142, National Liberals 53, and Independent Liberals 61,[1] but the resignation of Mr. Bonar Law and the advent to power of Mr. Baldwin were followed by his determination to appeal in 1923 for a mandate for Protection. This produced the reunion of the Liberals, and gave them 158 or 159 seats, but Labour won 191, and this fact may be taken to have marked the definitive decline of Liberal hopes. Unity was gravely hampered by the latent hostility between Mr. Asquith and Mr. Lloyd George, neither of whom could forget the feud of 1918 which arose over the accusation — later proved to be true — by Sir F. Maurice[2] that Mr. George had given inaccurate figures of the strength of the British forces in France in the desire to excuse his Government for the disastrous breaking of the British line in France in March 1918. Mr. George had then made the issue a matter of confidence, and had marked his resentment by refusing at

[1] Variant figures are 347, 144, 55, 60.

[2] Spender, *Lord Oxford*, ii. 299 ff.

the election of 1918 the approval of the Coalition to all those who voted for the suggestion of an enquiry into the allegations made. It is possible that, if the two leaders could have agreed to co-operate wholeheartedly, the party might have effectively united, and by the use of the funds available to Mr. George, have established itself as a rival for power to the Labour and Conservative parties. But this unity was denied. Hence, when in 1924 the Labour Government decided to dissolve after a trying experience as a minority ministry, the elections brought disaster to the Liberals, whose numbers fell to forty, while Labour with 151 showed relative stability. Further disasters awaited the Liberal cause. On the issue of the General Strike there was grave divergence of view between Mr. George and Lord Oxford and Asquith, which led to the resignation by the latter of the party leadership.[1] But the control of what remained of the party did not fall effectively to Mr. George, and the election of 1929 saw Labour given 287 seats to Conservatives 260, and Liberals 59. The Conservatives had, on the whole, between 1924 and 1929 lost popularity, because they were too unenterprising to meet the demands of people who still believed that the State could do many things for them which it was not attempting to do. The failure of the Government to deal with unemployment became a serious drawback, once the revulsion in its favour after the abortive General Strike was over. What, however, helped the Labour party most was the fact that it eschewed energetically after 1927 the idea of the use of economic force to produce political results. The Conservatives suffered also from the fact that they had carried through a great scheme of reorganisation of local government and rating reform too soon before the election to have secured the benefits of its

[1] Spender, *Lord Oxford*, ii. 362-71.

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operation, while there were many bitter opponents of change. The maxim "Safety First" failed to inspire. Labour, on the other hand, had worked hard, it was believed to be safe, and the Liberals were held to be without great value as a possible ministry. Their doctrine remained one in which the individual still counted for much, and there was opposition in it both to the desire of the Conservatives to secure a wide measure of protection of industry and to the Labour plans for nationalisation of industry. The Liberal faith, therefore, excited much less sympathy than either of its rivals.

The Labour party, in its second tenure of office from 1929 to 1931, had the possibility of real support from the Liberals. Both Sir H. Samuel and Mr. Lloyd George insisted that there should be readiness under a three-party régime to consider questions freely, without the ministry having to resign on defeats on any but essential issues. The ministry, however, though it agreed to consider the alternative vote as a means of winning Liberal support, pressed on legislation which was certain to fail on party grounds. It endeavoured to legalise the General Strike, provided it was for industrial ends only; but this was plainly an impossible position, and Liberals and Conservatives united to destroy it. An Education Bill aimed at extending forthwith the school age to fifteen and paying parents five shillings a week for the enforced abstention of children from work; the Roman Catholic members of the Labour party insisted on securing an amendment providing that funds must be made available to enable the non-provided schools to be equipped for the change. The Lords rejected the measure as financially impracticable, as it certainly was at a time when the Government was about to collapse in view of the financial and economic crisis brought upon it, partly by events in

America and Europe beyond its control, partly by its own indifference to economy.

