UNIVERSAL
LIBRARY

OU_154457

UNIVERSAL
LIBRARY

OSMANIA UNIVERSITY LIBRARY

Call No. 342.42/A61 L Accession No. 285

Author Anson, Sir, William.

Title Law & Custom of the Constitution.

This book should be returned on or before the date last marked below

THE LAW AND CUSTOM

OF THE

CONSTITUTION

ANSON

LONDON

HENRY FROWDE, M.A.

PUBLISHER TO THE UNIVERSITY OF OXFORD



AND

STEVENS AND SONS, LIMITED

THE
LAW AND CUSTOM
OF THE
CONSTITUTION

BY

SIR WILLIAM R. ANSON, BART., D.C.L.

OF THE INNER TEMPLE, BARRISTER-AT-LAW
WARDEN OF ALL SOULS COLLEGE, OXFORD

IN THREE VOLUMES

VOL. II: THE CROWN. PART I

154457

THIRD EDITION

OXFORD
AT THE CLARENDON PRESS
LONDON NEW YORK AND TORONTO: HENRY FROWDE
ALSO SOLD BY
STEVENS & SONS, LIMITED, 119 & 120 CHANCERY LANE, LONDON
1907

OXFORD
PRINTED AT THE CLARENDON PRESS
BY HORACE HART, M.A.
PRINTER TO THE UNIVERSITY

PREFACE TO THE THIRD EDITION

In consequence of unavoidable delay in bringing out the third edition of this book, which has, I fear, been for some time out of print, I have thought it well to publish the first four chapters at once. These are in some respects the most important, and they are certainly the most difficult to present in a satisfactory form. I have added considerably to the chapter on the Councils of the Crown, and have, I hope, been able to throw some fresh light on the beginnings of Cabinet Government at the close of the seventeenth and commencement of the eighteenth centuries. I have also transposed the order of the chapters, because I thought that the Councils of the Crown and the Departments of Government followed more naturally upon the chapter dealing with the Prerogative than did the subject of the Title to the Crown and the relation of Sovereign and Subject.

I reprint the Preface to the first edition as I wrote it in 1892, because it shows the purpose and scope of the work.

In conclusion, I would thank the friends who have so kindly helped me with information and advice in the preparation of this edition.

WILLIAM R. ANSON.

All Souls College,
November, 1907.

PREFACE TO THE FIRST EDITION

I REGRET that the second part of my work on the Constitution should have been so long in following its predecessor, and that it should not be better worth waiting for. For the delay I am not wholly in fault; for the shortcomings I can only plead a capacity unequal to the task which I undertook with a light heart, which I have pursued with interest and pleasure, and now conclude with misgiving.

I have tried to show how the executive government of this Empire is conducted—to draw a picture of the executive as distinct from the legislature,—of the Crown in Council as distinct from the Crown in Parliament.

Of the difficulties which I have experienced, two stand out prominently before me.

I think that any one will find it difficult to describe faithfully the daily working of a business with which he is not practically conversant. I have found it so in the course of my endeavour to describe the working of the departments of government. In spite of the kindest and most generous help from many friends who have the details at their command, I fear that I have not done justice to their efforts on my behalf.

But my greatest difficulty has been to arrange my subject. I wished to show how the business of government is carried on; who settles what is to be done; who acts; on what authority; and in what manner. In order to do this, and to do it within reasonable compass, I have omitted two matters, which I have found to occupy a place in other treatises. The royal prerogatives set forth at length by Blackstone are either attributes ascribed to royalty by lawyers, or are powers exercised through departments of government. As such I have dealt with them, and my

chapter on the prerogative will be found to contain, apart from history, only an account of what the Crown actually does, at the present day, in the choice of ministers, the settlement of policy, and the business of administration.

Another matter with which I have not specially dealt is the conflict which has from time to time arisen between the rights of the subject and the assertion of rights by the executive officer. It does but illustrate the working of that 'rule of law' which, as Mr. Dicey has impressed upon his readers, is a marked feature in our constitution. I have noted the exceptional position of persons subject to ecclesiastical or military law, and I have noted also the circumstances under which the Crown and its servants enjoy any special privileges or immunities in the administration of justice; but having once stated the principle that the King's command cannot excuse a wrongful act, and the fact that the Crown has no longer the power to control the action of the Courts, I have not made these matters the subject of any special treatment or illustration. I could but have said over again, what Mr. Dicey has set forth once for all, that in the relations of the Crown and its servants to the subjects of the Queen the rules of Common Law prevail.

Omitting these topics, which I conceived to be either useless or irrelevant to my purpose, I had still to arrange, in their proper places, the parts which the Crown plays in the work of government; the composition and action of the Cabinet—the determining power in the constitution; the departments of government which carry out the policy accepted by the Crown, on the advice of the Cabinet; and the working of these departments over the vast area of the Queen's dominions; finally I had to state the relations in which the Crown stands to the Churches, and to the Law Courts of the United Kingdom and the Empire.

Of the arrangement which I have adopted, I will only say that it represents an anxious effort to supply the student with the information which he requires, and to supply it in the place and order in which he might reasonably expect to find it.

As to the information itself, I have had to collect it from

many sources. Of books dealing with the subject in its entirety, I have found the fullest and the most serviceable to be the work of Mr. Alpheus Todd 'on Parliamentary Government in England,' but for the most part I have had to go to special treatises, to Parliamentary papers, or, directly, to the various government offices. For the kindness of members of many of the departments of government, I find it hard to express my gratitude in terms satisfactory to myself. If I do not make more than this general acknowledgement now, it is because I am unwilling to associate their respected names with a work which may perhaps prove to be a failure. If my book should meet with such approval as to need another edition, it will be my pleasure as well as my duty to thank them individually.

It may be thought that the historical matter which I have found it necessary to introduce, occupies too large a space. I can only say that I found it impossible to explain the present, without such reference to the past. Nor can I regret that this should be so. For when we contemplate our institutions in their monumental dignity, and the world-wide span of our Empire, it is well to remember the patience and courage of our forefathers, and the long line of kings and queens and statesmen, often conspicuously great in force of purpose and vigour of intellect, to whom we owe what we now possess It would be a mean thing, even if it were possible, to take stock of our inheritance without asking how we came by it. But it is not possible. If it is difficult to dissociate law from history in any branch of legal study, least of all can this be done in describing the fabric and machinery of an ancient state. I will not therefore apologize either to lawyers or to historians for trespassing on the domain of history; I will only express a regret that I have not trespassed with greater knowledge and a surer foot.

WILLIAM R. ANSON.

All Souls College,
January, 1892.

TABLE OF CONTENTS

CHAPTER I

PREROGATIVE OF THE CROWN

PAGE

1. The Nature of Prerogative.

Executive and Legislative Sovereignty 1
Suggested Definitions of Prerogative 3
Sources of Prerogative 3
The Kingship of legal theory 4
Summary 5

2. The King before Parliaments.

The Saxon King 6
The Normans and Feudalism 8
The Norman King, his Council and Ministers 9
The Curia and Exchequer 10
The Angevin Kings 12
The Administration of Henry II 13
Definition of Rights in the Great Charter 14
The Officers and Council of Henry III 15

3. Parliament and Prerogative 16

Increased strength of the Crown 16
Definition of Prerogative by Parliament 19
The choice of Ministers 20
The detail of Administration 20
The Council under the Lancastrians 22
Their administrative weakness 23
The strength of the Tudor Government 24
How far due to Parliament 25
To the judicial action of Council 25
To the creation of new Constituencies 26
The Stuarts and Divine Right 28
The Long Parliament 31
The Bill of Rights and Act of Settlement 33

4. The Prerogative since 1688.

Constitutional Monarchy 33
The Commons and the King's Ministers 35
How far the King can choose his own Ministers . . . 36
How far the King can determine the policy of his Ministers . 39
The King leaves the Cabinet 40

PAGE

And becomes irresponsible for Policy 41
Historical Contrasts 42
The King cannot act alone 45
Reasons for this 46
The Value of Kingship 49

Appendix.

Forms in which the royal pleasure is expressed 50
An Order in Council 50
A Sign Manual Warrant 50
Instruments under the Great Seal—Proclamations and Writs . 52
Letters Patent and Treaties 52
Persons responsible for the expression of royal pleasure . . 54
Necessity for observance of Forms 58
Occasions of their omission 58

CHAPTER II

THE COUNCILS OF THE CROWN

1. Councils before 1660.

The Three Councils 60
The Councils of Coke and Hale 61
The Continual Council 62
Its relation to the Commons 64
The Ordinary and Privy Councils 65
The legal element 65
Changes in the Tudor Councils 66
The Judicial Powers of the Council 68
The Whitehall and the Court of Requests 69
The Star Chamber 71
Privy Council and Star Chamber 72
Different in procedure and composition 73
The legislation of 1641 74
Council and Parliament 74
Presence of Ministers in the Commons 75
A better security than Impeachment 76

2. The Supersession of the Council.

Evolution of the Cabinet 76
The Council after the Restoration 77
Growth of departments 78
Committees of Council 79
The inner Council not a Cabinet 81
Sir William Temple's scheme 82
The later Cabinets of Charles II 83
The Cabinet of William III. 84
His view of Cabinet responsibility 84
The Cabinet and the Commons 87
Difficulty of fixing responsibility. 88

PAGE
Remedies attempted in the Act of Settlement 91
The Cabinets of Anne 93
The Foreign Committee 94
Need of departmental responsibility 95

3. The Cabinet.

The Council and the Cabinet 97
Beginning of Cabinet Government on accession of George I . 97
Effect of absence of King from Cabinet 97
Difference in title between Cabinet and Council . . . 98
And in action 98
Difference in summons 99
Collective Responsibility of the Cabinet 100
Irresponsibility of eighteenth-century Cabinets 100
The formal and the efficient Cabinet 101
The titular Cabinet 101
The confidential Cabinet 103
Opposition in the Cabinet 104
Disappearance of titular Cabinet 105
The grand Cabinet 105
Collective responsibility in 1782, in 1806, and in 1902 . . 107
Unanimity of advice to the King 109
Secrecy of Cabinet proceedings 110
No record of Cabinet proceedings 111
Only Privy Councillors may attend as members 112
The relations of the Cabinet to the Prime Minister, the Crown, and the Commons 112
Prime Minister a modern institution 112
Walpole first Prime Minister in modern sense 114
The sources of Walpole's power 115
Development of party management 116
Prime Minister not recognized as necessary until Pitt's time . 117
Conditions of Premiership before 1832 117
Size of Cabinets in eighteenth century 118
Effect of extension of franchise on position of Prime Minister . 119
The Prime Minister and his Colleagues 120
Mode of appointment of Prime Minister 120
His departmental duties 120
Cabinet Committees 122
Inner circle of Cabinet 122
Prime Minister's duties to his colleagues 124
His power of dismissal 124
Dismissal of Thurlow and Palmerston 126
Effect of resignations 127
Precedence of Prime Minister 127
Relations of the Cabinet to the Crown 128
Cabinet entitled to King's confidence 128
Duties of Cabinet to King 129
Queen Victoria and Lord Palmerston 129
The relations of the Cabinet and the House of Commons . . . 130
How majorities obtained in eighteenth century 131

PAGE
Causes of fall of Ministers 132
Changed relations of Cabinet and Commons 133
Causes of increased power of Cabinet 135
The Imperial Defence Committee 136

4. The House of Lords and the Privy Council.

The House of Lords as a Council of the Crown 136
The Privy Council does not advise the Crown 137
Except in Committees 138
Appointment and Oath of Privy Councillors 138
Composition of the Council 139
Its members are on the Commission of the Peace . . . 140

CHAPTER III

THE DEPARTMENTS OF GOVERNMENT AND THE MINISTERS OF THE CROWN

The Cabinet the motive power 141
The Departments the executive power 142

1. The growth of departments of Government.

Household offices, ancient and modern 142
Political offices 144

2. The Privy Council.

Proclamations and Orders in Council 147

3. The Chancery and the Secretariat.

The Chancellor 150
His duties: judicial 151
Political 153
Administrative 153
The Crown Office in Chancery 153
The religious disability 155
The Lord Keeper 155
The Lord Privy Seal 156
The Secretariat 157
The King's Secretary 158
The Principal Secretary 159
The Principal Secretary of State 161
The Secretaries and the Cabinet 163
The Northern and Southern departments 164
The Home Office and Foreign Office 165
The Five Secretaries 167
Their seals and the uses of them 169
The Secretary for Scotland 170
The Chief Secretary to the Lord Lieutenant . . . 171

PAGE

4. The Treasury and its Officers.

History of the Treasury 173
The Norman Exchequer 173
The Treasurer 174
The Exchequer 174
The Lord High Treasurer 175
The Commission of the Treasury 175
Severance of Treasury and Exchequer 176
The Treasury in Commission 176
Prime Minister as First Lord 176
Duties of First Lord 178
Business of Treasury Board 178
The Chancellor of the Exchequer 179
Duties of Chancellor 179
Increased importance of office 179
His judicial powers 181
Appoints sheriffs 181
The Parliamentary Staff 182
The Junior Lords 182
The political and financial Secretaries 183
The Permanent Staff 183
Departments connected with the Treasury 185
Control and Audit 185
Parliamentary Council 186
Woods and Forests 186
Customs and Inland Revenue 187
The Post Office 187
Its history 187
The Postmaster-General 187
His powers and their limitations 188

5. The Commission of the Admiralty.

Its history 190
The Admiralty Board 190
Its constitution 191
Position of First Lord 191
Duties of Sea Lords 192
Distribution of Business 192
General constitution of Admiralty 193

6. The Boards.

The Board of Trade 194
Its history 194
Its consultative duties 195
Its regulative duties 196
The Board of Works 199
The First Commissioner 200
The Local Government Board 201
The Board of Agriculture and Fisheries 201
The Board and the Land Commissioners 202

PAGE

The Board of Education 203
Its constitution and duties 203
Educational duties of other departments 205

7. Miscellaneous, Subordinate, and Non-political Offices.

The Chancellor of the Duchy of Lancaster 206
The Law Officers of the Crown 207
Subordinate Offices 208
Ministers and Cabinet 210
Ministers and Parliament 211
Non-Political Departments 212
Offices connected with the Treasury 212
The Ecclesiastical Commission 213
The Charity Commission 213

8. The Civil Service and the Terms of Official Tenure.

The Permanent Civil Service 216
Its relation to the parliamentary chief 217
Value of the system 218
Conditions of Tenure 221
At pleasure 221
During good behaviour 222
Liability to removal on address of both Houses . . . 222
Modes of dismissal 223

CHAPTER IV

THE TITLE TO THE CROWN AND THE RELATION OF SOVEREIGN AND SUBJECT

1. The History of the Title to the Crown.

Title by Election 225
Title by Inheritance 226
Effect of Coronation 227
Parliamentary Title and Hereditary Right 228
The Declaration of Rights 231
The Settlement of 1700 232

2. Modern Forms.

The Proclamation of Edward VII 234
The Coronation 235
The Coronation Oath 236

3. Allegiance 238

Nature of Allegiance 239
Naturalization and Alienage 240

4. Treason 242

The Statute of Treasons 243
Modern Changes 244

PAGE

5. Incapacity of the King 245
Absence 246
Infancy 247
Insanity 248
Moral Incapacity 250

6. The Demise of the Crown.
Does not affect duration of Parliament 251
Tenure of office at death of Sovereign 251
Demise of the Crown Act 254

7. The King's Family.
A King's Wife 255
A Queen's Husband 255
The Royal Children 257

APPENDIX

1. Letters Patent 259

2. Sign Manual Warrants 261

3. Commissions and Royal Orders 265

4. Oaths 268

INDEX 271

INTRODUCTION

THE writer who sets about the task of describing the Constitution of his country may follow more ways than one. Modes of describing Constitution.

There are, at any rate, three distinct methods of treatment. He may take the characteristic principles which distinguish our Constitution from those of other states. He may show how historical antecedents and traits of national character lead us to approach constitutional problems from a point of view different to that of other nationalities. Treatment of this sort, setting forth deep-seated principles and illustrating their action from history and from the present time, is perhaps of more permanent value than any other mode of describing a given constitution. This is the method adopted by Mr. Dicey in his work on the Law of the Constitution. Dicey.

Another method is that followed by Mr. Bagehot in his English Constitution and Mr. Low in his Governance of England. They do not describe in detail the structure or the relations of the various parts of our Constitution. They assume a knowledge of the general law and procedure of Parliament, of the nature of the Cabinet, of the departments of Government. They draw vivid and life-like pictures of a Constitution in being. Mr. Dicey deals rather with the relations of the individual to the sovereign power of the state; his rights as to freedom of the person, freedom of speech, freedom of public meeting; his subjection to Parliament in the matter of legislation. Mr. Bagehot and Mr. Low are not concerned with these matters. They show us how the machine works, what parts are played by the King, by the Cabinet, the Prime Minister, the two Houses of Parliament. The pictures, no doubt, are of the sort described as impressionist, but they live all the same. Bagehot and Low.

The present treatise.

There is a third method, that which I have adopted, and I think that it offers the most ungrateful task of the three. I have tried to describe these institutions with enough history to explain their existence, and enough of their working to show what they are intended to do.

Necessarily I have been obliged to enter into details some of which are dry and wearisome to the reader. Often I fear that I may not have observed a due proportion between the history of an institution and its present state. The history of the Government departments has yet to be written, but those of our institutions which are less definite in character—the Cabinet, the Prime Minister—must be treated historically if they are to be treated at all; for the present, in these cases, is a dissolving view; the changes are constant, often almost imperceptible, but nevertheless very real.

The Constitution in being,

This is what renders so attractive the pictures drawn for us by Mr. Bagehot and Mr. Low; they represent the working of the Constitution at a given time, but only for a time. They tell us, what no dry record of institutions and their changes could tell us, how the thing which we call our Constitution lived and moved. They suggest many questions as to how the changes have come about which we see but cannot at once explain. The great framework

in 1868,

of Government is much the same in 1868 and in 1904. Political power has been extended to a larger electorate by acts dealing with the representation of the people; constituencies have been rearranged by the Redistribution Act of 1885; Local Government has been democratized. But apart from Local Government our institutions remain the same, and yet the balance of power has shifted. Bagehot describes the institutions of to-day, but we feel that they are

in 1904.

changed. Mr. Low describes the same institutions thirty-six years later, and we feel that they are changing even now. This is the way of constitutions written or unwritten, and our Constitution, so largely dependent upon conventions, so scantily expressed in written form, is peculiarly susceptible to such changes. Yet it is worth while to ask what they are and how they have come about, for this book deals

with the Crown, the Councils of the Crown, and the Ministers of the Crown, and necessarily with the relations of these to Parliament. Nineteenth-century legislation, though it has extended the possession and altered the distribution of political power as regards the choice of members to serve in the House of Commons, has never touched the relations of the King and his Cabinet to Parliament. Statute has embodied much of the Common Law prerogative of the Crown, and has for many purposes conferred necessary executive powers upon the King and his Ministers. But the altered relations of the Cabinet and the Commons which we may observe if we follow the political history of the last thirty years, cannot be described as resulting from the deliberate action of the Legislature. If we note these changes and try to explain them it may serve to warn us that while the machinery of the Constitution may be described in the same terms at two periods fairly remote from one another, yet that the working of the machine may be very different. There may be a change in the motive power, and the results may differ correspondingly.

Changes of form.

Changes of character.

Bagehot describes the Constitution as it was when Palmerston was Prime Minister. His book is an analysis of the motive powers of the Government of this country, none the less searching and profound because written in a familiar style. In a Preface to the second edition, which came out in 1872, he admits that much had changed in the previous seven years; that the disappearance of Palmerston, Derby, and Russell, the statesmen of the days before the first Reform Bill, made a marked difference in the atmosphere of politics, independent of any legislative change, and that the extension of the franchise in 1867 had altered, and would probably alter still further, the character of the electorate. But he reprinted his book as it was written, subject to reservations in the Preface; and useful as it may be to compare the Bagehot of 1872 with the Bagehot of 1868, it is more important to compare these with the work of Mr. Low writing in 1904.

Compare Bagehot and Low.

There can be no doubt that Bagehot, whether he was writing in 1872 or in 1868, regarded the House of Commons

Bagehot on supremacy of Commons.

as the centre of political power and of political influence. By this I mean not merely that it was the strongest and most necessary part of the machine, but that it formed public opinion on great political subjects.

Its causes:

As one reads the book it becomes evident that this supremacy of the House of Commons is indicated by three features.

The electorate, before the changes of 1867, was what he describes as 'deferential.' The House of Commons chose the executive, and kept a constant supervision over the action of Ministers. Government was what he calls 'Government by discussion,' and discussion conducted in the House.

(a) deference of electorate;

By a deferential electorate Bagehot means that the electors were prepared to believe that those who offered to represent them had better opportunities of knowledge, more experience, and more leisure than themselves, hence they chose men of means and social position in preference to others. To use his own words, he means:—'that the mass of ten-pound householders did not really form their own opinions, and did not exact of their representatives an obedience to those opinions; that they were, in fact, guided in their judgment by the better educated classes; that they preferred representatives from those classes, and gave those representatives much licence [1].'

Whether this attitude of the electorate towards its representatives was likely to continue after 1867 he regards as open to question, and a body of critical and insistent electors must necessarily alter to some extent the character of the House of Commons, and affect the independence of the individual member. But this leaves untouched the other two features of the Constitution: the power possessed by the Commons to choose and control the Ministers of the Crown, and the conduct of Government by discussion, that is, discussion taking place in the House of Commons.

The choosing and controlling power of the House of Commons is again and again insisted upon. 'The House of

[1] Bagehot, introduction to 2nd edition, p. x.

Commons is an electoral chamber; it is the assembly which chooses our President.' He compares it with the electoral college in the constitution of the United States. The members of that college are sent there to vote for a particular candidate, and when they have voted their work is done: they have no further control over his action.

(b) control of House over Ministers;

'But our House of Commons is a real choosing body; it elects the people it likes. And it dismisses whom it likes too. No matter that a few months since it was chosen to support Lord Aberdeen or Lord Palmerston; upon a sudden occasion it ousts the statesman to whom it first adhered, and selects an opposite statesman whom it at first rejected. *Doubtless in such cases there is a tacit reference to probable public opinion; but certainly also there is much free will in the judgment of the Commons*[1].'

Later he speaks of the continuous control of the Commons arising from its power of dismissal. 'Its relations to the Premier are incessant. They guide him, and he leads them.' He contrasts the merits of the House and the whole body of the electorate as a choosing body; a man chosen by the whole electorate 'is not the choice of the nation, he is the choice of the wire-pullers[2].' Elsewhere he expresses apprehensions which sound strange to us as to the risk of 'the caprice of Parliament in the choice of a Ministry. A nation can hardly control it here; and it is not good that except within wide limits it should control it[3].'

(c) Government by discussion.

So much for the powers of the House of Commons in the selection and control of Ministers. Now as to government by discussion. 'No State,' he says, 'can be first rate which has not a Government by discussion.' It is 'a distinguishing feature of Parliamentary Government that in each stage of a public transaction there is a discussion[4].' The House of Commons is 'a great and open Council of considerable men which cannot be placed in the middle of a society without altering it. It ought to alter that society for the better. It ought to teach the nation what it does not

[1] Bagehot, p. 131. [2] ibid., p. 26. [3] ibid., p. 242.
[4] Ibid., 2nd edition, pp. lix and lxxi.

know[1].' Elsewhere he speaks of the apparent anomaly of 'government by public meeting.' It is, he says, only rendered possible by party organization, and that again is only permanently efficient because the parties are not composed of warm partisans. But for this, he says, party government would be sectarian government, a government in which each party, when in power, endeavours to push its tenets to their logical results[2].

Estimate by Bagehot

Such, then, was the House of Commons in the Palmerstonian period in the eyes of a political critic at once acute and profound. A body of men treated with respectful deference by the electorate; choosing, supervising, dismissing at pleasure, the Ministers of the Crown: parties to discussions on which the fate of a Government may depend, and by which the mind of the country is informed on all matters of current political interest.

No wonder that a seat in the House of Commons was an object of ambition. Bagehot tells us that he heard a man say, 'I wrote books for twenty years, and I was nobody; I got into Parliament, and before I had taken my seat I had become somebody.'

and Low

In 1904 Mr. Low forms a very different estimate of the situation as regards the prestige attaching to a seat in the House of Commons. 'In these days,' he says, 'one would be more likely to hear testimony of a very different character. "I sat in Parliament for twenty years. I voted steadily. I even made a speech occasionally. But outside my constituency nobody ever seemed to have heard of me. Then I wrote a flashy novel and some flippant essays, and I became a sort of celebrity at once[3]."'

of importance of Commons.

If we ask how the change has come about—and though Mr. Low puts the matter hypothetically and somewhat incisively, it is impossible to deny that there has been a change—we may go back to the three characteristic features which mark Bagehot's estimate of the House of Commons, and ask if they are still in existence.

Reasons for change.

First, the electorate, enormously extended by the Fran-

[1] Bagehot, p. 133. [2] ibid., pp. 142, 143.
[3] Low, Governance of England, p. 98.

chise Act of 1884, is no longer 'deferential.' A constituency does not send a man to Parliament because it is thought that he can form a better opinion on the topics of the day than the voters who sent him there. He is sent to vote for the Minister, and for the measures, acceptable to the party organization by whose exertions he has been returned. We have moved a long way from Bagehot's conception of Parliamentary government. The representative assembly has ceased, from his point of view, to be independent, because it is dominated by the constituencies, and, to use his own words, 'constituency government is the precise opposite of Parliamentary government. It is the government of immoderate persons far from the scene of action, instead of the government of moderate persons close to the scene of action[1].'

Altered character of electorate.

This may explain why the House has become less attractive to the average man of public spirit who is willing to give up a great deal of his leisure to the service of his country. Constituencies are exacting as to the vote and speech of their member in the House; they are exacting also in their demands upon his attention when Parliament is not sitting. The choice and supervision of Ministers which Bagehot assigns to the House of Commons may be said to have passed, as regards choice, to the constituencies, as regards supervision, to the Press.

We come then naturally to this next point. The House is no longer 'an electoral chamber.' The capricious exercise of its powers of choice, as exemplified by the fall of Lord Palmerston's Government in 1857 and of Lord Russell's in 1866, would no longer be possible now. Mr. Low put this very plainly.

Loss of control over ministers.

'It is the constituencies which in fact decide on the combination of party leaders to whom they will, from time to time, delegate their authority.' 'The member of Parliament, sent to the House of Commons by his constituents, goes there under a pledge that he will cast his vote, under all normal conditions during the life of the Parliament, for the authorized leaders of his party[2].'

[1] Bagehot, p. 146.

[2] Low, pp. 101, 102.

Selective power of House.

In one respect the House retains a certain selective function. A man must show in debate that he has some powers of speech, some dexterity in the handling of a subject, some readiness of reply, in order to constitute himself a candidate for office. A Prime Minister, in filling the subordinate offices of Government, will probably choose men who have shown themselves acceptable to the House. These are cases in which neither the man nor the office occupy to an appreciable extent the attention of the electorate, and to this extent the House of Commons does exercise a real though not a dominating influence upon the choice of Ministers [1].

The active part played by the constituencies in the selection of the leaders who are to be followed, and the policy to be pursued, naturally confers a great increase of power upon the Cabinet or Prime Minister. They and their policy represent the choice of the majority, for the moment, of the electorate, and the voters see to it that their representatives give effect to their choice.

Limitation of discussion by rules of Procedure.

An indication of this increased power of the Cabinet is to be found in the virtual disappearance of the third of those features which Bagehot described as essential to our constitution—'Government by discussion.' Successive codes of Procedure have placed the control of the time of the House more and more in the hands of the Government. There are, no doubt, good reasons why the Government should demand more time. The topics for legislation and discussion have increased with the extension of the King's dominions, with the larger concern of the State in matters which were in time past left to the individual, with the development of industry and commerce. Discussion itself is prolonged. The Councils of counties and boroughs now send up men who have played a part in local affairs, and who consider that the House should have the benefit of their acquired facility of expression. Obstruction, which came into existence in the year of Bagehot's death, gives a valid reason for

Their necessity.

[1] See a letter written by the late Lord Salisbury to Mr. Low, and printed on p. 112 of the Governance of England.

some control of debate, and the result of this combination of causes has had a marked and not very happy influence on the rights of members to discuss matters of public interest.

Their result on initiative of private members:

Firstly, the initiative in legislation and discussion which private members once enjoyed has been greatly reduced by rules of Procedure. A Bill introduced by a private member has little chance of passing unless the Government assist its passage; if he introduce a resolution the discussion is little more than academical, and its result has no practical outcome; a motion for the adjournment of the House may be met by a blocking resolution.

on discussion of Government business.

And again, not only does the Government appropriate the time of the House in large measure to its own business, but the way in which that time may be expended is also marked out. The various forms of bringing debate to a close, more especially the closure by compartments, or the guillotine, necessary as they may sometimes become if discussion is to be kept within reasonable limits, have occasionally this startling result, that large portions of an important and contentious measure may be passed without any discussion at all. If they are to obtain consideration at all they must obtain it in the House of Lords, where debate is brief, businesslike, and unrestricted by the closure.

The tendency of every change of Procedure, for many years past, has been to impair the rights, restrict the independence, and so diminish the importance of the private member. But, excepting those who hold office, the House of Commons is made up of private members.

Parliament exists, as its name implies, for discussion: so if the right of initiating discussion is limited in order to give time for Government measures, and if discussion on these is again limited practically at the pleasure of the Ministry, it seems plain that the power of the Cabinet has grown at the expense of the House of Commons.

Increased power of Cabinet.

And thus, while the power of choosing ministers, which Bagehot regarded as the great function of the House of Commons, has passed in large measure to the electorate, Government by discussion, which in Bagehot's view was essential if a constitution was to be first-rate in quality,

has come, so far as the Commons are concerned, to be Government by just so much discussion as the Cabinet pleases.

The power of Dissolution.

The weapon by which the Prime Minister or the Cabinet enforces its will upon the Commons is the threat of a dissolution. The mere intimation that, if the necessary support is not given to a Government, its careless or lukewarm supporters may be sent to explain their conduct to their constituents has been known to produce the desired results[1]. But why is it so effective? Why cannot the candidate plead his own merits, explain the causes of his conduct, and satisfy his constituents of his loyalty to the principles which he has professed?

Mr. Low supplies the reason, though, curiously enough, he describes it as a result and not a cause of the power thus exercised by a Minister.

'It follows also,' he says, 'that one cannot, at any given moment, except in the few months immediately succeeding a general election, say that the House of Commons represents the opinion of even the majority of the electorate. It may have done so, roughly speaking, when it was chosen; but it may have lost that character long before it has seemed fit to the Premier to recommend a dissolution[2].'

Why effective.

This is what makes the threat of a dissolution effective. Members know that under the present conditions of a general election the opinion of the country, as expressed by the result of the polls, can only be very roughly described as genuine, and is almost certainly short-lived. They know, therefore, that a dissolution means an election contest, with a certainty of expense and a probability of defeat.

The single-member constituency.

The causes of this probability are to be found partly in law, partly in custom. The law is the Redistribution Act of 1885; the custom is the modern development of party organization. The Redistribution Act based our representative system on the single-member constituency, and party organization has practically reduced the choice of the elector to two, or possibly three, candidates, no one of whom may be altogether satisfactory to him.

[1] Low, Governance of England, p. 110.

[2] Ibid. p. 112.

Every party worthy of the name, every party which professes great principles and is not limited in its efforts and interests to some one topic in the range of politics, embodies various elements: its members differ on various points within the range of those principles which are of the essence of the party creed. But as a single-member constituency, *ex vi termini*, can only elect one member, it follows that if a number of persons compete for a privilege which can only be accorded to one, the choice of the constituency, as determined by a ballot in which each voter votes once for all for one candidate, may not express even the passing opinions of the majority of the electors.

If we can suppose such a constituency contested by six persons, two representatives of the Unionist party, a Free Trader, and a Tariff Reformer, two Liberals, one of whom would abolish, and the other reform, the House of Lords, a Nationalist, and a representative of the Independent Labour Party, the result would probably be a victory for the representative of that party whose internal divisions were least acute. There would almost certainly be some one of the candidates whom a large majority of the electors would have placed second if they had ranged the candidates in the order of their choice, or would, at any rate, have preferred to the person elected.

Party organization.

Organization, or 'the caucus,' has come into existence to remove this difficulty, but the result remains unsatisfactory. Without organization the elector, confused by a wide range of choice, may vote for the man whom he would place first, and may find, not only that he is one of a minority, but that he has helped to ensure the defeat of the man whom he would have placed second if his views could have found full expression. With organization the elector may find his choice so narrowed that neither candidate is satisfactory to him, and he may abstain or even vote against his party. It is not every voter who has definite opinions or convictions on the issues, large or small, which divide the great parties in the State. There is a class of indifferent voter who is disposed to think that each party should have its turn, and there is yet another who likes to be on the winning side.

Their effects on independence of members.

All these elements of uncertainty are present to the mind of the member who is threatened with a dissolution by the leaders of his party. He knows that the narrow choice afforded to the electors may have made him barely acceptable to many who voted for him on the occasion of his return. Party organization outside the House, and party discipline, controlling discussion inside the House, combine to make him feel that he cannot depend for re-election on individual merits which he may have had little opportunity of displaying in debate. He may have displeased the party, or the party organizers; he will certainly do so if he votes against his leaders; his party may have become unpopular in the constituency; while he has been occupied in Parliament an opponent may have captivated the electors; and if the polling in his constituency comes late and matters go ill with his party, he may suffer for the misfortunes of his friends and go out with the tide.

If this were a place to discuss electoral statistics, it would not be difficult to show how great are the uncertainties, and how unrepresentative are the results of our present electoral system [1]. All these things are present to the mind of the member who at cost of money, time, and pains has won his seat, and is therefore prepared to make some sacrifice of independence to avoid the risks of a general election. And this is why the Cabinet holds its followers in a firmer grip than was possible in days when single-member constituencies were rare, and the 'caucus' was unknown.

General results.

Thus have events altered the phenomena which underwent the searching diagnosis of Bagehot. The electors, not the Commons, choose the Government: the Government, not the Commons, determines the limits of discussion.

[1] At the general election in 1886 a majority of votes was given for candidates who were in favour of Home Rule, but the Parliamentary result was a Unionist majority of 104. In 1895 the difference between the two great parties at the polls was not a quarter of a million votes out of four millions and three-quarters cast in favour of the Unionists, but the Parliamentary result was to change a Radical majority of 43 into a Unionist majority of 152. The results of the general election of 1906 have been matter of recent discussion.

Parliamentary discussion ceases to be interesting, even to those who take part in it, when its extent is thus controlled and its issues determined. The result of a Parliamentary debate is a vote on strict party lines, and the public regard with more interest the political discussion which is provided by the platform and the Press.

All these things invest the executive with an immense accession of power, a power which may be wielded by the Prime Minister alone if his influence controls the Cabinet or if his presence secures its cohesion: but whether the form of government is a dictatorship or an oligarchy the result is the same. The pressure which the Government of the day can now exercise upon the House of Commons may ensure the continuance of a Ministry in office until a Parliament expires by afflux of time. If we might assume conditions under which the House of Lords was deprived of the power of rejecting Bills, the Government of the day would be supreme in legislation, as in administration. The country, at a general election, would put its fortunes into the hands of an individual or a group of men who ruled, subject only to the intervention of the prerogative, until the stated term at which the electorate again chose its rulers. The prerogative of the Crown might still be brought into play to dismiss a Ministry, or to dissolve a House of Commons whose docility in support of the Government of the day arose from a knowledge that the House and the ministers alike had ceased to represent the wishes of the people, and that a dissolution would involve the retirement of many of its members into private life.

It is curious and not uninstructive to note how the leading traits of our Constitution, as drawn by Bagehot, have disappeared or are disappearing,—the deference of the electorate, the moderation of parties, the choice of the Ministry by the Commons, their continued control and immediate power of change, the value of Parliamentary discussion in determining political results and informing the country. And yet the great framework of our institutions endures, and these changes have come upon us almost unnoticed. The lesson which the student may deduce is

that he has only half learned, perhaps wholly misunderstood, the working of a constitution when he has mastered the Statutes and recognized textbooks which set forth its legal outline.

Since this book and introduction were written, the Letters of Queen Victoria have been given to the public; I regret that I have not been able to avail myself of the mass of material for modern constitutional history which they contain. I am glad, however, to find that I should have used them not so much to correct as to emphasize and illustrate what I have written. But some points which are brought out in the Letters may properly be called to the notice of the reader, even in the fragmentary mode of treatment which alone is possible at this stage of my book.

The prerogative of Dissolution is frequently discussed, and one may note with interest that the meaning and conditions of its exercise seem to have undergone some change in the mind of the Queen. Lord Melbourne impressed upon her that a dissolution was not so much an invitation to the electors to decide between contending political parties and leaders as an appeal to them on behalf of the ministry which at the moment was in the service of the Crown. In advising the Queen in 1841 that it would be better for his ministry to resign than to dissolve, he is reported in the Queen's diary as saying: 'I am afraid that for the first time the Crown would have an opposition returned smack against it; and that would be an affront to which I am very unwilling to expose the Crown.' 'This,' says the Queen, 'is very true[1].'

This view of a Dissolution is repeated in a letter, evidently considered with care, addressed to Lord John Russell in 1846: 'As Lord John touches in his letter on the possibility of a Dissolution, the Queen thinks it right to put Lord John in possession of her views generally. She considers the power of dissolving Parliament a most valuable and powerful instrument in the hands of the Crown, but one which ought not to be used except in extreme cases with

[1] Letters of Queen Victoria, i. 348.

a certainty of success. To use this instrument and be defeated is a thing most lowering to the Crown and hurtful to the country [1].'

The question arose again in 1858, when Lord Derby, whose ministry was threatened by a vote of censure in the Commons, asked the Queen to give him authority to say that if he was defeated Parliament would be dissolved. The Queen declined to make this contingent promise, but she consulted Lord Aberdeen in confidence on the point, and he, while entirely approving the Queen's refusal to allow her name to be used in order to influence debate, went on to say that he 'had never entertained the slightest doubt that if the minister advised the Queen to dissolve she would, as a matter of course, do so.'

He points out that if a minister pressed for a Dissolution, as an alternative to resignation, the refusal of the Crown would be tantamount to a dismissal, and he goes on to say, in a passage which is instructive both as to the prerogative of the Crown and the responsibility of ministers, 'There was no doubt as to the power and prerogative of the Crown to refuse a dissolution—it was one of the few things which the Queen of England could do without responsible advice at the moment; but, even in this case, whoever was sent for to succeed must assume the responsibility of the act, and be prepared to defend it in Parliament [2].'

It seems clear that this view of the subject prevailed with the Queen when, in 1874, Mr. Gladstone somewhat unexpectedly asked for a dissolution: the Queen assented at once, thinking 'that in the present circumstances it would be desirable to obtain an expression of the national opinion [3].'

It would seem, therefore, that a dissolution is now invariably granted on the request of the minister, and involves no rebuff to the sovereign if the minister is defeated at the polls.

Another point bearing on the pages that follow concerns the relations of the Cabinet with Ministers of the Crown.

[1] Letters of Queen Victoria, ii. 108.

[2] Ibid., iii. p. 364. This responsibility for past action of the sovereign under similar circumstances was recognized by Sir Robert Peel. Memoirs, ii. 31. See *post*, p. 44.

[3] Morley, Life of Gladstone, ii. 485.

The Cabinet, as I have shown elsewhere, is collectively responsible for the acts of its members, but the minister is individually responsible for the business of his office. He must not make the Cabinet a party to business with which it is not concerned, or quote the Cabinet as an authority for his acts.

Lord John Russell in 1851 consulted the Cabinet as to the appointment of Lord Granville to the Foreign Office, after the dismissal of Palmerston. The Cabinet preferred Lord Clarendon. The Queen protested, and with reason, against the Cabinet 'taking upon itself the appointment of its own members[1].' The Prime Minister chooses and recommends his colleagues for the approval of the Crown. In the end Lord Granville was appointed.

Thus too, when Lord Clarendon in a draft dispatch stated that 'he acts by the unanimous desire of the Cabinet,' he was reminded that 'he acts constitutionally, under authority of the Queen, and not on that of the Cabinet[2].' The remark is suggestive. The approval of his colleagues may determine the advice which a minister gives to the Crown, but in action he is the king's servant, and in communicating the king's pleasure a reference to the views of the Cabinet is irrelevant.

Beyond this the Letters demonstrate, in almost every page, what has been indicated in the following chapters—the unceasing attention paid by the Sovereign of this country to its interests, and more especially to all that concerns our relations with foreign powers. It is impossible to read these Letters and not to be impressed with the value of the advice given and the influence exercised by one who, standing outside the strife of parties, was able to survey the field of politics with calmness, with knowledge, and with the ever-increasing experience of a life given to active participation in the affairs of the Empire.

[1] Letters of Queen Victoria, ii. 419. A similar case is recorded by the Duke of Argyll as having occurred in Lord Palmerston's ministry of 1855 (Autobiography, i. 541, 543). As to whether the offer was ever made to Clarendon, see Greville Memoirs, vi. 431.

[2] Ibid., iii. 48.

CHAPTER I

THE PREROGATIVE OF THE CROWN

SECTION I

THE NATURE OF PREROGATIVE

Executive Sovereignty.

WHERE we find a body of persons independent of external control, united for the maintenance of that independence against force from without, and for the security of certain common interests, we may say that this is a political society or State. We may frame what ideal we please for such a society. We may assume that it exists in order to protect its members from invasion or anarchy, from violence external or internal: or we may consider the object of such a society to be not only that each man may live secure, but that each may live the best life of which he is capable. But in any event, and in every political society, there must be some person or body to represent the State in its dealings with other States, and to call forth and command the available force of the society, when needed, for defence or attack.

Again, in every such community rules of conduct must be made, and sometimes changed, with a view to internal security and order; and the observance of these rules must be enforced. If the fact of observance or breach should be called in question some recognized authority must exist for the purpose of answering the question, and here again the decisions of such an authority must be enforced. Thus we find that there are three sorts of machinery necessary to a political society: a legislature to make law, a judicature to interpret law, an executive to wield the force of the community for the maintenance of security without, and for the enforcement of law and order within.

The forces which work this machinery are found to be differently disposed in different communities and at

different times. They may be centralized in one person or dispersed among many. To compare one polity with another, or to consider how constitutional forces may best be disposed, and to what end, is the business of the political student; I have here to deal only with the structure and working of our own constitution.

Legislative Sovereignty.

The law-making power in this country is the Crown in Parliament; Parliament, convened by the Crown and making laws with the royal assent, can alone change the constitution of the State and give or take away legal or political rights.

The judiciary.

The interpretation of law is the work of the Crown in its Courts, done through judges who have been and are the councillors and representatives of the Crown.

The Executive or Crown in Council.

The enforcement of law within the community, the maintenance of its safety and dignity as regards external relations, is also the duty of the Crown. The Ministers of the King, collectively in the Cabinet, determine matters of policy; while this policy is carried into effect, and the everyday business of government is transacted, by the same ministers or their subordinates in the various departments which carry out the work of the Executive. My object is to describe the construction and practical working of these various departments or institutions, and to show how they are connected with the central executive force. But that force itself, the Crown, whence justice and administration alike proceed, stands at the threshold of our inquiry.

The Prerogative.

Some of the powers exercised by the Crown are conferred or defined by Statute, but some also exist in virtue of custom or Common Law. The term Prerogative may be applied to the whole of these, but it should properly be limited to the ancient customary powers of the Crown. I will deal at once with the meaning of a term which has caused some difficulty in the past.

Blackstone's definition.

Blackstone defines prerogative as 'a special pre-eminence which the king hath, over and above all other persons, and out of the ordinary course of the common-law in right of his royal dignity.'

Mr. Dicey's definition.

Mr. Dicey defines prerogative more precisely as 'the discretionary authority of the executive,' and he explains this to mean everything which the King or his servants can do without the authority of an Act of Parliament.

Blackstone's definition of prerogative is obviously too vague to be of practical value. The powers of the Crown in its executive character are twofold, consisting in those which it possesses at Common Law and those which are conferred on it by statute. The Common Law powers are not, as Blackstone says, 'out of the ordinary course of the Common Law'; they are a part of the Common Law, and as capable of ascertainment and definition by the courts as any other part of the unwritten law of the land. These Common Law powers make up what Mr. Dicey calls 'the discretionary authority of the executive.' The statutory powers cannot strictly be classed under the head of Prerogative. They may be creations of statute or definitions or modifications of powers previously existing at Common Law: but they markedly differ from those powers the nature of which is only ascertainable by precedent, and the exercise of which is limited by discretion. And, besides these, there are certain attributes of the Crown from which legal results necessarily flow, and certain incidental rights, not perhaps of the first importance, yet proper to be treated of in a book on constitutional law. The common law powers of the executive do not therefore exhaust the meaning of this complex and difficult term.

Sources of Prerogative.

One may with some approach to truth ascribe the various rights, privileges, and attributes which make up the Prerogative to three sources.

The tribal chieftaincy.

First, there is the residue of that executive power which the king in the early stages of our history possessed in all the departments of government; when he led his people in war, administered their affairs in peace, was their judge in the last resort. This power, reduced in compass by statute and limited in exercise by many conventional and practical restrictions, remains as that discretionary authority of the executive spoken of by Mr. Dicey.

Secondly, there are parts of the prerogative which trace

The feudal lordship.

their origin from the position of the king as the feudal chief of the country, as the ultimate landowner and the lord of every man. Hence arise those rights of the Crown which are in relation to the kingdom what a seignory is in relation to a manor, the right to escheat, to treasure trove, to the custody of idiots and lunatics—these are topics which should fall, some under the head of revenue, some under that of jurisdiction. Hence too comes the early conception of Treason as a breach of the feudal tie which binds the man to his lord. We now regard Treason as an offence not so much against the person of the King as against the constitution of the State which he represents; and Allegiance, as a test of nationality rather than an assurance of loyalty to an individual; but these ideas begin in feudal times, and spring from the feudal relation in which the subject stood to the sovereign.

The kingship of legal theory.

Thirdly, there are attributes with which the Crown has been invested by legal theory. These attributes, which take their origin in notions of practical convenience, in their turn harden into legal rules which give rise to deductions sometimes of an unexpected and inconvenient character.

The king never dies.

Such is the attribute of *perpetuity*. It was important that one king should succeed to another with the shortest possible interregnum; that the king's peace should not be in abeyance for however short a time. As hereditary right came to be more strictly regarded, the process of election which intervened between the death of one king and the completed title of another, grew less and less important. At length Edward IV was held to have begun his reign so soon as his title by descent was proved, and thenceforward perpetuity is regarded as a royal attribute; the king, it is said, never dies, and the throne is never vacant. The legal theory, though based on practical convenience, was found to be extremely inconvenient when James II fled the country and it became necessary in the interests of good government to declare that, in spite of legal theory, the throne was vacant. The object is now attained by different means. Provision is made by statute for continuity in the administration of justice and the course o

executive government, independently of the demise of the Crown.

Such too is the attribute of *perfection of judgement*. The king can do no wrong: 'The king,' says Blackstone, 'is not only incapable of *doing* wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness.' Hence the king's ministers are held to be responsible for the acts of the king. There was much practical convenience in this theory of ministerial responsibility: misgovernment is more easily visited upon the officer who advises than upon the king who acts or authorizes action upon his advice. The servant can suffer without any such convulsion of the body politic as would ensue if the master were held liable. The doctrine took its rise when Henry III reigned though still a child, and it has been worked out on its political side in such a manner as to contribute alike to the stability of the throne and the popular character of our government. But the maxim in which it is expressed, 'the king can do no wrong,' has lent itself to some deductions which not only limit the freedom of royal action, but also affect rules of private law. Coke tells us that there are things which the king may not do in person because if he were in the wrong the party aggrieved would have no remedy [1]. And there are injuries for which the subject can obtain no redress from the Crown, or, what is the same thing, from a department of government, because a master is only liable for the acts of his servants on the principle that their wrong-doing is his wrong-doing; so if the master 'can do no wrong,' he cannot be made liable for the wrongful acts of the persons in his employment [2].

in public law,

in private law.

Of these three aspects of prerogative the most ancient and by far the most important are the customary rights, legislative and executive, which the Crown possesses, in relation to Parliament, to the executive and to the Courts. The feudal rights of the Crown are mere incidents of the prerogative; they add, here and there, features which can only be explained when we conceive of the king as being in relation to the kingdom what the lord was to the manor.

Summary

[1] Coke, Inst. ii. p. 186.

[2] See chap. x.

The artificial rules deduced by lawyers from attributes ascribed to the sovereign have doubtless important effects traceable in the working and conventions of the constitution: but these are merely attributes associated with a certain conception of monarchy, and are not fundamentally concerned with the government of the country. The powers of the Crown, legislative, executive, and judicial, are what concern us here. I have treated elsewhere of the Crown in relation to Parliament: I will endeavour here to treat of the Crown as acting for the State through the various departments of Government, or in its judicial capacity through the Courts.

The legal powers of the Crown seem wide in theory and limited in practice: the influence of the Crown is something not easy to define either in theory or in practice: to trace the process by which this power and influence have come into existence and have varied in extent from time to time would be to write the history of the monarchy in this country. This, even if I were capable of doing it, I would not do here: yet it may be useful to mark in outline the periods of growth and limitation of the royal power, because the present law and custom upon the subject have been slowly defined, and their definition must be illustrated by precedents which it is not easy to understand without some general knowledge of our history.

Section II

The King before Parliaments

§ 1. *The Saxon King.*

The Saxon kingship

The Saxon king was a representative chief. To the members of his community he was the embodiment of its dignity and its history. For this purpose the kingly office was endowed with special sources of revenue from the land of the community and was adorned with the insignia of royalty, the throne, the crown, the sceptre, standard and lance. The king represented the order and the justice of the community since he was bound to preserve its peace

representative,

and, in the last resort, to declare its customs upon appeal. He represented the force of the community in its dealings with other kingdoms, in the conduct of war, in the making of peace and of treaties. The sheriffs, the bishops, the ealdormen, that is to say the great local officers, secular and spiritual, were his officers. In conjunction with the Witan he made laws and imposed taxes, but the laws were his laws, and he appropriated to such purposes as he thought fit the money raised by taxation.

The Saxon king had therefore a position of great dignity and a wide discretionary power: but in the exercise of this discretion he was constantly checked by the necessity of acting with and through the Witan, and was ultimately controlled by his responsibility to the community whose collective wisdom the Witan was supposed to represent. For it has been a marked and important feature in our constitutional history that the king has never, in theory, acted in matters of state without the counsel and consent of a body of advisers[1], varying in constitution from time to time, but always invested with something of a representative character.

responsible.

The Witan in action,

The Witan consisted of officials, of ealdormen and bishops, of king's thegns and nominees of the king: it can only therefore by a figure of speech be said to have represented either the wisdom or the general opinion of the community. But in its relation to the king the Witan was a powerful body. It took part with him in legislation and taxation, in the deliberations which determined the policy of the country, in the appellate jurisdiction which he exercised in the last resort, in the grant of public land, in the appointment of ealdormen and bishops. And further, though royalty was in theory confined to one family, the Witan in the assembly of the nation made choice of the most fitting member of that family to be king. The king went through the formal process of election, his responsibilities were formulated in the coronation oath[2] and were enforced by the possibility of his deposition.

in legislation,

in election.

[1] Stubbs, Const. Hist. i. 127, 194, 276, 370. (§§ 53, 76, 98, 125.)

[2] Stubbs, Hist. i. 146. (§ 61.) Documents, p. 62.

The Saxon king, then, though his dignity was great and his discretionary power wide, was not a hereditary monarch, as we understand the term hereditary, was not supreme landowner, was not irresponsible for acts done by his command.

§ 2. *The Norman king, his ministers and Council.*

The Norman king a conqueror,

The position of the Norman king was very different from that of the Saxon, and this was partly the necessary result of a position acquired by conquest, partly the consequence of feudal ideas derived from the continent[1]. Anxious as William I undoubtedly was to avoid the appearance of an adventurer and to figure as the rightful heir to the inheritance of Edward the Confessor, his title was established and upheld by force and arms. When resistance was overcome, the institutions of the land were at his mercy, and he used them as seemed to him most prudent for the security of his throne.

a feudal lord.