The election carried out under the auspices of the National Government in 1931 saw the *débâcle* of Labour with 52 seats to Conservatives 471 and Liberals 33, and the election of 1935, while increasing the Labour contingent to 154, reduced the Liberals to 21, giving Conservatives 387, National Labour 8, and Liberal Nationals 33. Since then the tale of the by-elections has told the same story, the slight tendency to move towards the Labour side, but not in any marked degree.

The years since the Labour *débâcle* have told very strongly against the Liberal party. This is not due to any special demerits of that body, but to the operation of very strong forces, which are aided greatly by the system of election in force, to which therefore Conservatives and Labour are naturally attached. One cause of disaster to Liberalism is the obvious fact that, since its great effort at rehabilitation in 1923 failed to restore it to the rank of second party in the State, it is more and more generally felt that its chance of ever having the power to form a ministry is utterly remote. This fact has wide effects. Men of ambitions either abandon the idea of a political career or turn their attention to one or other of the two great parties which can hope to attain power, and to have posts available for those who support them. Men, again, in business who desire the aid of a political party recognise that it is waste of money to contribute to the party funds. The supporters of free trade were long willing to open their pockets to the requests of Liberal party managers, for they could expect from that party a regular adherence to the principles of free trade and the maintenance for them of as wide an access to foreign markets as possible. Others, again, looked forward to honours. Now such men

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have no real motive to spend cash on Liberalism, and they have for the most part transferred their favours to the Conservative party.

The process of transfer has been aided, very markedly, by the formation of coalitions from 1916 to 1922 and since 1931. The claim that country should come before party is always attractive, and many Liberals have found safety in Conservatism without any violent act of conversion; in the war period and the years following there were a good many conversions, and since 1931 the pace has accelerated. The Liberals, who in 1932 adhered to the ministry when there was a split, and the ministers who remained faithful to free trade resigned, cannot now be regarded as differing in any principle from Conservatives. They have indeed created a party organisation, but like the similar organisation arranged by the Liberals who adhered to Mr. Lloyd George in the Coalition Government, and even the Liberal Unionists of past days, there are proportionately far more leaders than followers, and there is little doubt that not a single Liberal National can hope to achieve membership of the Commons except by the aid of Conservative votes. In the case of National Labour the case is even more marked. The party has never counted more than a handful of members, none of whom would be returned in any genuinely Labour constituency. We have, in fact, a Conservative party with a few hangers-on, who in no long space of time must be absorbed or disappear.

The Conservative party has, needless to say, advanced far beyond the tenets of the Victorian era. The complete surrender to the Irish Free State in 1921, and the further rather remarkable surrender to Eire in 1938, are acts which shows the enormous gulf between the Conservatives of the present day and those of pre-war mentality. The

social legislation of the Conservatives in 1938 included a measure regarding the mining industry which was quite fairly attacked by critics as advanced socialism. Indeed, those who still retain something of the ancient faith point to the fact that the wholesale control over industry and agricultural production and marketing open the way wide to the complete socialisation preferred by the Labour party. They point also to the tariff policy, the system of quotas, and so forth, as leading directly to socialism. Nor, of course, are they without warrant; but that does not mean that the Conservative party has in any degree departed from its capitalistic aspect, though it has no sympathy with the still strong Liberal dislike of governmental interference in control of business, and is perfectly ready to adopt, on an ever-increasing scale, plans not merely for the control in the interests of business of finance, as under the system of equalisation of the exchanges, but also for the grant of credits to aid export trade in cases where, on sound business grounds, such risks would not be taken.

Opposed to Conservatism stands the Labour party, and it now advances a programme which assuredly is not easy to reconcile with the present economic system. The short programme of 1937 contemplated an extensive scheme of nationalisation of finance, transport, various branches of industry, the land, electric power, etc., to be carried out in five years at most, and, to give immediate attraction to those who might feel doubt as to when they would begin to benefit from these heroic measures, it offered the abolition of the means test in respect of unemployment allowances, the increase of the amounts paid under the Unemployment Insurance scheme, and the grant of old-age pensions at the rate of £1 a week to single persons, and 35s. to married couples. No doubt, if this

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programme is taken *au pied de lettre*, it is possible to argue that it assumes a society actuated by motives quite different from those generally operative at present.