Feudalism, which was based on the holding of land subject to certain obligations of fealty and service, at once made the king the supreme landowner and invested the relation of king and subject with a contractual character, a right on the one side to service, on the other to protection. This new position of the king in relation to land had various effects. In respect of the great landowners who held of the king it established a personal tie between him and them which tended to strengthen his hold upon their fidelity and service; in respect of the royal revenue it made the king the immediate owner of all the unappropriated land of the community and the inheritor of every tenant-in-chief who died without heirs or forfeited his land for misconduct[2]; in respect of title to the Crown the close association of the rights of the Crown with the ownership of land tended to assimilate the descent of the Crown to the descent of an estate in land, and thus in-

[1] To this one may add that the Norman Duke was practically absolute, though he acted in the presence of a Council of barons chosen by himself.

[2] 'Ultimi heredes aliquorum sunt eorum domini.' Glanvill. vii. 17.

evitably increased the hereditary at the expense of the elective character of kingship.

Features of English feudalism.

But William was not content that the feudal relation should exist only between himself and the tenants-in-chief. He established the rule that every man, of whomsoever he might hold his land, should reserve his fealty[1] to the king, and should owe to the king whatever military service was due upon his fief. Thus was created a direct relation between the king and every landowner in the kingdom, a relation far more precise than had existed when the king was regarded by the community as its representative merely. The great feudal lords could no longer call their vassals to arms on their behalf against the king, for their vassals were the king's men. The king did not lose his representative character; but the coronation oath on the one side, the undertaking to be faithful on the other, made up the terms of a contract in which the fidelity of the subject was the consideration for a promise of good government by the king.

The Commune Concilium

With these changes in the relation of king and subject came changes in the character of the consultative body through and with whom the king professed to act. The Witan, as I have said, represented, by a figure of speech, the wisdom of the community. The *Commune Concilium* of the Norman kings was in theory, and, on state occasions, in practice, an assemblage of the feudal tenants-in-chief. The more limited circle of earls, barons, and bishops who were consulted, or at any rate informed, when the king proposed to act, to legislate, or to tax, formed an inner group of habitual counsellors. In either case the qualification for membership was tenure: and if the Norman assembly represented anything, it represented what we should now call the 'landed interest.' The time came, as we shall see in the Great Charter, when the larger assemblage of tenants-in-chief became an important check upon the Crown; but this was not yet.

more representative than Witan.

There came too, with the Conquest, a great change in the administrative system. In the ill-compacted monarchy

[1] Glanvill. ix. c. 1. Littleton, ii. c. 1.

Character of administration.

of the Saxons each shire was a complete administrative unit very slightly connected with the central government. When the duties of administration became too heavy for the king to discharge them in person, no attempt was made to classify and divide those duties, to assign them to departments and create a staff to discharge them. The Saxon kingdom was divided into ealdormanries, and thus the tendency to disunion, inherent in the Saxon polity, was increased. The great offices of the household were merely decorative. The High Reeve of Ethelred, the supposed counterpart of the later Justiciar, is a shadowy and uncertain figure. The Chancellor of Edward the Confessor indicates, we may be sure, a liking for foreign customs, rather than a move in the direction of administrative reform.

The Saxon ministers:

and the Norman.

But under the system initiated by the Conqueror, and more fully developed by Henry, justice and finance were dealt with as two departments of government, manned by a staff of officials and superintended by the great household officers and by the ministers who now begin to assume definite functions—the Justiciar, the Chancellor, the Treasurer.

The Justiciar.

When the king was abroad or absent from Curia or Exchequer he was represented by the Justiciar, *primus post regem in regno*; indeed the very existence of the office was largely due to the frequent absence of the king upon the continent. Moreover the Norman king dared not entrust large powers to local magistrates. Where he had to delegate plenary executive powers, he delegated them to a representative of himself for the whole kingdom: the very magnitude of the office made its holder a minister acting for the king, not a local potentate setting up independent local powers.

The Curia and the Exchequer.

But the need to specialize duties became apparent as administrative requirements widened. A strong judicial staff was needed to enforce the king's justice, and to make his courts more attractive to the suitor than those of the local or seignorial jurisdiction. A strong financial staff was needed to secure that good administration should

be accompanied by a solvent Exchequer, independent of the feudal liabilities of the tenants-in-chief. The two were so intimately combined—the profits and costs of asserting and administering justice and the incomings and outgoings of the Exchequer—that the same men acted in a twofold capacity. The justices of the Curia sat as barons of the Exchequer. The Chancellor was great alike in Curia and Exchequer. The Treasurer's duties and anxieties were so engrossing as 'hardly to be set forth in words[1].' Thus the Curia and the Exchequer consisted of the same officers discharging different functions as *justitiarii* or *barones*. But the Curia stood in closer relation to the *Commune Concilium*, since both were courts in which the king sat to administer justice; nor is it possible to say that there was a difference of jurisdiction between the two. The functions of the Curia would seem to have been entirely judicial, while the great Council dealt with questions of general policy, with legislation, with taxation, and, above all, with the election to the Crown.

Officers of Curia and Exchequer.

Curia and Council.

In two ways these institutions are of permanent interest. The administration of Curia and Exchequer knit together local and central government. The justices of the Curia, itinerant throughout the land, declared and enforced the king's law, assessed and levied the king's taxes: the sheriffs, who remained, as of old, the presiding officers of the Court of the shire, appeared twice in each year at the Exchequer to render account to the barons of the sums due from the shires.

Central and Local Government.

And again, we can trace the beginning of the distinction between the executive part of our institutions and the legislative or deliberative, when we find a great Council meeting for general legislative and political as well as for judicial business, while the permanent administrative staff is in constant session at the Curia and the Exchequer.

Legislation and administration.

For our present purposes the Curia is an institution of greater interest than the Commune Concilium. The Commune Concilium, even in its most developed form, as set forth in Magna Charta, is only the feudal conception of

[1] Dialogus de Scaccario, i. 6.

a law-making and taxing body; it is not so much the parent as the feudal counterpart of the assembly, representative of shire and town, which was called into being by Simon de Montfort, which was organized and perpetuated by Edward I, which, renovated and adapted to modern conditions by the legislation of the nineteenth century, exists as the Parliament of to-day. But the Curia, the administrative centre, is the germ from which have developed the departments of Government. Whether we regard it collectively as a Council of the Crown, or whether we regard it as a group of officials—the holders of the new political offices created by the Norman kings—we can trace from it our Executive of to-day.

Thus we may say that the Norman monarchy, though practically absolute, nevertheless maintained the form of counsel and consent, enlarged the area from which the Common Council of the realm should be drawn, and gave a definite qualification, that of tenure, to its members; above all it created a strong central administration distinguishable from the larger Council, and drawing together by its vigorous action the local institutions of the country.

§ 3. *The Angevin kings.*

Kingship in the 12th century.

We have not yet reached Prerogative in the modern meaning of the term, because Prerogative is the result of a definition more or less complete of royal privilege and power, and the age of definition has not yet come. The ill-organized Saxon community put itself into the hands of a king and a body of non-representative advisers for all but local purposes. The Norman king tightened his hold on the community: he used the personal relation of feudalism, the moral bond of society in the middle ages, to bind every landowning man to himself; he used the territorial bond of feudalism to make him the ultimate lord of every man and the immediate lord of the great men of the kingdom; but he restrained the tendency of feudalism to break up a kingdom into independent lordships; and he did this by means of the vigorous administration which checked the growth of local jurisdictions and brought the central

power into close touch with local institutions throughout the country. And yet we can see that the community possessed the rudiments of a control on the use of royal power. The Commune Concilium does represent the feudal society, and it is a machine regularly constituted, though not in regular working, for purposes of legislation and taxation, criticism and control.

And though it is true to say that until Parliament comes into existence we have not the means of defining, or even approximating to a definition of Prerogative, as we understand the term, yet between the accession of Henry II and the Parliament of 1295 we can trace continuous progress, first in the development and the definition of executive functions—in less abstract terms, the growth of departments of government; and next in the control or supervision of the exercise of these functions by a body more or less representative of the community. Three points in the history of the executive stand out prominently in this period of our history. The first is the increase of departmental activity in the reign of Henry II; the second is the definition of royal power and the rights of freemen in Magna Charta; the third is the dawn of the conception of a responsible executive traceable during the minority and through the reign of Henry III.

Administration under Henry II.

Henry II found a nation wearied out with the miseries of anarchy, and the nation found in Henry II a king with a passion for administration. Henry was determined to make his law prevail throughout the land, hence his attempt to define the jurisdiction of the ecclesiastical courts in the Constitution of Clarendon; his insistence in the Assize of Clarendon that no franchise or local jurisdiction should exclude his sheriff from entering therein; his requirement that his writ should initiate every suit relating to the freehold. All this needed a development of the judicial system, and we find this effected in two ways, from above, and from below.

The judicial system,

The royal administration of justice was strengthened and elaborated by the system of itinerant justices constantly modified throughout the reign, and surviving to the present

day in the modern system of circuits; and further by the severance from the general work of the Curia of a body of judges who were to form a permanent court *in banco*, to hear all complaints, and to reserve cases of special difficulty to be heard by the King in Council.

and use of local machinery.

But the royal administration of justice was further strengthened by its connexion with local machinery, the twelve lawful men of the hundred and four of the township who presented criminals to the king's justices, and the jury of sworn recognitors selected by the sheriff, who determined questions of fact as to the right to the freehold. Everything was done to make the King's Courts and the royal justice more attractive to the suitor and to enlarge their jurisdiction and increase their business at the expense of the local, or communal, and the seignorial or feudal courts. The same system prevailed in finance. New forms of taxation needed a better organized system for assessment and collection. Such a system was worked out by a further development of official machinery, and the employment of a local jury to determine local liabilities, bringing local and central administration into yet closer connexion. In the use of a representative jury to settle the liabilities of the locality to the central government we see the beginnings of the representation of the Commons for the grant of supplies to the Crown.

The growth of the official staff indicates the increase of departmental business, and the details of administration pass beyond the immediate control of the king, even of a king so busy and so acute as was Henry II.

The Great Charter defines rights.

Next in order of time comes Magna Charta. The promises of the Coronation oath were vague and general: the terms of the Charter are precise. Many things have been read into the Charter of which its framers never dreamed. Provisions which dealt with immediate grievances, or were limited by the conditions of the time, came to be expanded in interpretation until they embodied those principles of constitutional freedom which were at issue in the seventeenth century. But after making all due

allowance for the exaggeration of political enthusiasts the Charter stands out as a formulated definition of liberties to which every freeman could refer for proof of his right to freedom from arbitrary taxation and arbitrary punishment.

Ministerial responsibility.

Lastly, we find in the reign of Henry III the beginning of our modern ideas as to the relation of king to ministers, of ministers to the Common Council of the realm.

Henry III.

Tedious and inconclusive as are the struggles and bickerings which make up the history of this reign, its constitutional results are of great interest, quite apart from the development of the representative system by Simon de Montfort.

The growth of departments of Government

Out of the Curia of the earlier period proceed on the one hand specific departments of government and administration, on the other a body of councillors through whom and with whose advice the king acts in matters of state. The Chancery, the Exchequer, the Common Law Courts separate from one another. The Exchequer has its own Chancellor to aid and check the Treasurer. The Courts acquire different jurisdictions administered by different bodies of judges. The Chancellor affixes the great seal to formal manifestations of the royal will, while the secretarial portion of his duties passes into the hands of the king's secretary, an official who from humble beginnings is to develop ultimately into the Secretary of State.

of a definite Council.

As the departments of government begin to assume definite shapes, the circle of royal advisers with whom questions of general policy are discussed and determined acquires a distinct character. The infancy of Henry III brought into existence a Council different on the one hand from the Common Council of the nation, and on the other from the central group of administrators. This Council, intended in the first instance to conduct the affairs of the kingdom while the king was a child, outlasted the temporary needs to which it owed its origin, and became a permanent and striking feature among our institutions. From this period some modern principles take their rise. The responsibility of ministers for the acts of the king

dates from the time when the child Henry was the nominal head of executive government[1]. With the responsibility of ministers comes the rule that 'the king can do no wrong.'

Then again there arose with the conception of a responsible ministry a desire on the part of the larger assembly, the Great or Common Council of the realm, to control the choice and the action of the king's ministers. This Council had chosen the regent and those who were to act with him on the death of John, and it would seem that the baronage were not willing to forego the position which they then assumed. Of this the Provisions of Oxford (1258) bear evidence[2]. It is true that this claim was made by the barons on behalf of their order, and not for the Common Council as representing the community at large; but concessions thus made and rights thus acknowledged could readily be adapted to the larger and more representative body which shortly came into existence, and reasserted on its behalf.

Section III

Parliament and Prerogative

§ 1. *Limitations on royal action.*

Increase of royal powers

It may be said that the definition of Prerogative begins with the existence of Parliament. In spite of the negligence or the errors of the later Angevin kings the tendency of political life was towards the growth of royal power. The feudal king had ceased to regard himself as the official representative of the community. The Saxon king had been more than this: the dignity of a long pedigree and the sentiment of the *comitatus* combined to invest his position with a reverence which does not attach to an elected chairman or president.

Feudalism enhanced the power and the position of the Crown by introducing something more both of moral and

[1] Stubbs' Const. Hist. ii. 41. (§ 171.)
[2] Ibid. ii. 76–78. (§ 176.)

legal force into the relation of king and subject. The sentiment of fidelity due from the vassal to his lord strengthened the loyalty due to the king. The rule of the Conqueror was maintained that no man might swear fealty to his immediate lord without reserving the fealty which he owed to the king; and to the mind of the middle ages the rebel was not merely a disturber of the public peace; he was a traitor to the lord whose man he had sworn to be. Then too the legal aspect of feudalism was a practical service to royalty. The king, who held the royal domain, was entitled to the services of his tenants by precisely the same right as the tenants-in-chief and lesser landowners held *their* lands and were entitled to *their* services. And since it was the tendency of feudalism to connect jurisdiction with land, to bind the feudal tenant to suit and service in the lord's court, the king's title to inherit the Crown lands, to hold them, to demand the services due to him, to be supreme landlord, and, as keeper of the peace of the community, its supreme judge, came to be regarded as a proprietary right. But this right was of exactly the same character in its relation to the tenants-in-chief as their rights were in relation to their vassals, and so the interests of the feudal society were to some extent enlisted in the maintenance of the rights of the Crown.

by the feudal relation;

To the strength given by feudalism to royalty we must add the sanctity attached to the kingly office by the ceremonial of coronation and the voice of the Church. The king was not merely the chosen of the people, he was the anointed of God. Besides all this, the king, if he was a capable man, was the strongest man in his dominions; he had the machinery of administration at his disposal, and could probably at any given time command more money, and put more men into the field, than any one of his barons.

by ecclesiastical sanction.

It is, then, small matter for wonder that men had come to forget, if indeed they had ever clearly realized, that the king existed for certain purposes necessary to the community, as its representative in the maintenance of internal peace and order, of external dignity and security. The

Representative character of kingship forgotten.

promises of the Coronation oath and the definitions of the Great Charter were evidence, and not much more, of the duty of the king to govern according to law and to observe those limitations on royal power which the Charter prescribed. The rights of the king as law-maker, judge, and administrator were, no doubt, limited by the customary rule that he must act through and with his Council: but these rights had come to be regarded as inherent, not delegated: just as the hereditary character of the title to the Crown grew at the expense of the elective. And while the conception of the kingly office tended to grow in majesty and force, the Council varied greatly in efficiency as a restraining power: sometimes its composition was settled by a powerful baronage designedly as a check upon the king: sometimes a strong king would form a Council of royal nominees, new men on their promotion, who were merely exponents of the royal will.

Inadequacy of checks

Something more than this was needed to enforce the theoretical limitations on the power of the Crown, and to make the king the true representative of the national will. The Commune Concilium, as contemplated in s. 14 of the Charter, was not a representative assembly; practically it consisted of the tenants-in-chief: it was not summoned for general purposes of counsel and consent; the king only undertook to summon it in the case of a special demand for aid or scutage made upon the feudal tenants: it had no control over the action of the executive unless such a demand was made and terms could be obtained for compliance. Where this assembly was in a position to make terms with the king its interests were not bound up with those of the community, they were the interests of the class of landowners who held of the Crown. And at best the Concilium of the Charter was merely an expansion of the Council with which the king habitually acted, an executive and deliberative body temporarily enlarged for a special object.

before Parliament.

To define the prerogative of the Crown a force was needed which should be distinct from the executive, embodied in an assembly which should represent the com-

munity in its entirety, and possessed of means for ultimately putting constraint on the royal will.

Such a force was found in Parliament as constituted by Edward I; an assembly representative of the clergy, baronage, and commons, the three estates of the realm; and the constraining power which it possessed was the power of the purse. The king's revenue was insufficient to meet the needs of the State; the necessary supplement to this income could only be obtained by the goodwill of the community; and the community of the thirteenth century might be regarded as fairly represented in the Model Parliament of 1295. Source of Parliament's power.

Parliament was not slow in asserting its powers. In the right to tax, to make laws, to choose the ministers of the king it claimed to have a concurrent if not a dominating voice. Claims of Parliament.

Time was needed to show the insufficiency of a bare insistence on these rights. It was not enough to be a necessary party to taxation unless Parliament could determine the nature of the expenditure to be incurred, and could ensure that the money granted was spent on the purpose for which it was voted. It was not enough to be a necessary party to legislation, unless the Courts by whom laws were interpreted were free from the influence of the Crown. It was not enough to appoint the king's ministers unless Parliament could exercise some control over their action.

The appropriation of supply and the audit of accounts, the independence of the judges, and the whole theory of ministerial responsibility, are constitutional questions which evolved themselves and were settled after centuries of political strife or discussion. They were very dimly realized, if at all, by the Parliaments of the thirteenth and fourteenth centuries. The right to tax and the right to legislate form part of the history of Parliament. But the insistence on the right of Parliament in these respects was effective, if indeed it was not essential, for the limitation of the discretionary power of the Crown in the choice of Ministers, in the determination of general policy, in control over the details of administration. The first struggles

The king's discretion,

begin over the choice of ministers. This becomes more important to the king as the sphere of administration becomes wider and its details more complex.

The claim made by the Commune Concilium in the reign of Henry III, and by the magnates in the reign of Edward II, to have a voice in the nomination of the king's ministers and to control their action, was revived by Parliament in 1371, when the old age and failing powers of Edward III and the minority of Richard II had given increased importance to the executive powers of the Council. The Commons desired to control these executive powers by securing the nomination and election in Parliament of the chancellor and the lord privy seal, through whom chiefly the royal will was expressed; of the treasurer, who was responsible for the public income and expenditure; of the chamberlain, whose official duties were varied and important; and of the steward of the household, who was responsible for the economy of the Court and the maintenance of the royal state.

in choice of ministers;

But in 1385 Richard refused point-blank to name his intended ministers to the House of Commons; and the nomination of ministers in Parliament does not recur in his reign. By requiring an audit of accounts the Commons endeavoured to enforce ministerial responsibility and the right use of public money. By the process of Impeachment[1] they dealt with such political offences as were outside the ordinary course of law.

in detail of administration.

But very early in its existence the House of Commons seems to have become aware that for the control of the Crown in administration it was of supreme importance to secure the independence of the Courts and the publicity of judicial procedure.

The king might delay a cause or withdraw it from the Courts by writs issued under his lesser or privy seal[2], or

[1] See Part I: Parliament, ch. x. § 2.

[2] 28 Ed. I, c. 6. No writ concerning the Common Law was to go out under the little seal.

2 Ed. III, c. 8. Neither great nor little seal should be used to delay common right; if so used the justices should pay no attention to such commandments.

he might grant charters of pardon so wide in their terms as to amount to a dispensation to commit crime. These were the earliest grievances, and they were dealt with by Statute [1].

Or a man might be summoned by writ of *subpoena* before the Council, where the king continued to preside after he had ceased to sit in the King's Bench. The powers of the Council were undefined and arbitrary, and its procedure differed in many respects from that of the Common Law Courts. It was in vain that the Commons sought to destroy this jurisdiction or to control its exercise [2]. It developed in spite of the Statutes and the protests of the fourteenth and fifteenth centuries until opposition died away, to return with conclusive effect in the legislation of 1641.

But the instinct of the Commons was a true one. The prerogative must be limited by law if it was not to be limited by force, and legal restraints were of no avail if the king could constitute or control the Courts which interpreted the law.

[1] 2 Ed. III, c. 2; 10 Ed. III, st. 1, c. 2; 14 Ed. III, c. 15; 13 Ric. II, st. 2, c. 1.

[2] Statutes on this subject are numerous. They begin with generalities.

5 Ed. III, c. 9. None shall be attached or forejudged contrary to the Great Charter or the law.

28 Ed. III, c. 3. None to be put out of his lands or imprisoned, disinherited or put to death but by due process of law.

Then they become more explicit.

42 Ed. III, c. 3. No man to be made to answer before the King's Council on accusation to the king without presentment before justice or matter of record, or by due process and writ original according to the law of the land.

4 Hen. IV, c. 23. No man to be brought before the King's Council *or king himself* after judgment given in the Common Law Courts.

15 Hen. VI, c. 4. The writ of *subpoena* only to be issued after security given for costs.

The protests of the Commons are very numerous; but if a petition was in the first instance addressed to Parliament they were not unwilling that it should be referred to the Council. In 14 Ed. III, c. 5, they legalize such reference in case of delay of justice ascertained by a committee of five (one bishop, two earls, and two barons), and in 31 Hen. VI, c. 2, they gave power to the Council to deal in a summary way with great offenders against public order, saving in a somewhat ineffectual proviso the rights of the Common Law Courts.

§ 2. *The Lancastrians.*

The Council. The growth of the collective powers of the Council is, constitutionally, not less important than the growth of individual departments of government. In the reign of Richard II it had 'become a power co-ordinate with the king rather than subordinate to him, joining with him in all business of state, and not merely assisting but restricting his action[1].' In this capacity it is recognized by the Commons, who, early in the reign of Henry IV, ask that the Lords of the Council, as well as individual ministers, should be nominated in Parliament (1404), that they should be properly paid for their services, and that the procedure of the Council should be settled by fixed rules (1406). In every department of the executive, it was the duty of the Council to advise the Crown; and there soon follows the assumption by the Council of judicial powers which to some extent supplemented, to some extent superseded, the action of the Courts.

Parliamentary control:

as to the Council: During the infancy of Henry VI the Council added to its consultative functions those of a Council of Regency; and during this time it was nominated not merely in Parliament but by Parliament. On the attainment of his majority by the king, this practice ceased; the Commons relaxed their attempts at control, and the Council became the nominees of the Court. Under the weak rule of Henry VI the commoners and men of business became fewer at the Council Board[2]. Great lords of the Lancastrian side took their place, and the powers both of the Commons and of the Council at this period increased at the expense of the personal influence of the Crown. But this limitation of royal power and influence was not accompanied by the practical advantages of good government.

as to taxation and legislation. The Commons had acquired an increased and extensive control over taxation and legislation, and by the practice of impeachment they could strike an individual minister, but

[1] Stubbs, Const. Hist. iii. 247.

[2] Fortescue on the Governance of England, ed. Plummer, p. 146; and see Mr. Plummer's note, pp. 295, 296.

as yet they had not learned to use this power so as to keep a steady and consistent criticism at work on the action of the executive.

The Council had become a committee for the discharge of executive functions, irresponsible, except in so far as responsibility was secured by the royal power of appointment and dismissal, and by the possibility that the Commons might exercise in individual cases their right to impeach. The range of duties undertaken by the Council was practically co-extensive with the powers of the Crown. In judicial matters the complaints that the Council interfered with the action of the Common Law Courts continued for a while, but cease after the reign of Henry IV[1]. The lawlessness of the country, and the difficulty of obtaining justice by the ordinary procedure of the Courts when great lords set the common law at nought, may well have reconciled the Commons to the intervention of the Council.

Disorders of the 15th century.

In truth at this time we get an outline of constitutional government which seems to disappear when we look into details. The king reigned by a strict Parliamentary title; the House of Commons had acquired a control over legislation and taxation[2]; the royal Council was exercising with apparent vigour the administrative powers of the Crown[3]; and yet 'the Treasury was always low, the peace was never well kept, the law was never well executed; individual life and property were insecure; whole districts were in a permanent alarm of robbery and riot[4].' This local anarchy was wrought by great and rich nobles with the bodies of armed retainers who had followed them in the French wars, and now wore their livery and were maintained by their bounty. The ordinary course of justice was impotent against these men: the king himself could scarcely resist any combination of them. The Wars of the Roses were a sequel to the long disorders of the fifteenth century.

[1] Stubbs, Const. Hist. iii. 252.
[2] Ibid. 250.
[3] Ibid. 255.
[4] Ibid. 270.

§ 3. *The Tudors.*

Desire for a strong executive.

From the conclusion of the Wars of the Roses to the time of the Stuarts, from Fortescue to Bacon, the minds of political thinkers, practical or theoretical, seem to have turned towards the construction of a strong administration. Not only had the turmoil of the dynastic struggle created a longing for peace: the preceding disorder, and the insecurity of life and property which was not inconsistent with great constitutional progress, made men realize that an increase in the power and influence of the House of Commons was not all that was needed to make a nation prosperous and free.

The constitution of the king's Council for purposes of administration was the problem set to himself by Sir John Fortescue, who troubles himself little as to the relations of Parliament to the servants of the Crown, but much as to the organization of the executive. The distribution of the work of the Council received much attention from Henry VIII and Edward VI; the course of its business was regulated: the precedence of its important members determined by Statute: committees of the Council were formed for special purposes or for attendance upon the king.

And since the great nobles had been reduced by the Wars of the Roses in numbers, power, and prestige, the Council possessed no members of such individual weight or importance as would enable them to resist the royal will. It was an administrative machine of vast power, entirely in the hands of the Crown.

Popular acquiescence in Tudor rule.

The period fancifully styled the New Monarchy, the period during which the Crown stands forth in active personal government more distinctly than at any time since the reign of Henry II, was at once the outcome of the executive weakness of the Lancastrians, and the source of the violent collision of Crown and Parliament under the Stuarts. But it should be remembered that the people were as willing to be governed as the Tudor kings and queens were able and willing to govern, and that throughout the reign of Henry VIII Parliament seemed ready to

confer upon the Crown any powers which Henry VIII might be pleased to ask.

Statutory Prerogatives conferred.

Henry borrowed money without consent of Parliament, but he obtained from Parliament a release from the obligations incurred to the lenders. Parliament gave him the power of devising the Crown, enabled him to issue Proclamations which should have the force of law, and enacted that a king, when he reached the age of twenty-four, might repeal any statutes made since his accession; above all, it was Parliament, embodying the acts of Convocation, that made the king the legal head of the national Church, and it was Parliament that passed the many acts of attainder which gave a tragic colour to the concluding years of this reign.

Other exercises of prerogative.

In two respects we see the Crown in the reign of Henry VIII developing a policy and exercising powers which became formidable when, as happened in the succeeding reigns, individuals began to desire a free expression of opinion on matters affecting Church and Commonwealth, and when Parliament revived its interest in public affairs. One of these developments of executive power is manifested in the judicial action of the Council. The administration of the Common Law had been committed to the three great Courts, the King's Bench, the Common Bench, and later to the Exchequer. The imperfections of the Common Law were supplemented in the Chancery, where the Chancellor was the mouthpiece of the king's grace, but the indefinite residue of the judicial powers of the king was administered by the Council. Of the obscurity which overhangs the growth of these powers, and of the relations of the Council and the Star Chamber, I will speak in a later chapter. Here it is enough to note the compass and detail of the judicial work which the Council is found to be doing when, after a long gap in its records, we can once more follow its action in the reign of Henry VIII[1].

(a) Judicial action of Council.

[1] No regular record of the proceedings of the Council is extant between 1435 and 1540. As to the variety of judicial business transacted by the Council in the reign of Henry VIII, see Proceedings and Ordinances of the Privy Council, vol. vii p. xxv.

These powers do not seem at first to have been designedly exercised by the Crown at the expense of the liberties of the subject. The Common Law Courts were costly and difficult of access to poor men, they were not always effective against rich or powerful wrong-doers[1]; conspiracies which survived from the dynastic wars needed to be met by prompt and secret action; ecclesiastical changes, and the growth of a Press, raised new questions to which existing rules of law supplied no answer. Petitions for redress of grievances were laid before the Council; often it was only here that justice could be obtained speedily and at small cost by the poor; often too it was only here that justice could be obtained at all by the weak. It was only by degrees that the Court of Star Chamber became a Court for the restraint by an arbitrary procedure of the free expression of opinion on political subjects, that it enforced illegal proclamations by unauthorized penalties, that it no longer supplemented but interfered with the ordinary course of justice in the Courts of Common Law.

Thus the jurisdiction of the Council, dangerously indefinite, but on the whole salutary in its exercise under Henry VII, had become a formidable engine of oppression before the death of Elizabeth.

(*b*) Additions to the constituencies.

And, secondly, Henry VIII began the practice of increasing the numbers of the House of Commons by additions to the constituencies, a policy which was developed, in the hands of his successors, by a free use of the prerogative in granting charters to towns.

The statutory requirement that a member should be resident in his constituency had fallen into disuse[2], and a seat in Parliament had not yet begun to be an object of ambition. Henry VIII had therefore no great difficulty in procuring the election to the House of Commons of many members who held places at the pleasure of the Crown, or who hoped to obtain such places, or who for one reason or another were willing to vote as the king or his

[1] Collectanea Iuridica, vol. ii. p. 14.

[2] See Part I: Parliament, pp. 87, 319.

minister might direct. The successors of Henry VIII[1] were not content to rely upon influence over existing constituencies; they issued writs of summons to boroughs which had never heretofore sent members, a process followed usually by a charter of incorporation, conferring upon the borough the privilege of sending members, and regulating the rights of election. In this way the numbers of the House of Commons were increased by more than one hundred members in the reigns of Edward, Mary, and Elizabeth, and the growing independence of Parliament was sought to be restrained by a larger infusion of nominees of the Crown.

Prerogative under Henry VIII.

The raising of loans without consent of Parliament, the exercise of a wide and indefinite jurisdiction through the Privy Council, and the acquisition of a Parliamentary influence by an increase of the representation and by the introduction of placemen and courtiers into the House of Commons, constitute the chief exercise of prerogative in the reign of Henry VIII. Many deeds undoubtedly cruel and unjust were done, and laws were passed which placed a dangerous power in the hands of the Crown; but to these matters Parliament was made a party, and the blame must be divided in such proportions as the student of history may see fit between a king who loved his own way, a complaisant legislature, and a people which was willing to forego some measure of constitutional liberty for the sake of order and peace.

Under his successors.

Under Edward VI and the Tudor queens the jurisdiction of the Council pressed more heavily upon freedom of opinion, and the franchise was conferred upon boroughs which were never intended to exercise an independent choice of members. Yet, in spite of the exceptional influence and control which these monarchs exercised in Council and in Parliament, we find that a complicated machinery is growing up which needs to be put in motion before effect

Restraints on administrative action of king.

[1] The constituencies added by Henry VIII, though considerable in number, were places which might reasonably demand representation: Cheshire and Chester, Monmouthshire and Monmouth, the towns and counties of Wales.

can be given to the king's decision in the detail of administration; his will is all-powerful, but it must be expressed through his servants. Edward IV had been told already that he could not effect an arrest in person [1], and James I had to learn that the king could not sit as judge in his own Courts [2]. An Act of Henry VIII [3] requires the concurrence of three of the king's servants for affixing the great seal, and the recorded Acts of the Council in the reign of Edward VI make various provisions as to the official signatures necessary to authenticate a document signed under the king's own hand [4]. It was held in Elizabeth's reign that a royal order was not a sufficient authority for the issue of the royal treasure [5].

§ 4. *The Stuarts.*

The exercise of Prerogative by the Stuarts,

When James I came to the throne it was no longer easy to manage Parliament as it had been managed by the Tudors. The House of Commons had questioned some of the additions made by Elizabeth to the representation. It took an early opportunity of disputing the right of the Crown to interfere in elections or to determine disputed returns. The Stuarts did not venture to use to any extent the prerogative which the Tudors had so freely exercised of summoning boroughs by writ or conferring the right to representation by Charter. The additions to the representation made in the reign of James I were in almost all cases revivals of rights fallen into disuse. But James I and Charles I raised other and bolder issues. The judicial powers of the Privy Council exercised in the Star Chamber, and the power of appointing and dismissing at pleasure the judges of the superior Courts, enabled the Crown to interfere with the freedom of the subject, to legislate and to tax in defiance of statutes passed in earlier times, in defiance even of the Petition of Right, which was aimed at existing encroachments of the Prerogative.

[1] Coke, Inst. ii. p. 186.
[2] 12 Coke, Rep. p. 64.
[3] 27 Hen. VIII, c. 11.
[4] Acts of the Privy Council, iii. 366, 411, 500.
[5] 11 Coke, Rep. p. 92.

aided by theory of divine right,

It is possible that the difficulty of managing Parliament or increasing the number of its members may have induced the Stuarts to fall back upon unparliamentary methods. But the circumstances of the time offered some justification for these methods. The decay of feudalism left men in want of some theory of political duty which should supply the place of the feudal bond, and the Reformation, which broke up the unity of Western Christendom, created the new problem of a national Church. The theory of the divine right of kings offered a solution of these difficulties, and it was eagerly embraced by the Stuarts and accepted by many of their subjects. Under the Tudors a desire for settled government had reconciled men to encroachments on liberty of person and security of property, and had encouraged the king to use the royal powers with freedom and boldness.

but based on control of judicial administration.

But those powers did not rest on imagination only: they had a firm basis in the control which the Crown possessed over the course of law.

The Star Chamber.

So long as the king could use the indefinite jurisdiction of the Star Chamber for the infliction of punishments for political offences, it was possible for him to issue proclamations which would be enforced by fine or imprisonment in the Star Chamber, although disobedience to them might not constitute any offence recognizable by the Common Law Courts[1]. It is true that the use of this power by James I led to a precise definition by Sir E. Coke of the legal effect of such proclamations, a definition which, as I have elsewhere pointed out, is the *locus classicus* for the statement of the relations of Parliament and Crown in the making and enforcement of law[2]. But so long as the Star Chamber was available for the enforcement of proclamations there existed a judicial power residing in the executive, limited by no settled rules, exercisable at the royal discretion, and alleging the interests of government as the ground of its exercise.

Nor did the king's control of justice stop at the Star

[1] Gardiner, History of England, viii. 73, 77.

[2] Part I: Parliament, p. 294.

The Bench.

Chamber. He had an absolute power in the appointment and dismissal of judges: the judicial bench was, as to tenure of office, at his mercy; without exaggerating charges of corruption and subserviency, it is plain that self-interest as well as the traditions of a hundred years would lead the judges to take a broad view of the extent of their master's prerogative. And the course taken by the judges went far beyond mere latitude in the interpretation of the law; it led them to a point at which the sanction and validity of the law might be called in question.

The duty of the judges,

When a subject refused to pay a duty imposed or a tax levied without consent of Parliament, the Courts, if they did their duty as we understand it, were bound only to consider whether there was authority by Statute or at Common Law for the demand made by the Crown. If an emergency necessitated the raising of money without the consent of Parliament, the Courts were not concerned with the existence of such an emergency; their business was to interpret Statute and Common Law. Imminent peril might justify the Crown in overstepping its legal powers, but the justification should be recognized, not in a decision by the Courts that in such cases as he might consider to be of national emergency the law did not bind the king, but in an act of indemnity passed by Parliament to relieve those who had done the royal bidding in breach of the law.

and their interpretation of it,

Nevertheless, the judges of James I and of Charles I were for the most part of the opinion of Bacon [1], that their business was not merely to declare the law but to support the government. Acting on this theory they developed a doctrine of the discretionary prerogative which virtually set the king above the law. If, whenever a subject resisted an illegal demand, the Courts held that the demand was justified by a discretionary power resident in the king, they reduced themselves to a choice of difficulties. Either they must consider the circumstances of each case, must determine whether the use of this discretionary power

[1] Gardiner, ii. 191; iii. 2-8.

was needed, and so must assume the deliberative functions of a Council of the Crown, or they must leave it to the king to say when this power should be used, and in that way must set the Crown above the law.

The last was the course which the judges adopted[1]. They thereby made the king independent of Parliament so far as revenue was concerned. Nor did their action affect revenue alone: all attempts to define the prerogative by rules of law were rendered nugatory when the Courts held that it was of the essence of prerogative to decide whether or no the law of the land should be observed. The powers in respect of legislation which the Star Chamber gave to the king by the enforcement of proclamations, contrary to law, the Common Law Courts gave him, and as little in accordance with the rules of law, where the money, or the liberty, of the subject were concerned. and its results.

The Long Parliament took away the jurisdiction of the Privy Council in civil and criminal matters, and in so doing struck off a formidable branch of the royal prerogative. It also in unmistakable terms precluded the king from raising money without consent of Parliament. But the episode of the Commonwealth did far more than legislation could do to affect the powers of the Crown as then existing. Effect of the Long Parliament; and of the Commonwealth,

The prerogative of the English king had not rested on an armed force for its maintenance, but on custom and respect for law, and to some extent on imagination, and an acceptance of the existing order of things as a part of the scheme of nature. The issue of the war between King and Parliament showed that there was no such miraculous attribute

[1] 'In cases touching the prerogative, the judgement shall not be according to the rules of Common Law.'

'The king's power is two-fold, ordinary and absolute . . . The absolute power of the king is applied for the general benefit of the people, and is *salus populi*, as the people is the body and the king the head; and as the constitution of the body varies with time, so varies this absolute law, according to the wisdom of the king, for the common good.' Judgement of Court of Exchequer in *Bate's* case, 2 St. Tr. 371.

'That which is now to be judged by us is, whether one committed by the king's authority, *no cause of commitment being set forth*, ought to be delivered on bail, or to be remanded to prison.' The Court of King's Bench held that one so committed ought *not* to be delivered. *Darnel's* case, 3 St. Tr. 1.

in the prerogative as would enable the king and his followers to resist superior numbers or superior organization. The nation learned that, in the last resort, force could keep the king within the bounds of law unless he had a greater force at his back. This greater force, now that feudalism had passed away, was represented by a standing army. The right to maintain a standing army became a practical question from the time of Cromwell.

in raising the question of a standing army.

And there remained within the limits of law a formidable weapon,—the king could still dismiss the judges at pleasure. No attempt was made by Charles II to use this power in order to raise money: it would have been dangerous here to trifle with the stringent legislation of the Long Parliament, and Charles, alike from levity of temper and practical cleverness, was disinclined to run risks or to disturb his enjoyment of life for a mere extension of the powers of the Crown. The corruption of the House of Commons and the establishment of a system of Parliamentary influence were a safer and more effective way of getting what he wanted. When this failed he used his influence over the Courts to attack the charters of the boroughs, and the charters, when forfeited or surrendered, were remodelled so as to secure the ascendancy of royal will in the choice of members. When the unhappy James II desired to get rid of the Statutes passed for the security of the English Church, the powers of the Crown over the judges were again used to obtain a judicial sanction for illegal acts. The king desired to dispense with the operation of a Statute and to do so with the sanction of the Courts of law: he raised the question by means of a suit brought against the man in whose favour the dispensation was given, and secured such a decision as he desired from a Bench reconstituted for the purpose[1]. Nor was he content with the misuse of the dispensing and suspending powers: the Commonwealth had taught him the importance of a standing army, and a standing army was in course of creation when the Revolution came upon him.

The last Stuarts.

Corruption of Parliament.

Control of the Bench.

The standing army.

The Bill of Rights recited all the outstanding points of

[1] *Godden* v. *Hales*, 2 Shower, 275.

dispute between king and subject, the right to maintain a standing army among others, and decided them against the king; and the Act of Settlement took from the king the last of the prerogatives which enabled him to interfere with the course of the Common Law, or to override Statute, when it provided that the judges should hold their office during good behaviour, but might be dismissed upon address of both Houses of Parliament. The Bill of Rights.

Henceforth the theory of divine hereditary right lived on only in the imaginations of those who mingled politics with romance. The Crown becomes the official representative of the community, to carry out its wishes so far as they are expressed or can be ascertained.

Section IV

The Prerogative since 1688

§ 1. *The dependence of the Crown upon Parliament.*

The legislation of the reign of William III had done two things in respect of the royal prerogative. It had defined the legal rights of the Crown, and it had taken from the Crown the means of controlling the interpretation of those rights. The king was forbidden by Statute to raise money or keep a standing army in time of peace without consent of Parliament, to suspend laws or to dispense with their operation as James had done; but this was not enough. Judges who owed their places to the king's favour, and risked them by incurring his displeasure, had been able to disregard the Petition of Right in Hampden's case and the Test Act in Hale's. From the day that the Act of Settlement gave to the judges security of tenure *quam diu bene se gesserint*—subject to good behaviour in their office—and brought their action within the cognizance of Parliament, the king's Courts existed no longer to do the king's pleasure, but to interpret and enforce the law of the land. Constitutional Monarchy. 1 Will. and Mary, st. 2, c. 2. 12 & 13 Will. III, c. 2, s. 3.

But although in all administrative acts the king's

Dependence of Crown on Parliament

pleasure could only be expressed through officers amenable to the Courts of law, the determination of matters of general policy, and the choice of ministers remained unaffected by the restrictions which I have described. In respect of these two things remained to be done in order to bring the exercise of the prerogative under the criticism and supervision of the estates of the realm. The first of these was to compel the Crown to have frequent recourse to Parliament, the second was to bring the choice and the action of the King's ministers under some sort of Parliamentary control.

for money:

The first of these objects was attained when Parliament limited the king's life revenue to such a sum as would barely enable him to conduct the civil business of government; when it legalized the standing army, and granted supplies for the national armed force, every year, and for no more than a year.

for approval of policy.

The second was the gradual result of all the preceding limitations, whereby the King was made dependent upon the goodwill of Parliament for money and for legislation. From the Revolution onwards the King was, as heretofore, forbidden by Statute to tax without consent of Parliament; but this was not all; his power over the purse was further limited by the appropriation of supply and by the reduction of that portion of supply which was left under his personal control to just so much as would suffice to conduct the business of the country for a year at a time. Not only had he no longer a Court of Star Chamber to enforce his Proclamations—his power to suspend and dispense with Statutes was declared to be unlawful. The Act of Settlement made it impossible for him to rely upon a packed bench of judges who would hold that he might break Statutes in virtue of his discretionary prerogative; nor could a pardon granted beforehand shelter a Minister from impeachment behind the irresponsibility of the Crown. He could not add to the borough representation by giving charters, for the Commons were prepared to question his right to add to their number: he could not tamper with existing boroughs by the forfeiture and remodelling of their

charters, for the judges before whom the validity of such charters would be contested were no longer under his control.

Thus between 1688 and 1701 the King was precluded from the use of force, the misapplication of public money the perversion of law; and was compelled to have recourse continually to a House of Commons whose composition he could not alter, and whose members he could not intimidate. He might, indeed, attempt the corruption of the constituencies, but his powers in this respect were no more than those of a distinguished person who held landed property and had money available. George III was the last king who used this advantage. He might also influence individual members by inducements of personal advantage. Hence the clause in the Act of Settlement, which never came into force, making office or place of profit, held of the Crown, incompatible with a seat in the House of Commons, and hence the legislation of 1707, and the official disqualifications created by subsequent Statutes [1].

The House of Commons, in thus disabling office-holders, failed to see that it had more to gain by bringing the King's ministers into dependence upon itself than by cutting itself adrift from the executive in fear of royal influence upon legislation. Through Ministers alone could the Crown effectually communicate its wants to Parliament, and Parliament, by the readiness or reluctance with which it met the needs of the Crown, could indicate the amount of satisfaction with which it regarded the persons whom the Crown employed to conduct the business of government.

The Commons and the King's ministers

Since the Bill of Rights and the Act of Settlement have brought the prerogative within legal bounds which the King cannot transgress, it remains to ask, What is the discretionary power of the King, as the executive of the country, within those bounds? And the questions to be asked are three—

(1) Is the King free to appoint and retain such Ministers as he chooses?

[1] Part I: Parliament, pp. 76, 90.

(2) What is the influence of the King in the settlement of general policy?

(3) How may the King act in matters of administration?

§ 2. *Parliament and the choice of the Ministers of the Crown.*

Here is the only important point of contention between Crown and Parliament since the Revolution. The King has claimed to choose Ministers irrespective of the wishes of the House of Commons; the Commons have insisted that the Ministers of the Crown shall be chosen from the political party which is in a majority in the House, and that their tenure of office shall depend on the retention of the confidence of that majority.

The Ministries of William III.

The composite Ministries of 1689–1696 gave way to the Whig Ministry of 1697, as Sunderland made William III understand that he must rely upon one party or another if he wanted the support of a majority of the House of Commons for his policy; the Whig Ministry of 1697 passed by degrees into the Tory Ministry of 1700, as William perceived that a change of feeling in the country, represented by a change in the balance of power in the House of Commons, necessitated a corresponding change in his advisers. But it was in the reign of Anne that the necessary dependence of the Queen and her advisers upon one or other of the two great political parties became strongly marked.

Anne and Godolphin.

Godolphin, the Lord High Treasurer, and Marlborough, the Captain General, in the first ministry of Anne, found the country committed to a European war the policy of which they approved. In this they differed from the bulk of the Tory party to which they belonged. They tried to create out of existing parties a following for themselves but they had to learn by experience that it is difficult for more than two parties to exist where political feeling is strong. At this time there were two parties and no more. The Whigs were for war with France, for religious toleration, and for the Hanoverian succession. The Tories were

for peace, were averse to standing armies, staunch upholders of the privileges of the Church, and somewhat lukewarm in their sentiments towards the Electress Sophia.

Party government under Anne;

At the beginning of Anne's reign the war was the dominating feature in the policy of the country, and Marlborough and Godolphin on this point were not in accord with the bulk of the Tory party: they could not convert their friends nor form an independent party of their own, and they were thus compelled to rely upon the support of the Whigs. In time the Whigs claimed office as the price of support. But Anne was a Tory, and though her chief Ministers were willing to ally themselves with their political opponents, the Queen resented their demand that she should employ persons whose opinions she disliked. When in the full tide of military success Godolphin and Marlborough made the dismissal of Harley a condition of their retaining office, the Queen reluctantly dismissed Harley, and with equal reluctance allowed the great offices of state to be filled by Whigs. But she watched the turn of popular feeling, and when she became assured that this was running in her favour, and that the Whigs were unpopular, she dismissed them one by one and recalled Harley and St. John.

In the history of the time the rudiments of party government appear. The personal wishes of the Queen have great influence; a ministry does not stand or fall together, but ministers of one party replace ministers of another by a gradual process of change. And yet the opinion of the country represented by a majority in the House of Commons determines the Queen's choice, and by that opinion she must abide.

under the Hanoverians.

The first two Hanoverian kings were necessarily dependent upon the party which had placed their dynasty upon the throne. Political interest had languished throughout the country, but Parliamentary management in the hands of Walpole became a means of securing a working majority to a minister who knew its secrets. Thus the House of Commons was used by the party managers to

put pressure upon the king, and George II was constrained, not without grumbling, at one time to part with Carteret whom he liked, at another to employ Pitt whom he detested. George III tried, and not without success, to get the machinery of Parliamentary corruption into his hands, to break up parties, and to destroy all sense of collective responsibility in his ministers. But the jealousy which was stirred by this extension of royal influence gave a new life to party loyalty. For the first time since the Jacobites had fallen out of practical politics, we now find a party, the Rockingham Whigs, bound together, not as embarked in a joint adventure in search of office, but as sharing some sort of common opinion as to the relations of King and ministers in the constitution.

Increase in Parliamentary independence:

Little as the Parliaments of the eighteenth century could be said to represent the wishes of the people, yet the revival of political interest, stimulated by the war of American Independence, did put some constraint upon the inclinations of the King. Public opinion compelled the retirement of North (1782); confirmed the King's action in dismissing the Coalition Ministry (1783); and gave to the younger Pitt a majority in the Parliament of 1784, which made him independent of royal intrigues. This awakening of public opinion was intermittent, but as the eighteenth century closed, the House of Commons became more independent; the grosser forms of corruption disappeared with Lord North. Still the likes or dislikes of George III could make or mar the fortunes of statesmen, and the influence of the royal wishes, though waning, was still perceptible throughout the Regency and the reign of George IV.

in strength and cohesion of majorities.

The Reform Bill of 1832 made the House of Commons representative of the rising middle class and the manufacturing interest. Weight was thus given to a Parliamentary majority, and the increased interest in politics which creates and enforces party loyalty held the majority together. The pressure of such majorities upon the choice of the Crown now became irresistible. William IV did not resist it. The statement often made and long believed, that he dismissed Lord Melbourne's Ministry upon personal

grounds, can no longer be accepted after the full account given by Lord Melbourne of the circumstances under which his Ministry came to an end[1]. Queen Victoria invariably accepted the decision of the country as shown by a general election or a vote in the House of Commons. Ministers are the King's servants, but they are chosen for him by the unmistakable indication of the popular wishes given at the polling booth or in the division lobby. Legal theory and actual practice here, as elsewhere in our constitution, are divergent. The occasions when the choice of a Prime Minister has practically rested with the Sovereign are not real exceptions to this statement. Party lines may, for a time, become indefinite. They were so after the break up of the Conservative party in 1846, when the Coalition Government of Whigs and Peelites was formed by Lord Aberdeen in 1852. Or the leader of the party may not be obvious and paramount. Such was the case in 1859, when Queen Victoria, doubting if either Lord Palmerston or Lord John Russell would consent to serve under the other, asked Lord Granville to make an attempt, which proved ineffectual, to form a Government in which these two magnates would consent to serve under him. So again in 1894, when Mr. Gladstone retired, the Queen did not consult him on the choice of a successor, but invited Lord Rosebery to become Prime Minister[2].

But in these cases it is plain that the Queen did not follow political or personal likings, as Anne and George III had done, and that the choice exercised was really an endeavour to find ministers acceptable to the majority of the House of Commons and to the people, who had sent that majority to Parliament.

§ 3. *The Crown and its Ministers in the Determination of Policy.*

The business of government, like all other business, passes through two stages—the determination of policy

Policy settled by Ministers.

[1] Melbourne Papers, pp. 220-6.

[2] Morley, Life of Gladstone, iii. 512, 513.

or principle, and the working out of detail; the settlement of what is to be done, and the doing of it.

Absence of King from Cabinet meeting.

The general policy of the country, its foreign relations, proposed legislation, the principles of departmental management, are discussed and settled at the meetings of those great officers of state who are at the same time leading politicians and party leaders, and who constitute the body known as the Cabinet, of which more hereafter. At these meetings the Sovereign has ceased to be present since the death of Anne. At meetings of the Privy Council the Sovereign has been and is personally present, but the business at such meetings is of a formal character. When first the discussion of general questions of policy passed from the Privy Council to that inner circle of advisers which we call the Cabinet, a period which we may fix at the commencement of the reign of Charles II, the Sovereign presided alike in Cabinet and Council: the personal opinion and wishes of Charles, of William and of Anne[1], formed an important factor in the discussions which took place and in the conclusions reached. George I had difficulties in understanding our language, which made his attendance at these meetings alike useless and irksome. He absented himself, and his example has been so consistently followed as to have become a settled custom[2].

Effect of King's absence.

But the custom introduced by George I had far-reaching effects. The absence of the Sovereign from the meetings of Ministers at which the general policy of government is discussed and settled does not alter the legal rights of the Crown, the legal liabilities of its Ministers, or their legal relations to one another; but if Ministers are to settle affairs of state at meetings from which the King is absent, some

[1] See a curious note by the editor of the Hardwicke Papers, ii. 482.

[2] Mr. Todd (Parliamentary Government in England, ii. 115) records three instances of occasions on which the King has been present at a Cabinet meeting since the accession of George I. Two of these are formal meetings to lay before the King the draught of the speech to be made at the opening of Parliament (Hardwicke, Life, ii. 231; Hervey, Court of George II, ii. 555): the third is of very doubtful authority (Waldegrave Memoirs, 86). As exceptions from the established rule they are wholly unimportant.

one must preside at these meetings. The Prime Minister comes into existence, and the Crown recedes into the background.

Loss of controlling Power.