No doubt, if the assumption, a considerable one, is made that the Labour party can obtain a clear mandate for a policy of this kind, a serious situation might arise. There would assuredly occur a flight of capital and short-term loans would be recalled in haste by foreign lenders, and to counter this panic the ministry would have to have recourse to strong financial measures of control which could not be passed without the assistance of the House of Lords, which would normally be declined, with a view to forcing concessions on the part of the ministry. It would then be necessary to press the Crown to swamp the House of Lords, so that the ministry might be able to make effective the will of the people, and this might lead to a grave constitutional crisis, since it would be strenuously asserted that the Parliament Act, 1911, by providing a solution for deadlocks, had destroyed for good the right to create peers.

Such a crisis is not, on the whole, very likely to arise. The Labour party will probably find that any effort to obtain power by holding out clearly a revolution immediately after securing office will result in the indefinite delay of a real victory at the polls, and it will moderate its programme to the safer plan of gradual evolution which accords best with the English genius and the *modus operandi* of the trade unions, which provide the sinews of war for the Labour movement. It may further be contended that the interests of the party will compel such a policy, for any really serious effort, to think out the programme of 1937 will prove that it will simply be impossible to implement it in anything like a period of five years. The attempt to do so would merely create conditions so

chaotic that the ministry would be defeated disastrously at the general election, while any effort to prevent such an election being held would be a deliberate effort to destroy the constitution which would provoke justified resistance. It may, therefore, turn out that the differences between Labour and the Conservatives will prove not to rest on a complete distinction of economic outlook, but that both parties will approach more nearly to the view of the other, so that, as in the past, there will be room for a Parliamentary system based on quantitative rather than qualitative differences, as in the past has no doubt been the case.

All speculation, however, which rests merely on the opposition of domestic issues is really erroneous, for foreign affairs may bring about very different results from those that would exist if home affairs were alone concerned. The utter failure of British diplomacy at Munich presented the country with the realisation that the Government had completely laid aside the policy of 1935 which accepted the League of Nations as an essential feature of British foreign policy with its doctrine of collective security, and has created efforts among several Labour supporters to see whether it would not be possible to secure a stand on the part of Labour, Liberals, Communists, and certain Conservatives against further concessions, while a number of Unionists advocate an effort to achieve a complete national unity such as was demanded as essential for national security by Mr. Eden. What appears probable is that the importance of foreign affairs will not diminish, and that no solution of the future can be based on domestic issues alone. The Labour party could not have the slightest chance of success if it advocated a policy which must deeply divide the country in the face of totalitarian States with ever-increasing demands on both Britain and France.

5. *The Future of the Party System*

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While the British party system developed as a result of historical conditions, its success so far has depended on the fact that it accords well with British political feeling. Parties, as has been well pointed out, operate best when they rest on important divisions of opinion within a common background of agreement on fundamental principles, and when the Opposition can be styled His Majesty's Opposition without any feeling of incongruity. Where divergences are too vital, then the party in power cannot be expected to be ready to yield voluntarily to its opponents, and there is a like danger when the differences depend on personal or sectional interest as contracted with differences on the needs of the community taken as a whole. The Irish Nationalists when in Parliament were clearly a discordant element, because they were divided from the rest of the members essentially by racial grounds, accentuated by differences of religious, social, and economic character.