No doubt it is through the agency of the Crown that Ministers carry a policy into effect. If the King refuse to sign the necessary documents, or give the necessary assent, the thing which Ministers wish to be done cannot be done. But Ministers may say that they will not remain Ministers unless their policy is carried out; and Parliament may say, and the electorate may support it in saying, that it will have no other Ministers and no other policy. The absence of the King from the Cabinet deprives him of a voice in the determination of that policy. A King who presides at a discussion upon which a decision is formed, exercises an influence obviously greater than that of a King who merely receives the decision of his Ministers as the result of their collective opinion. The position of affairs has been reversed since 1714. Then the King or Queen governed through Ministers, now Ministers govern through the instrumentality of the Crown.

His freedom from responsibility.

Another result of this retirement of the Sovereign from meetings of the Cabinet was to make him as free from responsibility in the determination of general policy as he had been for a long time in executive action. This could not be while the King took an active part in the discussions at which the policy of the country was settled. He was not regarded as free from such responsibility by his Ministers, nor did he so regard himself. Danby, in 1678, formally pleaded a pardon under the Great Seal in bar of an impeachment. Somers, in 1701, alleged the King's command as his warrant for affixing the Great Seal to powers to treat and ratifications of treaties, and disavowed all responsibility for the terms of the treaties[1]. William III complained that the hesitating advice of his Ministers threw upon him the responsibility of directing the movements of the fleet[2]. Yet he was not usually wanting in self-reliance, and Sunderland regretted that he did not oftener 'bring

[1] Parl. Hist. v. 1272.
[2] Shrewsbury Correspondence (Coxe), 68.

his affairs to be debated' before the Cabinet[1]. It would have seemed as though the provision of the Act of Settlement, that a pardon should not be pleaded in bar of an impeachment, was designed rather to secure the liability of the Minister than to remove that of the King.

Gradually recognized.

The beginning of the change is noticeable in a curious debate[2] in 1711 on a motion of censure on the Queen's Ministers for the mode in which they had carried on the war. 'For several years past,' said Lord Rochester, 'they had been told the Queen was to answer for everything; but he hoped that time was over; that *according to the fundamental constitution of this kingdom Ministers are accountable for all.*'

It was doubtless largely due to the position occupied by the first Hanoverian kings that the non-intervention of the Crown in active political discussion passed so rapidly into a settled convention. But it was also inevitable that when the primary responsibility of Ministers came to be acknowledged, the King could not continue to act alone. If Ministers are responsible for every act of the Crown they may fairly insist that such responsibility should not be laid upon them without their knowledge and consent. Hence there has come about a change in the whole character of the relations of the Crown to its Ministers, since the reign of Anne. No act of State can be approached, resolved upon, or done, without the inevitable intervention of the responsible Minister.

Independence in political action,

William III arranged the terms of the first Partition Treaty and induced Somers and Vernon to send him powers in blank, to enable him to conclude a peace with France on terms to which they were only permitted to give a hurried and formal approval. Anne wrote dispatches and interviewed foreign Ministers[3]. Neither George I nor George II seem to have acted independently of their Ministers in matters of executive government, foreign or domestic. Complications might well have arisen out of the martial instincts of George II, combined with his position as Elector

ceases after 1714;

[1] Hardwicke State Papers, ii. 461. [2] Parl Hist. vi. 972.
[3] Bolingbroke Letters, 26 Dec. 1710-23 Oct. 1711.

of Hanover. But he acted on the advice of his responsible Ministers, and refrained, in 1729, from challenging the King of Prussia to a personal combat, and refused, in 1735, the flattering offer that he should take command of the Imperial army of the Rhine[1].

George III, though he used all the resources of prerogative in the choice of Ministers and in appointments to offices, never held private communications with foreign Ministers. George IV for a short time broke through this rule, but Canning when he became Foreign Secretary insisted on its observance[2]. 'I should be very sorry,' he says in 1825, 'to do anything at all unpleasant to the King, but it is my duty to be present at every interview between His Majesty and a foreign Minister.' in foreign relations;

The Sovereign does not, constitutionally, take independent action in foreign affairs: everything which passes between him and foreign princes or ministers should be known to his own Ministers, who are responsible to the people for policy, and to the law for acts done. The private letters addressed by Queen Victoria and the Prince Consort to foreign princes, or received from them, if they touched upon politics, were shown to the Prime Minister or to the Foreign Secretary, or to both[3].

But though the Sovereign of this country takes no independent action in foreign politics, his interest in such questions is necessarily keen, his knowledge extensive, and the extent to which he may influence or assist his Ministers in the settlement of diplomatic issues is considerable.

The circumstances attending Lord Palmerston's dismissal in 1851 show that Queen Victoria required to be clearly informed as to all communications with foreign powers, and to have an opportunity of expressing an opinion before any action was taken by her Ministers[4]. And the memoirs of the years 1859, 1861, and 1864 furnish abundant evidence of the influence which the Sovereign

[1] Lord Hervey, Court of George II, i. 127; ii. 6.
[2] Stapylton, George Canning and his Times, 433.
[3] Martin, Life of the Prince Consort, iv. 433.
[4] Hansard, cxix. 90.

of this country may exercise on diplomatic issues. In 1859[1] and in 1864[2] Queen Victoria pressed upon Lord Palmerston and Lord John Russell the views entertained by a majority of the Cabinet, in opposition to the adventurous or meddlesome lines of conduct to which those two distinguished statesmen were respectively inclined. Royal influence saved the country from the risk, at any rate, of becoming involved in a European war. In 1861 a grave crisis in our relations with the United States resulted in a happy issue, largely owing to the re-drafting of a dispatch by the Prince Consort, who was at that moment stricken with mortal illness[3].

in domestic administration.

The same rule applies in domestic affairs. When George IV desired that the prerogative of mercy should be exercised in the case of a person sentenced to death in Ireland, and wrote privately to that effect to the Lord Lieutenant, Sir Robert Peel, at that time Home Secretary, remonstrated with him strongly, on the impolicy of his action; intimating also, very plainly, that the advice of the Minister responsible for the exercise of this prerogative ought to have been taken before the king wrote to the Lord Lieutenant. The king gave way[4].

And this responsibility is clearly understood and accepted by Ministers. When, in 1834, Sir Robert Peel accepted office in succession to Lord Melbourne, he believed, erroneously, that Melbourne had been dismissed by the king, and he recognized that by taking office he had made the dismissal his own act. 'I should,' he says, 'by my acceptance of the office of First Minister, become *technically, if not morally*, responsible for the dissolution of the preceding Government, though I had not the remotest concern in it[5].'

§ 4. *The Crown and its Ministers in Action.*

Legal irresponsibility;

The King is practically irresponsible for the conduct of Government. 'Ministers,' in the words of Lord Rochester,

[1] Fitzmaurice, Life of Lord Granville, i. 349-61. [2] Ibid. 459-70.
[3] Martin, Life of the Prince Consort, v. 422.
[4] Wellington Dispatches, Civil S. vi. 313, 319; Parker, Sir Robert Peel, ii. 146-51. [5] Sir Robert Peel's Memoirs, ii. 31.

'are accountable for all.' If the affairs of the nation are ill conducted; if the policy of the Foreign Office involves us in war, or otherwise complicates our relations with other States; if the War Office and Admiralty leave us insufficiently provided with men, arms, and ships; if the Home Secretary misdirects the use of the prerogative of mercy, the Ministers of the day collectively or individually suffer in the public esteem. An individual Minister may be forced to resign, or the representatives of the people in Parliament, or the people themselves at a general election, may withdraw their confidence from the Ministry as a whole; a vote in the House of Commons, by the choice of representatives at a general election, may effect a transfer of political power to another party in the State. Any of these things may happen, but no one would attribute blame to the King.

But responsibility for policy, and for the general results which follow upon such policy, is a moral responsibility, enforced, it may be, only by loss of esteem, at worst by loss of place and power, if the advice given and the consequent action taken is unwise and results in disaster.

Legal irresponsibility is a different matter. The maxim 'the King can do no wrong' has two meanings. The King is not responsible for mistakes of policy however gross; he acts on the advice of his Ministers. And further, the King is not responsible when he acts on the advice of his Ministers even though the action thus taken is contrary to law. And yet the King is not above the law; every act of a department of Government is the King's act, and to many important acts of State the King is directly a party. He summons, prorogues, and dissolves Parliament; appoints to all the great executive, judicial, and spiritual offices; makes peace, war, and treaties; confers dignities, grants charters, authorizes the spending of public money, sets in motion the judicial circuits: for these and any other acts which the King must do in his official capacity some one is responsible, and if the law is broken legal responsibility attaches to the law-breaker. But the King is not legally liable for acts done in his service or by his command, and

how it acts as a check

on the King.

we find the practical check on royal action in the rule that the King's command is no excuse for a wrongful act.

The consequence of this freedom from legal liability does not promote—indeed it tends to fetter—the independent action of the Sovereign.

(a) Reluctance to act for an irresponsible master.

The legal irresponsibility of the King may not unnaturally cause a reluctance on the part of his servants to carry out commands, in matters of doubtful legality, since they, and not he, would be liable for the consequence of acts done. For the fact that the matters complained of were done by a Minister of the Crown or an officer of some department of Government, that they were done in the service of the Crown, or even by express royal command, is no answer to the complainant.

(b) King's command no excuse.

The King's command is no excuse for a wrongful act, and whether the wrongful act takes place at the direct instance and instruction of the King, or is done in the course of the service, civil or military, of the Crown, he who has committed the crime or done the wrong is personally liable. Our constitution has never recognized any distinction between those citizens who are and those who are not officers of the State in respect of the law which governs their conduct or the jurisdiction which deals with them[1]. Such exceptions to this general statement as may be found in our books depend on rules of Statute or Common Law limited in character and clear in principle. With these I will deal hereafter. For present purposes it is enough to say that to proceedings for a wrong or a crime it is no answer that the offence was committed at the request of another: that in the case of such offences against the State as have led to impeachment by the Commons, neither the King's command nor a pardon, however formally expressed, will furnish a defence at the bar of the House of Lords: and that in the ordinary course of law the King can grant no pardon for a civil wrong whereby an individual has suffered, and if he pardon a crime or an offence of a public nature the prerogative of mercy must be exercised through a responsible Minister.

[1] Dicey, Law of the Constitution, ed. 3, ch. xii.

(c) Formality in expressing royal will.

But there are acts of executive government which must be done directly by the King, and here we find that ministerial responsibility is secured by the requirement that a seal should be used of which a Minister has the custody, or that the counter-signature of a Minister should be affixed to the document which gives authority for the act.

Informal personal acts.

It may be said at once that there is hardly anything which the Sovereign can do without the intervention of written forms, and nothing for which a Minister is not responsible.

Ministers enter the service of the Crown by kissing the King's hands, but there are formalities which attend the assumption of all offices, the delivery of seals, a key, or a staff, the execution of a document involving the use of the sign manual and counter-signature of one or more Ministers [1], in some cases the employment of the Great Seal [2]. The President of the Council is appointed by simple declaration, and members of the Privy Council are admitted without form on kissing the King's hands and taking the Privy Councillor's oath, but these things are done at a meeting of the Council [3]; and a register is kept of every transaction which takes place at these meetings.

But there is a limited range within which a king may act without formality and yet with effect. The great political offices are held during pleasure, and the King might no doubt send for a Secretary of State and desire him to deliver up the Seals, or for the book of the Privy Council and strike out the name of a Councillor.

The King might also, while Parliament was sitting, enter the House of Lords, take his place on the throne, desire the House of Commons to be summoned to the bar of the House, and then and there dissolve or prorogue Parliament.

[1] The First Commissioner of Works is appointed by sign manual warrant countersigned by two Lords of the Treasury.

[2] The Postmaster-General is appointed, and the Commissions of the Treasury and Admiralty constituted, by Letters Patent under the Great Seal.

[3] An extract from Lord Iddesleigh's diary gives a lively description of the formalities of taking office: see Life of Lord Iddesleigh, by Andrew Lang, vol. i. p. 262.

These acts would be operative, but the King's Ministers would be held responsible, and would decline to accept responsibility for acts done without their advice. A capricious use of the prerogative in these respects meets a practical check: for a king would experience much difficulty in finding Ministers to serve him under conditions in which they were credited by the public with acts done without their knowledge and probably contrary to their judgment.

Departmental procedure.

We may therefore dismiss from consideration these informal acts, and we may next dismiss those orders more or less formal which proceed from the judicial or administrative departments of government, and the acts done by such departments, in virtue of a delegated authority from the Crown, often regulated by Statute.

Formal expressions of royal will.

There remain numerous acts of State to which the Sovereign is an immediate party, varying greatly in their importance, from a proclamation for the summons of a Parliament or the ratification of a treaty, to a licence for a theatre. These formal expressions of the royal will are made in various forms and on the responsibility of various persons. I propose in an appendix to this chapter to describe the forms by which these acts are done, and to note the officials who become responsible for them. Enough has now been said to show the limitation which law and custom have set to the exercise by the Crown of its executive powers, whether those powers are used in the choice of Ministers, the determination of policy, or the doing of acts of State.

In theory the Crown chooses its Ministers; in practice the wishes of the country, of the House of Commons, of the party leader to whom the formation of a Ministry is entrusted, greatly limit the royal choice. In theory the Crown does every important act of executive government; in practice every such act must be done in conjunction with a Minister responsible for the act and its consequences, and must be done in such a way as to ensure that this responsibility is real.

And yet although the discretionary exercise of legal

powers has passed from the Crown, though it has become the instrument through which his Ministers give effect to the policy which they believe to be approved by the country, the real influence of the Sovereign of this country is not to be estimated either by his legal or his actual powers as the executive of the State. The King or Queen for the time being is not a mere piece of mechanism, but a human being carefully trained under circumstances which afford exceptional chances of learning the business of politics. Such a personage cannot be treated or regarded as a mere instrument: it is evident that on all matters of State, especially on matters which concern the relations of our own with other States, he receives full information, and is enabled to express if not to enforce an opinion[1]. And this opinion may, in the course of a long reign, become a thing of great weight and value. It is impossible to be constantly consulted and concerned for years together in matters of great moment without acquiring experience, if not wisdom. Ministers come and go, and the policy of one group of Ministers may not be the policy of the next, but all Ministers in turn must explain their policy to the Executive Sovereign, must effect it through his instrumentality, must leave upon his mind such a recollection of its method and of its results as may be used to inform and influence the action of their successors. It is true that our Kings and Queens can no longer exercise at their pleasure the executive powers of the State, nor enjoy a perfectly free choice of the Ministers who are to exercise those powers. They still remain the instrument without whose intervention Ministers cannot act; they still remain advisers who have enjoyed unusual opportunities for acquiring the knowledge which makes advice valuable, who may be possessed of more than ordinary experience, whose warnings must be listened to with more than ordinary courtesy.

[1] Illustrations of this statement are furnished by the memorandum communicated at the Queen's desire to Lord Palmerston in 1851, post, ch. iii. sect. iii. § 3 (p. 129): and by the correspondence which passed between the Queen and Archbishop Tait in 1869 as to the action of the House of Lords in respect of the Bill for the Disestablishment of the Irish Church. (Davidson, Life of Archbishop Tait, vol. ii. ch. xix.)

APPENDIX TO CHAPTER I

Executive Acts done by the Crown

Forms in which the King's Pleasure is expressed.

Instruments of expression.

The King's pleasure is expressed for administrative purposes in one of three ways:—

1. By order in Council.

2. By order, commission, or warrant under the sign manual.

3. By Proclamations, Writs, Letters Patent, or other documents under the Great Seal.

(1) Order in Council.

(1) An Order in Council is, practically, a resolution passed by the King in Council, communicated by publication or otherwise to those whom it may concern. It runs thus:—

> At the Court at ——, the 1st day of June, 1907.
> Present,—
> The King's most excellent Majesty in Council.
> His Majesty, by and with the advice of his Privy Council, doth order and it is hereby ordered . . .

Then the substance of the order follows. Such a resolution may be embodied in a Royal Proclamation.

Proclamation.

A royal Proclamation is a formal announcement of an executive act, such as a dissolution or summons of Parliament, a declaration of war or peace, the enforcement of the provisions of a statute the operation of which is left to the discretion of the Crown in Council. The act is a resolution of the King in Council, but the document by which it is promulgated—the Proclamation—passes under the Great Seal [1].

(2) Passing on to those documents which do not proceed from the Privy Council, but from the department of a responsible Minister or Ministers, we find that they consist of sign manual warrants, commissions and royal orders.

(2) Sign manual warrant,

A sign manual warrant may be an executive act, or may be merely an authority for affixing the Great Seal.

[1] I have set forth the form of a Proclamation in vol. i. ch. iv. § 4.

Under the first head fall appointments to various offices. For instance, in the case of stipendiary magistrates the sign manual warrant is countersigned by the Home Secretary: in the case of the Paymaster-General, the First Commissioner of Works, and the Commissioner of Woods and Forests, the warrant is countersigned by two Lords of the Treasury. as an executive act,

Under the same head falls the exercise of various statutory powers by the Crown; as for instance the abolition of purchase in the army by royal warrant, when Queen Victoria acted under the provisions of 49 Geo. III, c. 126: or the exercise of the prerogative of pardon, in this form, as provided by 5 Geo. IV, c. 84.

But a very frequent use of the sign manual warrant is to authorize the affixing of the Great Seal to Letters Patent. There is then transmitted by the Crown office through a responsible Minister to the King, a document, consisting of three parts, (1) the warrant which must be signed by the King and countersigned by a Secretary of State, and which constitutes the authority for affixing the seal, (2) the patent, to which the seal is to be affixed, and (3) the docket. as authority for affixing Seal.

The *docket*[1] is a short note, for the information of the King, of the purport of the Letters Patent, and the name of the Secretary of State by whose order they are prepared. It runs thus:—

> May it please your most excellent Majesty.
>
> This contains a warrant to the Lord High Chancellor to pass letters patent, [the object is here shortly stated.]
>
> And this warrant is prepared according to your Majesty's command, signified by Mr. Secretary ——.
>
> J. M. Clerk of the Crown.

A royal order under the sign manual, as distinct from a sign manual warrant, seems to occur only in the case of an order for the expenditure of public money, as appro- Royal order.

[1] There is another sort of docket, which is a separate instrument, accompanying all Letters Patent and descriptive of their tenor. It is not sent to the King, but is stamped as required by the Stamp Act (54 & 55 Vict. c. 39), and is kept by the sealer as an authority for sealing. For forms of letters patent and sign manual warrant, see Appendix i.

priated for the service of the year. It has taken the place of a number of sealings and warrants which were once required [1].

Commission.

An appointment to office by *commission* where the commission is not conferred by Letters Patent under the Great Seal, differs but little from an appointment by sign manual warrant. The Viceroy of India is appointed by *warrant* under the sign manual, the governor of a colony by *commission* under the sign manual and *signet*; the first appointment of an officer in the army is by *commission* under the sign manual and the second secretarial seal.

(3) Instruments under Great Seal.

(3) The documents to which the Great Seal is affixed are Proclamations, Writs, Letters Patent, and the documents which give power to sign and ratify treaties.

Proclamations.

A *Proclamation* as described above is an announcement of some matter which the King in Council desires to make generally known to his subjects.

Writs.

A *Writ* is a mandate addressed by the executive to an individual requiring him to do, or forbear from doing, some act. The great majority of writs issue from the High Court of Justice, or from inferior Courts, in virtue of the delegated judicial power of the Crown. But certain writs pass the Great Seal, and are a more direct expression of the royal will; such are writs for the election of members, addressed to the returning officers of boroughs and counties, and writs of summons to individual peers [2].

Letters Patent.

Letters Patent are an open document to which the Great Seal is affixed; such a document is used for various purposes. It may be used to put into *Commission* powers of various sorts inherent in the Crown—legislative powers, as when the King entrusts to others the opening of Parliament, or the duty of assenting to Bills; judicial powers, as when the judges are sent upon circuit, to clear the gaols, to hear and determine felonies and the like, or to take assizes; executive powers, as when the duties of Treasurer and Lord High

[1] 29 & 30 Vict. c. 39, s. 4. For the form of such an order see Appendix iii.

[2] For many purposes the Crown Office Act, 1877, enables a wafer impression of the Great Seal to be used.

Admiral are assigned to commissioners of the Treasury and Admiralty. It is used to constitute a corporate body by charter; to confer offices, as judgeships of the High Court, or professorships of Civil Law or Divinity at Oxford, or places in the College of Arms; or to confer dignities, as for the creation of peers; or to pardon one charged with crime who is required as a witness for the Crown. It is used to grant to a Dean and Chapter a licence to elect a bishop, or to Convocation a licence to confer for the purpose of amending or altering canons [1].

Treaties.

For the purpose of making a *Treaty*, the first stage in the proceedings is the grant of powers to representatives of the Crown to negotiate and conclude the treaty. For this purpose an instrument is prepared containing full powers to the Minister representing the Crown to negotiate or conclude a treaty, or convention, with the Minister who is invested with similar powers to act for the State which is the other party to the transaction. To this instrument the Great Seal is affixed on the authority of a sign manual warrant countersigned by the Secretary of State for Foreign Affairs.

Powers.

Signature and sealing.

When a treaty is concluded it is signed and sealed in duplicate by the Ministers representing their respective countries with their own seals. If the treaty contains, as is usual, a clause providing that it shall be ratified and ratifications exchanged at some future date and specified place, then until ratification neither side is bound by it. If there is no such clause, the treaty may take effect in accordance with the terms therein contained [2]. The power to ratify or reject is vested in different parts of the Sovereign power, according to the constitution of different countries—in a popular assembly, as the Cortes in Portugal; in a second

[1] It should be borne in mind that in the case of appointments to offices the Minister responsible for the appointment ascertains the King's pleasure before the preparation of the more formal documents which I have described. The name of the person to be appointed is submitted in writing, which if approved is initialed by the King.

[2] For the usages as to ratification, the distinction between tacit and express ratification, and the moral obligation not arbitrarily to refuse to ratify, see Hall, International Law, ed. 3, pp. 329-34.

chamber, as the Senate in the United States; in the Executive, as the Crown in England.

Ratification.

And so a warrant is again issued under the sign manual, countersigned by the Secretary of State, for affixing the Great Seal to an instrument ratifying the treaty. The instrument of ratification, which is in fact the treaty with the Great Seal affixed to it, is then exchanged, by the Minister empowered to do so, for a ratification with corresponding forms from the other side. The Ministers who exchange ratifications execute at the same time in duplicate a document of a less formal but very important character, a statement, sealed with their respective seals, that the ratifications have been exchanged. The document of ratification of the treaty by the foreign power with whom we are dealing, and the document attesting the fact that ratifications have been exchanged, are then deposited in the Foreign Office.

It is possible that a treaty may require legislation in order to bring it into effect. Such is the case with treaties involving fiscal changes which cannot be brought about without the consent of Parliament. The ratification is then postponed till the required legislation has taken place, or the treaty must contain, express or implied, a condition subsequent that its operation is dependent on the action of Parliament.

Persons responsible for the Expression of the Royal Pleasure.

Privy Councillors.

The order in Council is made by the King 'by and with the advice of his Privy Council.' Those persons who are present at the meeting of the Council at which the order is made assume the responsibility for what is done.

Responsible Ministers.

The sign manual warrant or other document to which the sign manual is affixed bears the counter-signature of one or more responsible ministers. In case of Instructions given to a colonial governor, where no such counter-signature appears, the document is authenticated by the use of the Signet, one of the three seals for the use of which a Secretary of State is responsible.

The Great Seal is affixed on the responsibility of the Chancellor, but though he is primarily responsible, there are in most cases certain forms by which he is authorized or directed to use this final authentic expression of the royal will. The Chancellor.

These forms used until lately to be very complicated; their complication was due to the conflict between kings and their advisers in the fourteenth and fifteenth centuries. The King wished to order the use of the Great Seal without the intervention of any Minister but the Chancellor; the Council and the Parliament were determined that at least one other officer of State, the keeper of the Privy Seal, should be a party to the transaction [1]. Ancient modes of giving authority.

An act of 1535 [2] settled the forms necessary for the most important purposes in which the Great Seal needed to be employed. Every gift, grant, or writing signed with the sign manual and intended to pass under any of the great Seals [3], was to be brought to the King's Principal Secretary or to one of the Clerks of the Signet; a warrant under the Signet was then to accompany the document to the Lord Keeper of the Privy Seal, who in turn transmitted it with a like warrant under the Privy Seal to the Chancellor or other officer, in order that effect might be given in due form to the King's pleasure as expressed in 'gift, grant, or writing.' At some date subsequent to 1689 the Law Officers of the Crown were introduced into the transaction at its earliest stage. Legislation of the present reign has reduced these forms to reasonable limits [4].

[1] Proceedings of the Privy Council, vol. vi, Preface, pp. clxxxiv, clxxxviii, excii, excvi.

[2] 27 Hen. VIII, c. 11.

[3] There were Great Seals for England, Ireland, the Duchy of Lancaster, the Counties Palatine of Durham and Chester and the Principality of Wales.

[4] Before 1851 a patent under the authority of a Secretary of State might pass through the following forms:—

1. Warrant, signed by King and countersigned by Secretary of State addressed to Attorney- or Solicitor-General to prepare a *Bill*.
2. Bill prepared, signed by Attorney-General and taken to Secretary of State's office for the King's signature. There called the Attorney-General's Bill.
3. Bill signed by the King, taken to Signet Office, there called the

Existing modes of giving authority.

We can therefore consider, within these limits, the modes in which authority is given for affixing the Great Seal. They are four:—

A *fiat* of the Chancellor or Attorney-General, or warrant of the Speaker of the House of Commons.

An Order in Council.

A sign manual warrant [1].

A sign manual warrant preceded by an Order in Council.

Chancellor's fiat.

For certain purposes the Chancellor may order the use of the Seal without any previous signification of the King's pleasure. This is done in the case of some of the Commissions for holding circuits in England and Wales [2], of Com-

King's Bill, and there deposited. For a description of the Signet Office, which was really a branch of the office of the southern, afterwards Home, Secretary, see Thomas, Departments of Government.

4. An attested transcript sealed with Signet, handed on to Lord Privy Seal's Office, bidding him direct Chancellor to make Letters Patent in prescribed form, taken to Privy Seal Office, and there deposited.
5. An attested transcript of the above, sealed with Privy Seal, with request for direction was lodged at Crown or Patent Office in Chancery. There an engrossment was made of it, and the Privy Seal and engrossment left at the Lord Chancellor's.
6. If Lord Chancellor saw no objection, he wrote his name under the grant, and the Great Seal was then affixed. (Nicolas, vi. pp. ccviii–ccx.)

The changes are as follows:—

14 & 15 Vict. c. 82. Necessity for *Signet* abolished.

43 & 44 Vict. c. 103. Attorney- and Solicitor-General not to prepare warrants for Letters Patent.

47 & 48 Vict. c. 30. Necessity for *Privy Seal* abolished; and a warrant under H.M. sign manual, prepared by the Clerk of the Crown, countersigned by Lord Chancellor, one of the principal Secretaries of State, the Lord High Treasurer, or two of the Commissioners of the Treasury, is authority for affixing the Great Seal.

This is not to affect cases where the fiat, authority, or direction of Chancellor is sufficient.

[1] In the case of Letters Patent empowering Commissioners to open Parliament, or to give the royal assent to Bills, the sign manual warrant is a part of the document, or rather, the King's signature, as well as the Great Seal, is affixed to the Letters Patent. This is under 33 Hen. VIII, c. 21, s. 5.

[2] This is true of the autumn assizes, and of the intermediate assize after Easter in Lancashire and Yorkshire. For the purpose of other circuits, the King signs two warrants, one to assign the judges to their respective circuits, the other containing the names of the King's counsel and of others who are to be put into the Commission.

missions of the Peace, of writs of summons to peers to attend Parliament on succeeding to the Peerage, of writs of *dedimus*, *supersedeas*, *mittimus*[1].

Writs for bye-elections to fill vacancies in the House of Commons are issued from the Crown Office on the authority of a warrant from the Speaker, Commissions of Escheat on the *fiat* of the Attorney-General. Speaker's warrant.

In certain cases the authority of an Order in Council is sufficient. A royal proclamation passes the Great Seal in virtue of such an order, and though writs for a new Parliament are in practice issued on the authority of the proclamation for the summons of a Parliament, an Order in Council is usually made, directing the Chancellors of England and Ireland to issue the necessary writs. Order in Council.

In the great majority of cases the mode in which the authority is given is by a sign manual warrant countersigned by one of the principal Secretaries of State when Letters Patent are used to signify the royal pleasure, or when powers are given to conclude or ratify a treaty. On certain occasions the Lord Chancellor countersigns the warrant. The Lords of the Treasury might do so, but do not in practice. Sign manual warrant.

In a few cases an Order in Council is required to precede the issue of the sign manual warrant. These occur in the grant of charters to towns or other corporate bodies, and also in certain cases when the warrant proceeds from the Colonial Office. For the Privy Council advises the Crown before a corporation is created and invested with privileges, and a colony, in default of any other provision for its government, is governed by the Crown in Council. Order in Council and warrant.

It will be understood that although an Order in Council or a sign manual warrant, or both, may for certain purposes be required as authority for affixing the Great Seal, yet that all three are separate modes of signifying the royal

[1] Writ of *dedimus* giving power to administer oaths—as in the case of persons newly placed on the Commission of Peace.

Of *supersedeas* to stay the exercise of a jurisdiction.

Of *mittimus* to authorize the removal of records from one Court to another.

pleasure, and that in each case either a body of Privy Councillors or an individual Minister is rendered responsible for the action of the Crown.

The forms above stated seem to comprise all the modes in which the royal will is expressed for executive purposes, and they show how many restraints are imposed on its expression by the interposition of responsible Ministers.

Necessity for observance of forms.

Nor is any choice allowed to the Crown as to the necessity for an individual expression of consent, or as to the form in which it should be expressed if custom or rules of law require that the assent should be given in a particular form.

Exceptions.

(1) Illness.

(2) Absence from kingdom.

In cases of illness or of absence from the kingdom, the use of the sign manual has been dispensed with. A stamp has been allowed to be affixed under certain conditions when a King or Queen has, from weakness or pain, been unable to sign in person; and a Commission has from time to time been issued under the Great Seal to enable Lords Justices to sign on behalf of the King when he has been absent from the kingdom [1].

Modern facilities of communication have made the appointment of Lords Justices unnecessary. The last four reigns have produced but one such Commission, in 1821. And the number of cases in which the sign manual is now required by Statute seems in the course of the present century to have made Parliament more scrupulous as to the delegation of this royal function.

Henry VIII, Mary Tudor, and, it is said, William III,

[1] The following is the form in which that part of the Commission runs which gives authority to sign for the King. It is taken from the Commission of 1719.

'And our Will and Pleasure is, that the said William Archbishop of Canterbury, &c., by virtue of the authority granted by these presents, be, and shall be known, named and called by the name, Title, or Stile of Guardians and Justices of our said Kingdom, or our Lieutenants in the same; and that all Writs, Letters Patent, Commissions and other instruments or writings whatsoever, which should or ought to have or bear Teste by or under ourselves, shall bear Teste in and under the name of the First for the time being and the Stile of other Guardians and Justices of our said Kingdom, and of our Lieutenants in the same, in the form following, viz.: Witnesses, William Archbishop of Canterbury and other Guardians and Justices of the Kingdom. 44 Com. Journals, p. 40.

issued Commissions giving power to certain persons to apply a stamp of a certain form to such documents as should pass the sign manual.

Statutory exemption.

In the last weeks of the life of George IV his infirmities made it difficult and painful for him to affix his signature to documents for which the sign manual was necessary. It was then considered that neither the King of his own authority, nor the King in Council, could make valid the expression of the royal will in any other way than by actual signature, and so a Statute[1] had to be passed providing that a stamp might be affixed in lieu of the sign manual; but the King was required to express his consent to each separate use of the stamp[2], and the document so stamped was attested by a confidential servant and a number of high Officers of State.

In illness of George IV.

In case of military commissions.

Again, until 1862, it was the practice that all commissions in the army should pass under the royal sign manual. The accumulation of commissions awaiting signature had reached 15,000. An Act was passed to enable the Queen, by Order in Council, to free herself from the duty of signing such commissions. It was argued in debate, on the authority of the precedent of Mary's reign, and of the commissions to the Lords Justices in the reigns of George I and George II, that the Queen could by virtue of her prerogative depute others to sign for her; but Sir G. C. Lewis pointed out that commissions had always passed the sign manual, that this practice had been recognized by various Statutes, including that of George IV just referred to, and that it could not safely be abandoned except on statutory authority[3].

[1] 11 Geo. IV, c. 23.

[2] Stanhope, Conversations with the Duke of Wellington, p. 257:—

'The King was rather irritable from the effect of a clause which Lord Grey had introduced into the Bill for the Stamp, that his assent should be spoken separately to each paper requiring signature. Keppel, who was always about him, was very careful as to the due observance of this rule; once or twice, when the King had only nodded, instead of repeating the same words, Keppel reminded the Duke, and the Duke then reminded the King. His Majesty said, with some impatience, "Damn it! what can it signify?" But the Duke answered, "Only, Sir, that the law requires it;" upon which he complied.'

[3] Hansard, clxv. 1483.

CHAPTER II

THE COUNCILS OF THE CROWN

SECTION I

THE COUNCILS BEFORE 1660

§ 1. *The growth of the Council.*

THE King, as we have seen, never acts alone. That which he does in the department of judicature he does through his representatives in the Courts. That which he does in administration he does through the intervention or on the responsibility of a Minister or Ministers, or of the Privy Council. The general policy of his government is determined by the advice of the Cabinet.

The three Councils.

I will not dwell at this moment upon the King as judge, or upon the details of administration. In the present chapter I would ask what has been the history and what are the present circumstances of the three great Councils of the Crown: the House of Lords, with the judges and law officers who share in its summons; the Privy Council, necessary, as has been shown, for the transaction of certain formal acts of State; the Cabinet, which settles questions of general policy and determines the action which shall be taken by the departments.

The materials for the history are ample enough, but this does not make it easier to form conclusions as to the character of the King's Councils at any given times, in theory and in fact, or to mark the stages of transition by which we have reached the conditions of the present day. The King can take counsel of whom he will, but we shall always find that there are certain persons specially entitled to offer advice, and certain persons under a special liability to give advice. To these we may add a group, not always so distinct, of persons whose advice is habitually expected, given, and acted upon. These groups, although they pre-

serve a perceptibly separate existence throughout our history, yet appear to be constantly fading into one another, and when they are classified and named by eminent writers it is difficult on closer inquiry to find the consultative bodies which correspond to the names.

The four Councils of Coke and Hale.

Coke tells us that the King is assisted by four Councils: (1) The *Commune Concilium* or Court of Parliament, (2) The *Magnum Concilium*, or House of Lords, (3) The Privy Council for matters of State, and (4) The Council of the Law, consisting of the judges.[1] Hale also describes four Councils, agreeing with Coke as to the first two, but placing a *Concilium Ordinarium* between the *Magnum Concilium* and the *Concilium Privatum* and omitting the Council of the Law.[2]

The last two Councils of Hale might be thought to correspond with the Privy Council and the Cabinet, but we must not apply modern ideas to the terminology of the seventeenth century. It will be better to try to ascertain what the four Councils of Hale really were.

And here we must note a tendency in every successive Council, first to increase in size, then to form within it a nucleus of advisers who transact the more important business, then to become two bodies in all but name, the real and the titular councillors, lastly to part in name as well as in fact, whereupon the smaller Council in turn runs the same course.

The Commune Concilium.

We can trace this process soon after the transformation of the Witan into the *Commune Concilium*, wherein the qualification for membership rested on the tenure of lands from the Crown. Within this assembly of magnates developed the group of great officers of the household and of State, who, sitting with their staff of subordinates in *Curia* or in Exchequer, transacted the judicial and financial business of government. It would perhaps be an anticipation of modern ideas to say that the *Curia* was the executive, the *Concilium* the legislative and deliberative body[3], but this distinction

[1] 1. Co. Litt. 110(a).
[2] Hale, Jurisdiction of the House of Lords, ch. ii.
[3] Stubbs, Const. Hist. i. 387, 388.

between the two bodies tended to become more marked as the larger body expanded from an assembly of magnates into an assembly of tenants-in-chief, the *Commune Concilium* of the Charter.

Gives way to Parliament.

This assembly of tenants-in-chief in its turn gave way to the assembly of estates, the clergy, baronage, and commons, summoned in person or by their representatives to advise and assist the Crown in Parliament. Here, if anywhere, is the *Commune Concilium* of Hale and Coke.

The Magnum Concilium.

Of these estates one, the baronage or magnates, from its composition, was more easily brought together for purposes of consultation, and, from its power, was more necessary for purposes of consent. It represented the Concilium of the Norman kings before that assembly was afforced by the summons of the tenants-in-chief. Hence it remained and still is a council of the Crown, the *Magnum Concilium* of Coke and Hale, the House of Lords of to-day.

The Continual Council.

Meanwhile the *Curia*, if we may assume that it was a separate and definite body, existing for the combined purposes of council and administration, gradually disappeared as the executive and judicature defined themselves. The Chancery parted from the Exchequer in the end of the twelfth century; the Common Law Courts with their special jurisdictions became distinct in the course of the thirteenth: and there comes into existence a Council which includes the great officers of State. The members of this Council have, in addition to such departmental duties as any of them might discharge, the duty and responsibility of advising and acting with the King.

This body, ill-defined as to constitution and powers, but always in immediate attendance upon the King, appears first during the minority of Henry III. It is distinct from the larger deliberative assembly, the *Commune Concilium*, from the more frequently summoned assembly of the magnates, and from the judicial and financial staff which transacted the business of the Courts, the Chancery, and the Exchequer.

In the middle of the thirteenth century it had assumed so definite an existence that the mode of its selection forms

an important feature in the Provisions of Oxford[1]. From the reign of Henry III we may say that, as an assembly, it had acquired a corporate character: its members were sworn as councillors of the Crown: general questions of policy were here discussed, and prepared, if necessary, for the consideration of the estates of the realm: finally, it was the medium through which the King, himself irresponsible, performed acts of State[2]. It is the *Continual* Council.

Confusion of Councils

We should note an uncertainty which existed for some time after Parliament had come into existence, as to the legislative powers of the Crown when acting with a body which was neither the Continual or King's Council nor the National Council, but the King's Council *plus* the estate of the baronage. Edward I used such an assembly for purposes of legislation[3]. Edward III tried to obtain grants of money from a body which consisted of Council, baronage, and a selected representation of the commons[4]. Yet it is possible to distinguish these Great or General Councils of the magnates, occasionally summoned to advise the King, from Parliament on the one hand and the Continual Council on the other. The confusion clears away as the legislative rights of the commons are recognized and insisted upon. The Great Councils were summoned from time to time on special occasions throughout the fourteenth and fifteenth centuries, and on these occasions they transacted business, other than legislative, such as might have been dealt with at the Continual or Privy Council. On two occasions only was a Great Council summoned in the seventeenth century[5].

gradually disappears.

The baronage assumes its position as an estate of the realm and a House of Parliament. The *Magnum Concilium* survives in certain privileges of the House of

Post, p. 136.

[1] Provisions of Oxford. Stubbs, Documents, 396.

[2] The order for expelling the Jews (1290) was made 'per regem et secretum concilium.' Ibid. 435.

[3] As in the passing of Quia Emptores; and see Stubbs, Const. Hist. ii. 26.

[4] Rot. Parl. ii. 253, 257, and see vol. i, Parliament, 228, 291. Hale, Jurisdiction of Lords' House, p. 8, says, 'The form of these great Councils ever varied.'

[5] Such Councils were summoned by Charles I in 1640, and by James II in 1688. Clarendon, Rebellion, ii. s. 34; Macaulay, History of England, ch. ix. vol. iii. 262; Clarke, Life of James II, vol. ii. p. 238.

Lords and in certain duties of the judges and law officers of the Crown.

Powers of Continual Council.

So we may leave the first two of Hale's Councils, and watch the developments of the Continual Council. If the minority of Henry III first gave a definite existence to this Council as a group of responsible advisers, the minority of Richard II was the time when its powers were defined as practically co-extensive with the prerogative[1].

The business of the Council covered the whole field of executive action: its members were appointed for a year, but were usually re-chosen; they were bound to attend its meetings, and were paid for their services[2].

Its relation to the Commons.

Ante, pp. 20, 22.

I have already spoken of the attempts by the Commons to control the appointment of the Council, of their moderate success between 1377 and 1422, of their cessation after the latter date: these matters, together with the changes in the composition of the Council during the fifteenth and sixteenth centuries, relate to the limitations on the power of the King rather than to the constitutional history of the Council. Whether the Council was made up of great feudal lords, as in the later period of the Lancastrians, or of men of business of no great birth or estate, as under the first Tudors, or whether, as in the earlier part of the fifteenth century, both these elements were present, the powers of the Council were much the same; only in the first case they might be used as a check upon the King; in the second, the King, himself irresponsible, might use the Council and its powers with formidable effect.

But assuming that from the end of the fourteenth century the Council was admitted to be,—with the King, and subject to his initiative,—the executive of the country, there are three points to be noted in its history between this date and the Rebellion. They are (1) the development of an outer and an inner Council; (2) the judicial powers of the Council; (3) the closer relations of Council and Parliament.

[1] Stubbs, Const. Hist. iii.

[2] Nicolas, Proceedings of Privy Council, i. p. v; and see lists of members of the Council, ibid. 237, 295.

§ 2. *The Ordinary and the Privy Councils.*

The Councils of the fourteenth and fifteenth centuries were the Great Council, and the Continual or Privy Council[1], the former summoned for special occasions, the latter in constant attendance upon the King. Between the years 1460 and 1540 there is a blank in the records of the Council, and when we are able to resume the narrative of its proceedings we find that the Great Council has fallen into abeyance, and that another sort of Council, the *Concilium Ordinarium*, has come into existence.

The ordinary Counsellors.

An obscurity hangs about this Council, both as to origin and composition. It is not the same body as the Privy Council. The latter varied in numbers and in other respects during the Tudor reigns; it was sometimes divided into two groups, one to attend the King when he moved about the country, the other to transact business in London[2]; it was sometimes divided into Committees[3], to each of which some department of executive business was assigned. But outside the body of Privy Councillors there appear to be a number of persons sworn of the Council yet not habitually summoned to those meetings which are recorded as meetings of the Privy Council.

Their legal character.

The accounts which we have of this Council, whether we turn to the precise description of the *Concilium Ordinarium* by Hale[4], or to less explicit references in documents of the Tudor period, all suggest that the *ordinary* counsellors were chosen mainly for legal or judicial purposes.

Hale treats of the *Concilium Ordinarium* chiefly in its relations to the Courts of Law. Henry VIII, in November 1541, orders his Chancellor to summon his 'counsellors *of all sorts*, spiritual and temporal, with the judges and learned men of his Council[5],' to hear of the misconduct of

[1] The term 'Privy Council' dates from the reign of Henry VI. Nicolas, Proceedings of Privy Council, i. p. lxxii.

[2] Nicolas, vii. pp. xv, xx.

[3] Burnet, Hist. of Reformation, v. 119.

[4] Hale, Jurisdiction of the Lords' House, c. ii.

[5] Nicolas, Proceedings of Privy Council, vii. p. xix.

Katherine Howard. The ordinary Council does not correspond to Coke's 'Council of the Law[1],' which was confined to the judges, whereas there seems to be no doubt that among the ordinary counsellors were persons of rank and dignity [2], and learned lawyers who had not attained to the Bench [3].

It is very likely that Hale, writing at the end of the seventeenth century, describes this Council with more exactitude than is justified by the facts of its history; and indeed one must admit that it is impossible to dogmatize about the constitution, at any given time, of Councils whose existence was never defined by rules of law and whose composition was mainly determined by practical convenience. The judges are liable to be called upon for advice, the Privy Council are regularly and habitually consulted and have become the recognized channel of executive action. It was convenient during the Tudor period that the legal and judicial element in the Council should be strengthened by the addition to the King's Councils of men whose advice might strengthen the judicial work of the Council though not needed on general matters of State. We may be further justified in saying that occasional counsellors for non-legal matters were sometimes introduced. Yet these institutions are essentially elastic, they are different at one time and at another, but the process of change is impalpable.

After the close of the Tudor period we hear no more of Ordinary Counsellors, save in the later description of Hale.

Changes in the Privy Council.

The Privy Council itself underwent changes in the sixteenth century. It changed in number; there were eleven members at the accession of Henry VIII [4], and twenty-five at the time that Edward VI came to the throne [5]. Mary's

[1] Co. Litt. 110 a.

[2] As, for instance, the Bishops of London and Rochester and Lords St. John and Windsor. Nicolas, Proceedings of Privy Council, vii. p. xxii.

[3] The conciliar functions of the judges survive in the writ of attendance which they receive at the commencement of each Parliament. (Part I. p. 52.) The learned men of the Council are to be found in the King's or Queen's Counsel learned in the law.

[4] Nicolas, Proceedings of Privy Council, vii. p. 4.

[5] Burnet, Hist. of Reformation, v. 117.

Council was much larger, rising at one time to forty-six. During the reign of Elizabeth the number dropped from eighteen to thirteen. We find too a change in the composition of the Council as compared with the previous century. New men devoted to the business of official life and of no great weight in the country had been introduced by Edward IV; and officials pervade the Tudor Councils [1]. This was the advice of Fortescue [2], who thought that the King's business suffered from the inattention of great lords, engrossed in their own affairs and in the advancement of their families and dependants.

Beginnings of the Cabinet.

The formal division of the Council into Committees under Edward VI and the assignment of the most important business to a Committee of State [3] may have continued under Mary. During the last years of Elizabeth's reign the Council was greatly reduced in number, and nearly all its members held high offices. It was in effect a Cabinet Council. Under the Stuarts the numbers were increased. The Committee of State of 1553 reappears under that title in 1640, when it is also described as a 'Cabinet Council' by way of reproach [4].

It seems almost inevitable that unless the entire Privy Council was often reconstituted the treatment of important matters must pass into the hands of a few. The Council would always contain men qualified for one cause or another to be Councillors of the Crown, but not possessed of the practical sagacity, promptitude of judgment, and force of character which come into play when some crisis calls for immediate action and nothing that can be done is free from risk. The men who possess these qualities would be the

[1] In 1536 the Yorkshire rebels complained that there were too many persons of humble birth in the Council: Henry VIII replied that it contained more of the nobility than when he came to the throne, but added that 'it appertaineth nothing to any of our subjects to choose our Council.' Nicolas, Proceedings of Privy Council, vii. p. lv.

[2] Governance of England, ch. xv. ed. Plummer, p. 145.

[3] Burnet, Hist. of Reformation, v. 119. The King sat with this Committee for matters of most importance.

[4] The Hardwicke Papers, ii. 147, contain the minutes of a Cabinet Council of August 16, 1640. See too Clarendon, History of the Rebellion, bk. ii. ss. 61, 99.

men to form the 'Committee of State,' the 'junto,' the 'Cabinet.'

§ 3. *The Judicial Powers of the Council.*

The severance of the Common Law Courts from the *Curia* had not exhausted the judicial powers of the Crown. Those who wanted remedies which the Courts of Law could not supply, and those who wanted redress which the Courts of Law could not enforce, came to the Crown as to the fountain of justice, and the Crown in Council did for the suitor what the King's grace might prompt. The Chancellor, who was usually a lawyer as well as an administrator, carried into the Chancery a good deal of the judicial work of the Council; but successive Chancellors gradually confined their jurisdiction to cases in which they supplemented the Common Law, and built up a body of equitable rules respecting uses, fraud, and the enforcement of contracts.

In the reign of Edward III, as we are told by Coke[1] and Selden[2], there were three Courts into which writs *coram rege* were returnable: they were so returnable *in Banco*, *in Camera*, *in Cancellaria*—in the King's Bench, the Council Chamber, or the Chancery—and the coercive jurisdiction of the Council, though a subject of remonstrance on the part of the Commons, grew more necessary as the numerous households and retainers of the great lords[3] spread disorder for which the ordinary litigant had no remedy.

A poor man's court.

This jurisdiction served two objects, the assistance of the weak or the poor, and the maintenance of order.

In the first of these cases the Council acted, as did the Chancellor, upon the receipt of a bill or petition. In rules made for its governance in 1390 the Lord Privy Seal and

[1] Coke, Institutes, iv. c. 5.

[2] Selden, Discourse on Laws and Government of England, ii. c. 3.

[3] The great lords had councils of their own. See Fortescue, ed. Plummer, pp. 308–10. 16 Ric. II, c. 2, forbids lords or ladies to compel appearance before their councils on any disputed right to real or personal property under penalty of £20. The Act, 31 Hen. VI, c. 2, giving power to the Council to deal with cases of riot and oppression, has already been referred to; supra, p. 20.

others were to deal at once with the bills of persons of small importance; again in 1424, its members were enjoined in dealing with petitions not to meddle with such matters as were determinable at the Common Law, unless they should 'feel *too great might on the one side, and unmight on the other*, or else other reasonable cause that should move them [1].' Similar in character is an ordinance of 1443. Wolsey, when Chancellor, established a Committee of the Council to sit 'in the Whitehalle' 'for the expedition of poore mennys causes depending in the sterred chamber [2].' And to the same purpose it is provided in the ordinance of 1526 for the household of Henry VIII, that of those members of the Council who were in constant attendance on the King, two should sit daily in the Council Chamber at certain hours to hear 'poor men's complaints [3].'

The Whitehall and the Court of Request.

We may follow this jurisdiction to its close. It became the Court of Requests, sitting in the Whitehall, consisting of certain members of the Council and some lawyers, 'Masters of Requests,' to hear matters referred to it by the Council, or matters which came directly before it. The Masters of Requests were sworn of the Privy Council, though as time went on they ceased to be reckoned among the Privy Councillors, and though sworn as counsellors to the King had no precedence among members of the Privy Council [4]. They dealt with cases resting on the suggestion that the suitor was either too poor to proceed at Common Law, or that he was a member of the King's household [5]. The parties came directly before the Court or were referred to the Masters of Requests after petition to the Council [6]. Judgments of the Court were enforced by writ of attachment under the Privy Seal.

[1] Nicolas, Proceedings of Privy Council, i. 18: iii. 149.

[2] S. P. Dom. Hen. VIII, iii. 571 (MS. Record Office), set out in vol. xii of the Publications of the Selden Society, p. lxxxi.

[3] Ordinances for regulation of Royal Household, 159, 160, and see Nicolas, vii. p. viii.

[4] This change took place early in the seventeenth century. Selden Soc. Publications, vol. xii. p. xli.

[5] Lambarde, Archeion, 229.

[6] Memorandum by Dr. J. Herbert, Secretary of State. Selden Series, xii. p. xxv.

But in the later years of the sixteenth century the Common Law Courts took exception to a jurisdiction which deprived them of litigants and of fees. The judges, in assailing the Court of Requests with writs of prohibition, treated it as a new Court created under the early Tudors, with neither statutory authority nor immemorial custom to support its jurisdiction. The validity of the writ by which obedience to the orders of the Court was enforced was challenged in the Common Pleas in 1598, and it was held that 'the Court of Requests or the Whitehall was no Court that hath a power of Judicature [1].'

This, in the view of Coke, terminated the existence of the Court, though he speaks with regret of its discontinuance. But he was premature: the need of cheap and speedy justice prevailed over the alleged infirmity of jurisdiction; and the Masters of Requests, presided over by the Lord Privy Seal, did a large judicial business throughout the reigns of James I and Charles I. Even the Act for the abolition of the Court of Star Chamber, which would seem to have taken away from the Privy Council all jurisdiction exercisable by the ordinary courts of justice, did not interfere with the action of the Court of Requests. But it ceased to sit in the troubled times of the Civil War, and was not revived by Charles II [2].

ı court to nforce rder.

In the Court of Requests the Council exercised a civil jurisdiction in the interests of those who wanted to get justice cheaply. But there was another class of cases in which the strong hand of the executive was needed. Here the Council dealt with offences against order, disregard of proclamations, fraud, forgery and the mutilation of documents, perjury, conspiracy; these were punished with fine, imprisonment, the pillory, loss of ears, and whipping [3].

This seems to have been an original jurisdiction of the

[1] Coke, Inst., iv. p. 97.

[2] The Committee of Council, appointed Feb. 7, 1667 (when there was a general re-arrangement of the Committees), to deal with petitions and grievances, was forbidden 'to meddle with questions of property, or what relates to *meum & tuum*.' Register of Privy Council, Charles II, vol. vii. p. 173. See also Selden Series, xii. p. l, li.