The opposition of Liberalism and Conservatism was essentially of the type which is relatively safe, because both parties accepted the fundamental doctrine of capitalism as the best foundation of economic prosperity, and both were willing to encourage individual enterprise. It is true that party government has never lacked critics, and that there has been force in all that has been said against it. The fact that there is a Government and an Opposition, and that in the nature of things the latter is animated by the conviction that it has sounder views than the former, leads to its perfectly proper anxiety to be in power with the chance of conferring the benefits of its tenets on the country. It tends, therefore, to hold that the end justifies the means, and that it is wise to resist every governmental proposal which offers occasion for damaging attack, in the hope that

the ministry will thus lose power and be overthrown at the general election, if not earlier. To fight on second reading and in committee the same proposals is waste time in one sense, but it adds to the cumulative effect of the attack and may impress the electorate. Another ground of censure is the waste of talent and experience involved when a capable administrator has to resign because his ministry is overthrown on some ground wholly unconnected with his department. Even allowing for the fact that the bulk of administrative work is carried on by the permanent Civil Service, there do occur cases where the change of minister is an unfortunate incident, but the idea [1] of having ministers outside the Cabinet and exempt from its vicissitudes was tried in the Irish Free State with complete want of success; finance is so bound up with all administration that heads of departments must be in the Cabinet and must share its fate.

Party also results in the constant necessity of compromise on the part of members and electors alike. It is impossible to support at pleasure items of the party policy; it must be supported as a whole or at least acquiesced in where such acquiescence will not injure the party's position. But this is inevitable if party is to exist, and without party the government of Britain would not be capable of being conducted on the present basis, which with all its defects has proved not an unsatisfactory method of securing the welfare of the people of the land.

It is now contended [2] that the real basis of all party division is economic, that this is true of Whigs and Tories in England, of Republicans and Democrats in the United States; third parties, such as the Labour party or the

[1] Irish Free State Constitution, 1922; Keith, *The Dominions as Sovereign States*, p. 243.

[2] H. J. Laski, *Parl. Govt.* pp. 92 ff.

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Agrarian party in America, rest on this foundation; even parties based on nationalism, like the Irish party, rest really on the feeling that the superior power is withholding economic advantages, and hence its action on attaining power is to create a tariff wall against that power. Party is a mechanism to control public opinion regarding property. In the past the differences between Conservative and Liberal views have never amounted to essential discord on the institution of private property; but the Labour policy of socialisation strikes at that fundamental principle evoking disagreement which forces the other parties into a union based on the maintenance of property against attack. The present system contemplates the transit of power between parties without the supporters of the defeated party fearing any vital alteration in the essential basis of society, but the Labour party proposals put in operation would change the whole of the economic structure of the realm by striking at the principle of private ownership. If the Labour party secured power and strove to put its principle forthwith into effect, would the Opposition acquiesce or would it resist, bringing, for example, all its financial power forthwith against the Government and driving it to make concessions, under the threat that otherwise complete financial disaster would be brought about? This is the danger inherent in the abandonment of the policy of gradualism in the matter of reform, and that the danger exists suggests that, unless that doctrine is adopted once more, the progress of British democracy may be rudely interrupted; for it is difficult to avoid the conclusion that, if parties are abolished, the alternative is repression of opponents by such means as concentration camps, murders and executions, now seen to full advantage in those continental countries which have banished the party system from their constitutions. The argument that complete economic change is not merely

essential but must be effected by one blow is open to the gravest doubt, and to the retort that the policy is so dangerous that the only hope of carrying it entertained by its supporters is its introduction in so complete a form that the reconstruction of the capitalistic régime would be impossible.

It is significant that one of the protagonists for years of the doctrine of " Socialism in our Time ", Sir S. Cripps has abandoned this ideal in favour of more deliberate action,[1] though at the cost of breaking off his relations with the Executive of the Labour party, which has adhered to its view that the party programme must be pursued absolutely, even if it means the indefinite postponement of any chance of seeing the Labour party in power with an effective majority. As Sir S. Cripps has insisted in his campaign, there is very little evidence that the full policy will be able to secure for the party advent to power at any predictable date. On the other hand, it is contended that the alternative of co-operation with Liberals would mean a serious movement from the Labour party to Communism, a view which suggests that many Socialists are not really adherents of that faith, but Communists who accept the party connection merely with the intention of undermining its democratic principles in favour of the autocracy of Communism. If that be the case, the objections on the part of the great mass of unattached electors to give Labour a mandate will certainly be reinforced.

[1] See his statement in the Commons, Feb. 16, 1939, and statements on Feb. 5, March 5.

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