[3] Acts of the Privy Council, ed. Dasent, i. 39, 105, 124, 209.

King's Council, sometimes, but not necessarily, exercised in the Star Chamber. The often-cited Act 3 Henry VII, c. 1 constituted a committee of the Council, the Chancellor, Treasurer, Lord Privy Seal, or any two of them, with a spiritual and a lay member of the Council, and with the addition of the two Chief Justices, or other two judges, to deal with cases of livery and maintenance, misconduct of sheriffs, and other specified offences against order. A later Act added the President of the Council to this Court[1]. The Star Chamber.

The object and effect of this Act has been much discussed. Let us first look at the facts. The Council did not cease to exercise some criminal jurisdiction throughout the reign of Henry VIII, and in 1540 took power to compel those whom it summoned to enter into recognizances to attend its pleasure until they were dismissed, a power constantly exercised and, one must suppose, in a manner very irksome to the subject[2]. Among the Committees which Edward VI appointed, one was to deal with offences against order, the disregard of proclamations, and the infliction of the necessary punishments[3]; and during the reigns of Mary and Elizabeth we find the Council dealing with offences, mostly in the nature of seditious language, and ordering punishments.

A secretary of the reign of Elizabeth setting out his duties, records the distinction which existed between two branches of the work of the Council—matters of public interest, foreign or domestic, and matters between party and party. And of this second branch little is dealt with by the Lords of the Council, but in case of breaches of the peace 'the Lords do either punish the offender by commitment, *or do refer the matter to the Star Chamber*, where great riots and contempts are punished[4].'

[1] 21 Hen. VIII, c. 20. This jurisdiction is recognized in 5 Eliz. c. 9, § 7.

[2] Nicolas, vii. 27, and see Acts of the Council, ed. Dasent. Between April 1542 and the end of December 1546 no less than 158 such recognizances are recorded.

[3] Burnet, History of Reformation, vol. v. p. 117. There were six Committees: one to deal with the civil, one with the criminal jurisdiction of the Council: others for the State, for the revenue, for the collection of debts due to the King, and for the bulwarks.

[4] Prothero, Constitutional Documents, 167.

'ow ifferent 'omPrivy ouncil.

Thus side by side with this jurisdiction of the Privy Council we find existing another jurisdiction, that of the Lords of the Council sitting in the Star Chamber[1]. To this Court matters are constantly referred by the Privy Council in the reigns of Henry VIII, Edward VI, Mary, and Elizabeth; and when the Star Chamber is mentioned in the Acts of the Council, it is as the Court in which a case should be tried[2], before which an individual should appear[3], or a jury be censured[4]. Once there is a suggestion of jealousy on the part of the Council. Sir William Paulet, whose case had been deferred that he might formulate his charge, transferred it to the Star Chamber. The Council ordered that a matter brought before their table should not be removed to another Court without their authority, and required Paulet with all speed to exhibit his bill of complaint before them[5]. Thus, while we have two Courts, both of them exercising inquisitorial and judicial powers, we find that one makes only an occasional use of these powers, and is engaged mainly in administrative work. It remains to ask what distinction is to be found between Council and Star Chamber as regards jurisdiction, composition, or procedure.

'heir owers dentical.

One cannot suppose that the offences designated in the Act of Henry VII might not, apart from Statute, have been dealt with by the Council at large, or that, if they had been assigned to a Committee of the Council, the King might not have summoned two judges, not members of the Council, to assist the Committee. The Act did not create new offences, or a new jurisdiction, but it specified certain

[1] When Cranmer, on his first appearance before the Council, was ordered to appear before them on the following day at the Star Chamber, we seem to be on the point of identifying the two Courts. But the body which was present in the Star Chamber next day was a Committee of the Council 'appointed to sit upon the offenders.' It was not the Court of Star Chamber, for it transacted some administrative business, besides sending Cranmer to the Tower. Acts of the Privy Council, iv. 347.

[2] Acts of the Privy Council, ed. Dasent, v. p. 71.

[3] Ibid. i. p. 386 : iii. pp. 41, 176, 216, 388 : v. p. 193.

[4] Ibid. vi. pp. 382, 411 : vii. pp. 347, 207. In this last case the jury was summoned from Cornwall for acquitting a man charged with piracy, in order that the matter might be heard in the Star Chamber on the first day of Term.

[5] Acts of the Privy Council, ed. Dasent, vii. 405.

offences which the circumstances of the time had brought into prominence, entrusted certain persons with the exercise of a power which the Council had always possessed [1], and legalized procedure by writs of Subpoena and Privy Seal. Thus a stimulus and a definiteness were given to the exercise by the Council of a coercive jurisdiction which extended beyond the express provision of the Act.

Their procedure

And though the jurisdiction thus exercised would seem to be that of the King's Council, there were differences in procedure, the sittings of the Star Chamber were public, and were confined to the term time, and the evidence of those who came before the Court was given upon oath. When these differences arose it is not possible to say. Moreover, the persons who compose the Court are not the same as those who habitually sit at the Council Board. All contemporary authority on the subject of the Star Chamber points to the inclusion of men whose dignity or learning strengthens the Court, but who are outside the circle of habitual advisers of the Crown. It might be said that the Concilium Ordinarium is here discernible, but I will not strive at greater precision than the evidence permits, and will say that the Star Chamber was a Council of the Crown, that it exercised a jurisdiction which the Privy Council might have exercised, but that it included persons whom the Privy Council did not include [2].

and composition different.

[1] Thus Bacon says: 'In the Star Chamber a sentence may be good grounded in part upon the authority given the Court by 3 Hen. VII, and in part upon that ancient authority which the Court hath by the Common Law.' Bacon's Works, ed. Spedding, vii. 379.

[2] Bacon describes the Court as compounded of four elements, Councillors, Peers, Prelates, and Chief Judges Works, ed. Ellis and Spedding, vi. 85. Camden names certain great officers, as composing the Court, 'et omnes consiliarii status tam ecclesiastici quam laici, *et ex baronibus illi quos princeps advocabit.*' Britannia, ed. 1594, p. 112. Sir Thomas Smith includes, in addition to 'the Lords and others of the Privy Council, as many as will, *other Lords and Barons which be not of the Privy Council and which be in the town.*' Commonwealth of England, bk. iii. ch. 4. Crompton says: 'Le Court de Star Chamber est Hault Court, tenus avant le Roy et son Conseil et *autres.*' Courts de la Roÿne, pp. 29, 35. Finally, Hudson tells us that Lords of Parliament who were not members of the Privy Council claimed, and, in some cases, exercised, the right to sit and give judgment. Treatise of the

Abolition of Star Chamber.

In 1640 the Long Parliament passed an Act called 'an Act for the regulating the Privy Council and for taking away the Court commonly called the Star Chamber.' In the preamble to this Act, the Star Chamber is assumed to be a Court of criminal jurisdiction created by the Act 3 Hen. VII, c. 1. It is asserted to have exceeded the powers conferred by that Act, and it is abolished. But the composition of the Court is suggested in the words which forbid 'any bishop, temporal lord, privy councillor, judge or justice whatsoever' to hear and determine any matter in the Court henceforth abolished. The Privy Council, or Council Board, is also forbidden to 'intermeddle in civil causes and suits of private interest between party and party'; and persons committed by the King in person or by order of the Council are to have a writ of *habeas corpus*.

The Long Parliament may have been historically wrong in tracing the origin of the Court of Star Chamber to the Act of Henry VII, but there can be no question that a distinction was drawn between the Star Chamber and the Privy Council as to their composition and as to the matters dealt with by the two Courts. With this enactment, the judicial powers of the King's Council acting as a Court of first instance within the jurisdiction of the Courts of law is brought to a close.

§ 4. *The closer Relations of Council and Parliament.*

Nominations in Parliament.

The Commons had ceased, from 1422 onwards, to demand the nomination in Parliament of the King's Council. We do not know the time at which the Council ceased to be appointed for a year, and began to hold office during the King's pleasure; nor when they ceased to be paid for their services. Probably the Council of Regency which managed affairs in the minority of Henry VI set the example of an indefinite tenure of office; and the great lords who composed the later Lancastrian Councils were able to take care of themselves without payment.

Court of Star Chamber, Collectanea Iuridica, i. 25, and see Prothero, Constitutional Documents, 1559-1625, pp. 180-3.

From 1459 to 1621 there is no instance of an impeachment by the Commons. It would seem as though they had altogether relaxed their hold on the Executive.

The placing of the Lords.

And yet the connexion between Council and Parliament grew closer under the Tudors. In the House of Lords the dignity of the Council was enhanced by the 'Act for placing of the Lords[1].' The Chancellor, the Treasurer, the President of the Council, the Lord Privy Seal, if peers, take place above the highest members of the peerage; the King's Secretary, if a bishop or a baron, sits above all other bishops or barons.

Communications with the Commons.

In the lower House the attempts to establish communications between the representatives of the Commons and the representatives of the Crown take different forms. Henry VIII used to require the Speaker[2] to be the exponent of his wishes, and on a few occasions Ministers of the Crown who were not members of the Commons made unwelcome visits to the Commons House[3]. But from 1560 onwards the King's Ministers, the Chancellor of the Exchequer and the Secretaries are active in debate, and the Tudor practice of adding to the constituencies and tampering with the electorate was designed to secure seats for Court officials and nominees. In 1614 the presence of Privy Councillors was noticed in the House of Commons, but though their right to be present was discussed, it was not contested and was never afterwards disputed[4]. To admit members of the Council to discuss the King's business in the midst of them gave the Commons a surer mode of obtaining the control of affairs than the mere nomination of Ministers in Parliament. We approach the modern connexion of Executive and Legislature, but it is by slow degrees. When the authors of the Grand Remonstrance, in 1641, asked that the King should only employ such Councillors and Ministers as could obtain the confidence of Parliament, they probably had no clear idea as to the mode in which that confidence should be expressed.

Presence of Ministers in Commons,

[1] 31 Hen. VIII, c. 10.
[2] Stubbs, Lectures on Mediaeval and Modern History, 272.
[3] In 1514 and 1523. Parl. Hist. i. 482–5. [4] Parl. Hist. i. 1163.

At least, the presence of Ministers n the House of Commons explaining their policy and the King's needs was a surer and more practicable mode of harmonizing Legislature and Executive than the use, however frequent, of the remedy by impeachment.

a better security than impeachment.

Impeachment was a valuable weapon when it was first instituted in the fourteenth century, and again when its practice was revived by the Commons in 1621 under kings who were ready to strain the Constitution to the point of rebellion. It was then important to be able to strike a heavy blow at the instruments of the royal will. But for the ordinary purposes of controlling or dismissing a careless, perverse, or incapable Minister, the Commons, with no other means in their power than impeachment, were much in the position of an employer, who could not dismiss a useless or impertinent servant, but must wait till he was able to proceed by indictment for larceny or assault. The authors of the Grand Remonstrance said truly 'that the Commons might have cause often justly to take exceptions at some men for being counsellors and yet not charge those men with crimes[1].' It was only by their presence in the House of Commons that Ministers could be made to understand that they were indeed the servants of the King, but of the King as the official representative of the people.

Section II

The Supersession of the Council

§ 1. *Evolution of the Cabinet.*

The Council after the Restoration.

The Restoration did not give back to the Council the judicial powers which the Long Parliament had taken away. Duties, consultative and executive, still remained, and we now have to trace the supersession of the Council, as a consultative body, in favour of that group of confidential servants of the Crown which we know as the Cabinet.

The result of the contest between Charles I and his Parliament showed that the King could not govern except on amicable terms with Parliament, and as he must govern

[1] Clarendon, Rebellion, bk. iv. s. 73.

through ministers it would follow that these ministers must be acceptable to Parliament. This truth was not realized at once: and the process by which a correspondence of political opinion between ministers and the House of Commons has been secured was a slow one. But it began in the reign of Charles II.

Contrast of Councils of to-day

We are used to see a group of ministers acting together on lines of policy approved by the majority of the House of Commons, under a leader whom we know as the Prime Minister: meeting for consultation in a body which we call the Cabinet, and holding office so long as their policy commands the confidence of Parliament and of the country. Each of these ministers is at the head of some branch of government—Foreign Affairs, the Army, Trade, Education—which he administers with the aid of a large staff of permanent officials, and he represents this department, for purposes of explanation or defence, in the House of which he is a member. A subordinate minister outside the circle of the Cabinet represents the department in that House of which his chief is not a member. Before a minister adopts any measure of novelty or importance in the conduct of his department he would be bound to consult his colleagues in the Cabinet and abide by their decision.

Over against these ministers and their majority are the opposition leaders with the minority behind them, watching and waiting till the turn of public opinion gives them a majority and transfers to them the government of the country.

The Privy Council is therefore at the present time reduced, for ordinary purposes, to executive business which is formal and not discretionary, while its consultative functions have disappeared.

and those of Charles II.

But in the reign of Charles II and for some time after we can see only the bare rudiments of such a scheme of government.

We find indeed a body of ministers, holding high offices of State, though not necessarily administrative offices[1],

[1] To illustrate my meaning I would point out that the President of the Council, the Lord Privy Seal, and the Lord Chamberlain were always in

meeting, with more or less regularity, for purposes of consultation. But though one of these may enjoy a predominant influence with the sovereign, there is no recognized Prime Minister, first in the royal confidence and entrusted with the choice of his colleagues; nor is there any necessary coherence of political opinion nor even any sense of personal loyalty among the groups of men who meet to discuss and settle the policy of the country.

The absence of departments:

On the other hand, with the exception of the Treasury and the Admiralty, the departments of government as we understand them do not exist. The duties of the Secretaries of State were divided in a manner so arbitrary [1] as to show clearly that neither was expected to administer any branch of our affairs, foreign or domestic. The Secretaries were, in those days, merely the channels through which the decisions of the King in Council were communicated to those concerned.

Administrative business, not always excepting that of the Treasury and Admiralty, was carried on by Committees of the Council, or, if important, was prepared by them for submission to the full Council before action was taken.

their growth.

We are not here concerned with the growth and structure of the departments of government, so it is enough, for present purposes, to say that the administrative duties of the Council have gradually been transferred to Secretaries of State or to Boards, nominally consisting of a President and a number of great officers of State [2]. In fact the Board is the President, who is assisted by a Parliamentary Secretary, usually representing the Board in the House of which the President is not a member.

Our concern here is with the Councils of the Crown.

the inner circle of advisers. Their offices cannot be called administrative. Nor indeed, in those days, was the office of Secretary of State.

[1] One Secretary was responsible for communication with the Northern, the other with the Southern powers of Europe.

[2] The statutory composition of those Boards is at once a reminder that they spring from Committees of Council and a warning against a too literal acceptance of rules of constitutional machinery as representing what actually happens. If a Secretary of State was summoned to a meeting of the Board of Trade, or the Board of Education, he would probably learn for the first time that he was a member of the Board.

Council and Cabinet.

The Council which now determines the policy of the country is the Cabinet, all of whose members are also members of the much larger body of Privy Councillors. That there was, during the reign of Charles II, and earlier, such an inner circle of advisers of the Crown is not difficult to show. But in following out its history we have to trace the process by which the Cabinet becomes definite in composition, uniform in political opinion, collectively responsible for every act of Government. The task is somewhat difficult: this Cabinet, powerful and important as it is, has never been recognized by law; it is rare that we obtain any record of its transactions; it has varied in composition and numbers from time to time under the political conditions of the moment; and its relation to Parliament, and to the country, is undergoing constant, if imperceptible change. The history of the Privy Council is recorded in the Registers of the Council: that of the Cabinet must be made out from casual notices in memoirs and correspondence.

In the reign of Charles I.

Neither an inner council nor the name 'Cabinet' were unknown in the time of Charles I. Sometimes the name is applied to a definitely constituted committee of the Privy Council, sometimes to a group of advisers enjoying the special confidence of the King. Thus, in the State papers of the early months of 1640, the Committee for Foreign Affairs is referred to as the 'Lords of the Junto[1],' the committee for Scotch Affairs as 'the Cabinet Council.' But in July 1640 we find the Lords of the Junto dealing with a question relating to the coinage: while a body of persons identical in composition with the Committee for Scotch Affairs is described by Clarendon as 'the Committee of State which was reproachfully called the Juncto and enviously then in Court the Cabinet Council[2].'

Committees of Council.

It is extremely probable that where a Committee, set up for a particular purpose, was found to consist of persons who in a special manner commanded the confidence of the King he used it for general consultation and advice. But

[1] State Papers Domestic, 1639-40. See letters of Jan. 10, Feb. 7, Feb. 20, March 5, July 14.

[2] Clarendon History of the Rebellion (ed. Macray), ii. 99.

where no system existed we may exert our ingenuity vainly in the endeavour to construct one.

The Commons, in the Grand Remonstrance, demanded that the King should employ such ministers 'as Parliament may have cause to confide in.' A method by which the existence or withdrawal of their confidence might be shown was suggested in the words, 'without which we cannot give his Majesty such supplies for the support of his own estate nor such assistance to the Protestant party beyond the sea, as is desired.'

The King in reply asserted his right to choose his ministers, and stated that he proposed always to employ persons of ability and integrity [1].

Charles II. In the reign of Charles II a change in the direction of modern practice begins. On the one hand the administrative and departmental duties of the Privy Council become more clearly defined: on the other the Cabinet, under that name, becomes a permanent, if somewhat indefinite and unacknowledged, feature of our institutions.

Committees of Council, Throughout this reign the Committees of the Council were undergoing constant reorganization and change. At its commencement we find three standing Committees, for the Treasury, for Irish Affairs and for Foreign Plantations; others were appointed from time to time for particular purposes. In 1667 there was an important rearrangement [2], and the Committees for Foreign Affairs, for the Admiralty, for Trade and Plantations, and for Petitions of complaint and grievances are constituted with definite rules and duties. The Foreign Committee is so important during the next three reigns that it has been thought to contain the germ of the Cabinet; but though there may have been times when this Committee and the group of confidential advisers consisted of the same persons, the work of the Committee was departmental, while that of the Cabinet was concerned with general policy.

and inner Cabinet. This group of advisers appears at the beginning of the

[1] Gardiner, Constitutional Documents, 153, 158.

[2] Register of Privy Council, Charles II, vol. vii. p. 173.

reign, but on a small scale. It was necessary that some communication should be maintained between the House of Commons and the King's ministers, because money was wanted; the sources of revenue assigned by Parliament to the King did not produce the sum contemplated [1], and the funds needed would not be forthcoming unless a Parliamentary majority could be secured for a grant. To obtain this majority the ministers of Charles relied, not upon a community of political opinion with the Commons, but upon appeals to the loyalty, the good nature, or the self-interest of individual members.

The inner Council not a Cabinet.

How these appeals were to be made was settled in conference between Clarendon and Southampton, the Chancellor and Treasurer, and leading members of the House of Commons; these two ministers for a time advised Charles and determined the policy of the country. Soon however the King invited others to the conference, and appears to have himself dabbled in Parliamentary management, making promises without much regard to the prospect of their fulfilment [2].

But though one of the objects of this Committee was to obtain, by argument or inducement, the concurrence of a majority of the Commons with the wishes of the King, it does not satisfy our notion of a Cabinet. It was not a body of men who agreed on political questions, for Clarendon strongly resented the introduction of Ashley, Coventry, and Arlington to its consultations. The opinion of the majority did not bind the action of its members, for Clarendon and Southampton successfully opposed a Bill to enable the Crown to dispense with statutory requirements as to religious tests, though the Bill had been introduced into the House of Lords by Ashley with the approval of the King [3].

The meetings of this body were, in Clarendon's time, informal in character, and uncertain in place; and although general questions of policy were discussed, yet in grave matters of public interest, as, for instance, the sale of

[1] State Papers, Calendar of Treasury Books, pp. xxviii, xxix.
[2] Clarendon, Autobiography, ii. 205. [3] Ibid. 344-9.

Dunkirk, the result of the discussion was laid before the full Council[1] for decision.

Certainly before the end of the reign the term 'Cabinet' was used for the groups of confidential servants who advised the King, and their meetings also attained a certain regularity. Political unanimity does not appear to have been necessary or expected. The Cabal was certainly not a harmonious body, yet Burnet speaks of a subject in 1673 as being 'much debated in the Cabinet[2].'

Temple's Council.

The representative Privy Council of Sir William Temple's design, that transient and embarrassed phantom in our constitutional history, is interesting as showing how the need of reconciling the executive and the legislature was dimly felt in the seventeenth century, and how the problem puzzled the statesmen of the time.

Its origin:

The government of Charles II had undergone a series of catastrophes; Clarendon had been impeached; the Cabal broke up in a storm of unpopularity; then again Danby was impeached. These violent ends of successive ministries led Charles II to invite Temple, a diplomatist of tried ability and integrity, to try to devise a ministry which should keep in touch with the House of Commons.

its composition:

Temple proposed that a Council should be formed of thirty persons, chosen from the various political parties, and also containing representatives of the church, the law, and the mercantile and landed interests. He believed that the representative character of this Council would commend it to Parliament, while the varied knowledge and experience of its members would make it an efficient adviser to the Crown. He forgot that if his Council was thus to mirror the conflicting political opinions and the varied interests of the country, discussion would be lengthy and controversial, and that the obligation of secrecy would be extremely difficult to maintain. The advice tendered by such a Council was not likely to be harmonious, prompt, or confidential.

On April 21, 1679, Temple's scheme saw light, the King

[1] Clarendon, Autobiography, ii. 248.

[2] Burnet, 'History of My Own Time,' ii. 8.

made a speech to the existing Council in which he thanked them for their services and discharged them from further attendance on the ground that their numbers made secrecy impossible, that he had been obliged, in consequence, to transact business with a smaller body of advisers, and that he wished henceforth 'to lay aside the use of *any single ministry, or private advisers, or foreign committees*, for the general direction of his affairs[1].'

its failure.

But this Council followed the course of its predecessors. Three Committees were at once appointed, for Foreign Affairs, for Tangier, and for Trade and Plantations; Temple himself joined a small group which was formed for the discussion of general business, outside the Council, and was presently indignant because the King consulted another group in which he was not included[2]. In a year's time things went on as before.

Towards the close of the reign the Cabinet becomes a more definite institution. Lord Guilford had been given a place on Temple's Council as Lord Chief Justice of the Common Pleas. Not long afterwards he became Lord Keeper, and was summoned to meetings of the Cabinet. In Roger North's life of Guilford, the Council, the Committees of Council, and the Cabinet assume distinct shape.

The Council.

The Council met every Thursday. The Lord Keeper attended these meetings, and also 'the Committees of Council, as for Trade and Plantations, &c., which might be called *English* business, but he never cared to attend at the Committee for Foreign Affairs, and yet, though he always declined giving any opinion in that branch of royal economy, he could not avoid being in the way of the ordinary deliberations of that kind by reason of his attendance at the said Councils.'

Committees of Council.

We see here the Committees preparing business for final discussion and settlement at the Council, which has evidently not yet lost its voice in the conduct of affairs.

But behind these is a body which is neither Committee

[1] Registers of the Privy Council, Charles II, vol. xv.

[2] Temple's Works, ii. 538, 541.

The Cabinet.

nor Council. The Cabinet, we learn, met every Sunday. It consisted of 'those few great officers and courtiers whom the King relied on for the interior despatch of his affairs': who 'had the direction of most transactions of government, foreign and domestic[1].' This was the body which settled questions of policy, and its work is plainly different from that of the Committees of Council.

Cabinet of William III.

In the reign of William III the Cabinet becomes a recognized institution, though its importance is sometimes obscured by the strong will and political capacity of the King. An illustration of the complete independence of action, which William assumed in some departments of public affairs, is to be found in his correspondence with Pensionary Heinsius on the subject of the First Partition Treaty. His English ministers are never mentioned. Parliament is referred to from time to time as likely to give trouble about money and troops. The nation is described as inclined to peace, but 'if war is to be the upshot of this business I must take my measures to bring this nation insensibly into it[2].' He speaks throughout of the movements of ships and troops, and the terms to be made with foreign powers, as matters for his own decision.

The King's view of a Cabinet.

Evidently he desired to act for himself, or, if consultation was necessary, to consult with few. In fact, at the beginning of the reign, there are signs that he regarded the Cabinet as a formal dignified body, whose advice would not be asked in matters of urgent importance.

Seymour's case.

This is suggested by the case of Sir Edward Seymour, who in 1692 accepted office as a junior Lord of the Treasury, and was sworn of the Privy Council. He claimed that his rank entitled him to sit above Hampden, the Chancellor of the Exchequer, at the Treasury Board. This was impossible, but his susceptibilities on the question of precedence were met by his admission to the Cabinet[3].

[1] Life of Lord Keeper Guilford, by Roger North, pp. 227 sq. The narrative extends into the reign of James II; and we get another glimpse of the Cabinet of James. The East India Company's charter of 1687 received 'the approbation of the King declared in His Majesty's *Cabinet Council*.' Ilbert, Government of India, p. 22.

[2] Hardwicke State Papers, vol. ii. pp. 340, 347, 358, 362.

[3] Luttrell's Diary, vol. ii. 472, 485, 490.

The case of Lord Normanby, two years later, is interesting because it shows us William's views as to consultation with his ministers. Normanby was made a member of the Cabinet without office. He complained that, when the King was abroad, the Queen had held a meeting of ministers to which he was not summoned. The ministers summoned were Portland, the Lord President [1], the Lord Chancellor [2], the Lord Privy Seal [3], the Master of the Ordnance [4], and the two Secretaries of State [5]. The business concerned the service of the fleet in the Mediterranean and off the coast of France. Normanby was not satisfied by the assurance that this was not a Cabinet Council. Shrewsbury wrote to William on the subject, and the reply is instructive:— Normanby's case.

'It is true that I did promise my Lord Normanby that when there was a Cabinet Council he should assist at it: but surely this does not engage either the queen or myself to summon him to all the meetings which we may order, on particular occasions, to be attended solely by the great officers of the Crown, namely, the lord keeper, the lord president, the lord privy seal, and the two secretaries of State. I do not know why Lord Sydney was summoned to attend unless it was on account of some business relative to the artillery, which, however, might have been communicated to him. I do not see that any objection can be made to this arrangement, whenever the queen summons the aforesaid officers of the Crown to consult on some secret and important affair. Assuredly that number is fully sufficient, and the meeting cannot be considered as a Cabinet Council since they are distinguished by their offices from the other counsellors of State, and therefore no one can find fault if they are more trusted and employed than the others [6].'

William appears to hold that a place in the Cabinet might be given as a compliment to a Privy Councillor, but that 'secret and important affairs' are not for the Cabinet but for a few great officers whom the Crown may please to consult. There is not only no sense of the collective responsibility

[1] Carmarthen. [2] Somers. [3] Pembroke.
[4] Sidney. [5] Shrewsbury and Trenchard.
[6] Shrewsbury Correspondence (Coxe), pp. 34, 38.

of the Cabinet or of this inner group; there is hardly any sense of the individual responsibility of those who may be 'trusted and employed above others.'

Cabinet minutes of 1694-5-6.

An interesting light is thrown on the practice of the time in this respect by the minutes which Shrewsbury kept of Cabinet meetings held in the years 1694, 1695, 1696. About sixty such meetings are recorded in the Montagu House papers, and are there described as 'Privy Council Minutes.' They are clearly Cabinet minutes kept by Shrewsbury for his own information, as may be seen if they are compared one by one with the official records of meetings of the Privy Council during that period [1].

The persons present at the Cabinet vary but slightly from one meeting to another. The President of the Council, the Lord Privy Seal, the two Secretaries of State, Godolphin and Russell representing the Treasury and the Admiralty, form a nucleus. The Archbishop becomes a regular attendant from the date of Tenison's appointment. The Master of the Ordnance, the Lord Steward, the Lord Chamberlain appear less frequently. It is possible to identify the meeting held on May 14, 1694 [2] as the meeting which was the cause of offence to Normanby, because he was not summoned. He is present at the next recorded meeting, the minutes of which are significantly endorsed by Shrewsbury as 'Cabinet Council.' The name of Seymour does not often appear. Evidently there was an outer and an inner circle of the Cabinet. Normanby, by his importunity, forced his way into this inner circle: but others, less exacting, were less frequently summoned.

Sunderland had more definite views as to the Cabinet,

[1] Hist. MSS. Commission. Montagu House Papers, vol. ii. part i Meetings are recorded on fifty-nine days. On one of these, May 4, 1695, the Cabinet met apparently six times. A comparison of these minutes with the Register of the Privy Council shows that on forty-seven of these days no Council was held. On the occasions when a Council was held on the same day as one of the meetings recorded by Shrewsbury, the persons, the business, and sometimes the place differ; except on one occasion, Dec. 9, 1694, when his minute is clearly a note of special business, which, as we can learn from the Register, was assigned to Shrewsbury at a meeting of the Privy Council.

[2] Hist. MSS. Commission. Montagu House Papers, vol. ii. part i. p. 66.

and these were shared, as we shall see later, by Bolingbroke [1].

Clearer conception of Cabinet and its duties.

In 1701 [2] he writes to Somers as to the conduct of affairs in the event of a whig majority being returned at the general election then pending. Among other things he proposes:—

'None to be of the Cabinet but those who have in some sort a right to be there by their employment.

Archbishop, Lord Keeper, Lord President, Lord Privy Seal, Lord Chamberlain, First Lord of the Treasury and two Secretaries of State. The Lord Lieutenant of Ireland must be there when in England. If the king would have more it should be the First Commissioner of the Admiralty, and the Master General of his Ordnance.

It would be much for the king's service if he brought his affairs to be debated at that Council.'

Three things are noticeable in this passage: the clear conception of a Cabinet Council at which affairs of general policy should be discussed; the disinclination of the King to use such a Council; and the small regard paid to the representation in the Cabinet of the holders of great administrative offices—William had thought that the Master of the Ordnance should take his orders without being consulted. Sunderland thinks that he might possibly be admitted into a Cabinet which necessarily should contain the Archbishop, the Lord Chamberlain and the Lord Privy Seal.

§ 2. *The Cabinet and the Commons.*

Responsibility to Parliament.

At this point it is necessary to turn from the evolution of the Cabinet and its relations with the King to the question of ministerial responsibility to Parliament as affected by the existence of the Cabinet. Responsibility to Parliament was imperfectly understood, although from the reign of Edward III onwards attempts had been made to secure it. Legal responsibility only exists if it can be enforced; it can only be enforced by some form of penalty; and a convenient form of penalty was not as yet discovered.

[1] Infra, p. 95.

[2] Hardwicke State Papers, ii. 461.

The penalty of an erring minister.

For the King, whether he loved pleasure like Charles II, or religion like James II, or power like William III, wanted to direct his government to the ends he desired, and if he found ministers in whom he had confidence, he was not disposed to change them because his confidence was not shared by the House of Commons. He had to learn that, inasmuch as the needs of State outran the resources placed at the disposal of the Crown, he could only govern through men able and willing to induce the Commons to supplement those revenues by additional supplies.

The Commons were prepared to assume that the acts of the government were the acts of the King's ministers, not of the King himself: but they wanted to be able to punish an erring minister if they could be sure of punishing the right man.

Difficulties as to its character,

The punishment was clumsy enough—impeachment or attainder resulting in exile, imprisonment, fine, or death—until it came to be understood that the expression of popular disapproval, shown by a vote of the House of Commons or the result of a general election, was a sign that the entire ministry must be changed or that a minister who had acted on his own responsibility must leave office.

and as to its incidence.

But the difficulty of the time was not merely to find the right punishment, but to fix responsibility on the right persons.

Some part of this difficulty, as in the case of William III, might arise from the independent action of the King, and some from the absence of any notion of a ministry acting as a whole; but a great deal was due to a state of things which we can hardly realize, the want of government departments working under responsible political chiefs.

Want of departmental responsibility.

If, at the present day, the public, through the House of Commons, has reason to complain of the condition of the Navy, the conduct of Irish affairs, the administration of the Post Office, there is a minister directly responsible for each of these departments who can be called to account. If his action has been approved by the Cabinet the ministry must stand or fall by the decision of the Commons. If he has acted on his own responsibility, his colleagues may, or

may not, defend him, and he may be compelled to resign. But departmental business, at the date of the Act of Settlement, was largely transacted through Committees of the Privy Council. Thus individual responsibility was lost while the Cabinet recognised no collective responsibility.

The King his own minister.

The difficulty which might arise from the independent action of the King is illustrated by the incidents of the First Partition Treaty: William conducted the negotiations in Holland, but he could not conclude a treaty without formalities which needed the use of the Great Seal, and this again needed a sign manual warrant with the counter signature of a Secretary of State.

Somers and the Partition Treaty;

Portland, therefore, our ambassador at Paris, was directed to communicate the terms of the Treaty to Vernon, for the information of Somers: and the King himself wrote to Somers desiring him to consult such of his colleagues as he thought proper to be admitted to the secret, and asking that the necessary forms should be sent to him without letting their purport be known to any but these few favoured Counsellors.

Somers had interviews with Vernon and Montagu, communicated by letter with Oxford and Shrewsbury, and, with Vernon, sent the necessary powers to the King, adding some words of warning.

He repudiates responsibility.

In 1701 Somers was charged, on his impeachment, with his conduct in respect of the Partition Treaty. He answered that he had affixed the Great Seal on the authority of a sign manual warrant, countersigned by a Secretary of State, that he had offered an opinion about the treaty, but was not responsible for its terms, and that he had acted as the King bade him.

To us it would seem that Somers should either have refused to affix the seal to the powers needed for making the treaty, or else that he should have accepted responsibility for its terms. To us it seems surprising that the King should not have submitted the result of these important negotiations to his entire Cabinet, and that Somers after a perfunctory consultation with four of his colleagues should have supplied the King with powers in blank and pleaded

the King's commands as relieving him from all responsibility.

Irresponsibility of Cabinet,

But this only illustrates one side of the difficulties of the time—Somers was at any rate an ascertainable person, in charge of the Great Seal, for the use of which he might be called to account. The Cabinet was a more elusive body. At the close of 1692 there was an interesting debate in the House of Commons on the cost and ill success of the war, on our losses at sea, and on the advice to be given to the King. The House resolved that 'the great affairs of Government had been for some time past unsuccessfully managed under those that had the direction thereof,' and asked their majesties to prevent this by employing 'men of known integrity and ability.' But in the course of debate it was asked how the House could ascertain who were in fault. One speaker says, 'I know not where we are wounded. I would not have the management in such hands in the future; but this cannot be while we have a Cabinet Council.' Another says, 'The method is this; things are concerted in the Cabinet and then brought to the Council: such a thing being resolved in the Cabinet and put upon them, for their assent, without showing any of the reasons.' He goes on to say that this practice has given dissatisfaction at the Council, and adds, 'If this *method be, you will never know who gives advice*[1].'

A third, almost in the language of the Act of Settlement, says, 'I would have every Counsellor set his hand to his assent, or dissent, to be distinguished.'

The debate ended with a resolution which would now be regarded as a vote of censure on a ministry; it had no such effect as would now follow from such a vote.

and of individual minister.

A recognition of the need of varying the composition of a ministry as the balance of parties shifted, would not of itself meet the complaint of the speakers quoted above. Nor would the substitution of the Privy Council for the Cabinet have given the House of Commons the opportunity which it desired for attacking incompetent management in the various departments of Government.

[1] Parl. Hist. vol. v. p. 731.

The framers of the Act of Settlement did not see the whole difficulty, and failed to find a remedy for what they did see. The real remedy,

What was needed was the responsibility of individuals for specific branches of State affairs, and of these individuals as a body for the action of one another and the policy of the whole: so that when a department was ill conducted or general policy disapproved the minister who was to blame or the entire ministry should lose place and power. It was not necessary in the public interest that they should be banished or sent to prison or lose their heads. But the Commons of that day could not forecast the mode in which the constitution would work out, nor conjecture the ultimate practical solution of their difficulties. They feared lest bad or incompetent servants of the Crown might escape punishment or be retained in favour because their evil counsels could not be brought home to them, or because they could set up a royal pardon or command for the malpractices to which they had been parties. not understood.

In the first instance the treatment of this question was embarrassed by the fear lest the representatives of the people themselves, who should stand forth as the accusers of those who did wrong or gave evil advice in high places, might themselves be infected by the presence of persons holding office under the Crown, and thereby incapacitated from judging fairly when the interests of King and people seemed to conflict. Proposed exclusion of Ministers from Commons.

This fear so far prevailed that a provision was introduced into the Act of Settlement excluding persons holding office under the Crown from sitting in the House of Commons. Had not this provision been repealed in 1705 before the Act came into operation ministers would have lived secluded administrative lives, free indeed from the liability to daily question and criticism, but deprived of the opportunity of defence and explanation which keeps the ministers of to-day in fairly close correspondence with the wishes of the people as represented in Parliament.

The endeavour to ensure that ministers should be ac-

countable for the advice which they gave was embodied in another provision.

The Act of Settlement and the Privy Council.

'From and after the time that the further limitations by this Act shall take effect, all matters and things relating to the well governing of this kingdom which are properly cognizable in the Privy Council by the laws and customs of this realm shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same.'

The House of Commons may have thought that the responsibility of ministers was now secured, but there must have been some misgivings in the minds of such of them as knew how the business of State was done.

The Privy Council, unless reduced in number, and reconstituted from time to time, so as to secure some community of political opinion among its members, would have proved an unworkable machine for the purposes of government. It had, in fact, been proved to be so by Sir William Temple's experiment.

The requirement of a signature was a clumsy way of securing responsibility for advice given in Council; moreover it would often have failed to identify the real culprit, because the policy recommended may have been sound, but marred by departmental inefficiency.

Burnet[1] says that 'it was visible that no man would be a Privy Councillor on those terms.' It must have been equally visible that no Privy Council could conduct the business of State under the proposed conditions.

The Act of Settlement and the prerogative of mercy.

One more precaution taken in the Act of Settlement is to be found in the provision that:—

'No pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.'

The case of Danby was in the minds of those who framed this provision. Such a case would arise if the various officers of State responsible for the formalities necessary to the use of the Great Seal were ready to assist

[1] 'History of My Own Time,' v. 24.

the King to exercise the prerogative of mercy, not to pardon a criminal tried and sentenced, but to prevent the question of criminality from being tried.

Danby's case.

It might also arise in the case of so scandalous a breach of duty as was committed by Lord Chancellor Nottingham in the case of Danby. Charles II sent for Nottingham desiring him to bring the Great Seal. The Chancellor came, with the Great Seal in charge of an attendant. Danby produced a pardon, which the King signed, and then took the Seal from Nottingham and ordered the attendant to affix it to the pardon[1]. The act was a direct breach of Statute law governing the use of the Seal, and Nottingham, by taking the Seal back from the King's hands, made himself a party to this illegality. No doubt he deserved impeachment as much as Danby. But the provision of the Act of Settlement was in fact out of date. No King since the Revolution has made, or would be likely to make, himself responsible for an act which the Commons considered deserving of impeachment, by thus using his prerogative of pardon.

The framers of the Act of Settlement, with the best intentions, did nothing to bring about that responsibility of ministers to Parliament with which they were so much concerned. Their work is interesting only as showing that they realized a difficulty which custom and the instincts of practical convenience have gradually brought to a solution. How those great solvents of constitutional legislation would have modified in their working the two provisions of the Act of Settlement repealed in 1705 must remain a matter for speculation.

The Cabinets of Anne.

In the reign of Anne, Cabinet and Council are more distinct than in the days of William III, but we still find three consultative bodies under various titles, the Cabinet, or Lords of the Cabinet Council, the Lords of the Committee or the Committee of Council, and the Privy Council or Great Council; the three bodies which had demanded, in different degrees, the attention of Lord Keeper Guilford.

[1] Journals of the House of Commons, ix. 575.

The Foreign Committee.

The Cabinet determines policy: the Committee of Council does the work which to-day is done by the departments of Government, the Council gives formal expression to the royal will. In the reign of Anne the Foreign Committee assumes an importance disproportionate to that of others, but this may be because we learn the workings of the machine chiefly from the letters of Bolingbroke who was largely concerned with the business of that Committee[1]. In his correspondence we see the Cabinet which settled questions of general policy sitting in the presence of the Queen: the Lords of the Committee or Lords of the Council, who worked through the details of the Treaty of Utrecht: the Privy Council, who gave their formal assent to the treaty and authority to affix the Great Seal to its ratification.

Thus in the framing of the Treaty of Peace and Commerce with Spain, Bolingbroke informs the Queen that 'the draft will be ready for the Lords of the Council to-morrow, and for the Cabinet on Sunday, when I presume you would have the Cabinet sit as usual[2].' Again, five days later he announces that the Lords of the Council have gone through half the treaty and expect to finish it the next day: 'my Lord President will take care to summon the Great Council, pursuant to your Majesty's commands, for Thursday morning[3].'

Three points come out in the history of the Cabinet during this reign.

The Cabinet and the departments.

The first of these is the closer connexion of the Cabinet with the departments of Government. Sunderland in the previous reign regarded the First Lord of the Admiralty and Master of the Ordnance as persons who might or might not be in the Cabinet. But nine years later Bolingbroke speaks of the first office as necessarily bringing the holder into the Cabinet, but not the second: 'The employment of

[1] Bolingbroke, Letters, i. 167: 'I have not been, to own the truth to your Grace, this month, at the Committee of Lords which sits at the War Office.' There appears to have been a Committee to examine Guiscard in Newgate, Letters, i. 102. The assembly before whom he appeared when he stabbed Harley would seem to be the Cabinet; see Swift, Narrative of Guiscard's Examination.

[2] Sept. 24, 1713.

[3] Sept. 29, 1713.

First Commissioner of the Admiralty brings your Lordship (Strafford) into the Cabinet, which would not have been if the other employment (Master of the Ordnance) had fallen to your share, without making a precedent for enlarging the Cabinet, which Her Majesty had much rather confine than extend [1].'

Shrewsbury, writing to Harley, speaks in the same way of the Treasury Commission. 'In my mind you should be at the head, because you then come naturally into the Cabinet Council where you are much wanted [2].'

The second point is that, although we may note a tendency to connect the Cabinet more closely with actual administration, the want of political chiefs responsible for particular departments is obviously felt by Parliament.

The need of departmental responsibility.

In January, 1711, a debate arose in the Lords on the conduct of the war in Spain, and a resolution amounting to censure of 'the Cabinet Council' was moved, together with an address to the Queen that she would 'be pleased to give leave to any Lord, or other, of her Cabinet Council, to communicate to the House any paper or letter relating to the affairs of Spain.' The Queen gave the permission asked for, and came down '*incognito* to hear the debate [3].' The resolution was then moved, with the substitution of 'ministers' for 'Cabinet Council.' Upon this there ensued a long wrangle as to the greater or less precision of the substituted words. Lord Rochester stated emphatically that the Queen was not responsible, 'that according to the fundamental constitution of this kingdom Ministers are responsible for all.' But this did not help the object of the debate, which really was to pass a censure on some definite person or group of persons. It was urged with truth that 'ministers' was a word of uncertain signification, and might include persons who had no part in the policy which misdirected the war in Spain: while 'Cabinet Council' was a 'word unknown in our law,' and if a censure was passed the House ought to know whom they were censuring. The

[1] Bolingbroke, Letters, iii. 27.
[2] Hist. Manuscripts Committee, MSS. of Marquis of Bath, i. 198.
[3] Parl. Hist. vol. vi. p. 971.

truth was that there was neither collective responsibility for policy, nor individual responsibility for departmental inefficiency. A vote of censure had no terrors for a Cabinet which had no sense of corporate existence, and when either House tried to ascertain more precisely the cause of a trouble, responsibility disappeared in a Committee of the Privy Council.

Privy Council a formal executive;

Thirdly, the Great Council, that is, the Privy Council, has now been reduced to formal executive action. In this respect its position had manifestly changed in thirty years, as may be seen by comparing the meeting to approve the sale of Dunkirk with the meeting to sanction the peace of Utrecht. The sale of Dunkirk was debated at length at the Council Board, though it had already been fully discussed at the Cabinet or Committee, and Clarendon mentions with satisfaction that there was but one dissentient voice [1]. When the Treaties of Peace and Commerce were laid before the Privy Council in 1713, and the Queen proposed their ratification, Lord Cholmondeley suggested a postponement for further consideration, but he was told that the time for exchanging ratifications was settled, and was so near at hand that no postponement was possible. The treaties thereupon passed the Council, and next day Lord Cholmondeley was deprived of his place in the Queen's Household [2].

except on the death of Anne.

On one celebrated occasion the Privy Council resumed the functions of a Cabinet. The meeting at Kensington, when Anne lay dying, was a meeting of the Council, and is so recorded in the Register; and their Lordships, 'considering the present exigency of affairs, were unanimously of opinion to move the Queen that she would constitute the Duke of Shrewsbury Lord Treasurer [3].'

Having ascertained that the Queen was in a condition to be spoken to, the wish of the Council was communicated to her by certain members of the Board. Shrewsbury was summoned to receive the staff of office, and on his return measures were taken for the security of the

[1] Clarendon, Autobiography, ii. 248.
[2] Parl. Hist. vi. 1170. Swift's Journal, April 7 and 8, 1713.
[3] Register of the Council, July 30, 1714.

kingdom against a possible surprise by the adherents of the Stuarts.

This is, if not the last, at any rate a very exceptional exercise by the Privy Council of deliberative as well as executive powers. From the date of the Revolution we may say that the Cabinet became the motive power in the Executive of the country.

Section III

The Cabinet

§ 1. *The Council and the Cabinet.*

The accession of George I marks the beginning of Cabinet Government as we understand the term. The King had hitherto recognised the predominance of a party, as affecting his choice of ministers, only when circumstances put constraint upon him. The natural inclination of a Sovereign would be to choose ministers on grounds of individual merit rather than of party politics; but we have seen how William III and Anne gradually, sometimes reluctantly, shaped their ministries to correspond with the balance of parties in Parliament. George I, however, from the outset, and of necessity, placed his confidence in the leaders of the party which secured his accession; the party which by reason of the quicker intelligence and better organization of its members, rather than by its numerical superiority in the country, was able to keep him on the throne. There was no question of playing off one party against another, or selecting the best men from both sides. The ministry of George I was necessarily Whig.

The dependence of George I on a party.

And George I did not preside at Cabinet meetings. The effect of this was twofold; the King lost initiative and control in discussing and settling the policy of the country; and, as some one must preside at these meetings, the place hitherto occupied by the King was taken by a minister: the Prime Minister becomes a more definite person than heretofore.

His absence from Cabinet.

Thus, in the words of Lord Acton, 'Government by party was established in 1714, by party acting by Cabinet,' and 'the power of governing the country was practically transferred. It was shared, not between the minister and the

King, but between the head of the ministry and the head of the opposition[1].' The latter statement is perhaps an anticipation, for organized opposition hardly existed before the time of Burke, but this great change of 1714 is clearly marked; and here we may finally distinguish the functions of Cabinet and Council.

Difference in title between Cabinet and Council.

The Cabinet are 'His Majesty's servants.' The Privy Council are 'the Lords and others of His Majesty's most Honourable Privy Council.' To describe the Cabinet as a Committee of the Privy Council is misleading. Every meeting of the Privy Council from which the King is absent is a Committee, even if every member should be summoned and present. But the Cabinet does not meet as a Committee of the Privy Council, for it is not so constituted. The Cabinet meets for the purpose of advising the Crown, and as its members are not otherwise bound by any obligation of secrecy, it would seem that to be sworn of the Privy Council is a necessary prelude to admission to the Cabinet[2]. The Cabinet considers and determines how the King's Government may best be carried on in all its important departments; the Privy Council meets to carry into effect advice given to the King by the Cabinet or by a Minister, or to discharge duties cast upon it by custom or statute. Committees of the Council meet to act or advise on specified matters. It is necessary that a member of the Cabinet should be under the obligations of a Privy Councillor, because the oath of the Privy Councillor assumes that he is a confidential adviser of the Crown.

Difference in action.

But the Privy Council is essentially an executive, the Cabinet a deliberative body. The policy settled in the Cabinet is carried out by Orders in Council, or by action taken in the various departments of Government. Committees of

[1] Acton, Lectures on Modern History: 'The Hanoverian Settlement.'

[2] Mr. Hearne (Government of England, p. 192) says that Lord Bute was made a member of the Cabinet by George III before he was Privy Councillor, but this seems to be a misunderstanding of a note to Walpole's Memoirs, i. p. 8. George II died on the morning of Saturday, Oct. 25. Lord Bute was sworn of the Privy Council on Monday the 27th (Haydn's Book of Dignities, ed. 2, p. 200). Horace Walpole, writing to Mann on the 28th, says, 'the Duke of York and Lord Bute are named of the Cabinet Council' (Letters, iii. 354). But see post, p. 112.

the Council may be appointed to collect evidence, to report and advise on certain matters, but the Cabinet meets to advise and initiate action in all matters; its members are the heads of executive departments, and leaders of the party whose policy is approved by the electorate, and so the advice of the Cabinet is acted upon.

Difference in summons.

The two bodies are differently summoned.

A summons to the Cabinet runs thus:—

'A meeting of His Majesty's servants will be held at the Foreign Office[1] at — o'clock on Saturday, the — of May, at which — is desired to attend.'

A summons to a Council at which the King will be present is in the following form:—

'Let the messenger acquaint the Lords and others of His Majesty's most Honourable Privy Council, that a Council is appointed to meet at the Court at — on — the — day of this instant, at — of the clock.'

When the King will not be present the form is as follows:—

'Let the messenger acquaint the Lords of His Majesty's most Honourable Privy Council, that a Committee of their Lordships is appointed to meet in the Council Chamber, Whitehall, on — the — of — at — of the clock.'

Nor is it only in the form of the summons that the difference lies. The Cabinet is summoned by the Prime Minister, through his private secretary, two personages who have no place in the legal theory of the Constitution. The Privy Council is summoned by the Clerk of the Council, an officer whose history dates back to 1540, when Sir William Paget, himself afterwards a Privy Councillor and Secretary of State, was appointed Clerk[2].

The Cabinet of the present day is then a body distinct from the Privy Council in title, in function, and in mode of summons. Every member of the Cabinet is a Privy Councillor, and the connecting link between the two bodies may be found in the Privy Councillor's oath and the obligations which it involves.

[1] The place of meeting varies with circumstances; it might be at the Prime Minister's official residence, in Downing Street, or in his private room at Westminster.

[2] Nicolas, Proceedings of the Privy Council, vii. pp. ii, 4.

§ 2. *Collective Responsibility of the Cabinet.*

Irresponsibility of 18th century Cabinets.

The Cabinet, as a whole, is responsible for the acts of its members: but if this responsibility is to be real the Cabinet must be a definite body of persons, every one of whom is informed, or can obtain information, as to any measure of importance contemplated or taken by the entire Cabinet, or by any individual member.

Throughout the greater part of the eighteenth century this collective responsibility did not exist. The Cabinet was a large body meeting occasionally for the formal settlement of business which had been practically settled by a small inner group, 'the confidential Cabinet.'

The first Cabinet of George I contained the Duke of Marlborough, who was scarcely ever invited to Cabinets of which he was a nominal member; and Lord Somers, whose infirmities prevented him from taking any part in public business [1].

In the reign of George II we have two complete lists [2] of

[1] Stanhope, Hist. of England, i. 104.

[2] *List of Cabinet*, 9 Sept., 1737.

1. Archbishop of Canterbury.
2. Lord Chancellor.
3. Lord Godolphin (Lord Privy Seal).
4. Duke of Grafton (Lord Chamberlain).
5. Duke of Richmond (Master of the Horse).
6. Duke of Newcastle.
7. Earl of Pembroke (Groom of the Stole).
8. Earl of Islay.
9. Lord Harrington.
10. Sir R. Walpole.
11. Sir C. Wager.
12. Duke of Devon.
13. Duke of Dorset.
14. Duke of Argyle.
15. Lord President.
16. Earl of Scarborough.

Life of Lord Hardwicke, i. 383.

List of Cabinet, 1740.

1. Dr. Potter (Archbishop of Canterbury).
2. Lord Hardwicke (Lord Chancellor).
3. Earl of Wilmington (Lord President).
4. Lord Hervey (Lord Privy Seal).
5. Duke of Dorset (Lord Steward).
6. Duke of Grafton (Lord Chamberlain).
7. Duke of Richmond (Master of the Horse).
8. Duke of Devonshire (Lord Lieutenant of Ireland).
9. Duke of Newcastle (Secretary of State).
10. Earl of Pembroke (Groom of the Stole).
11. Earl of Isla (First Minister for Scotland).
12. Lord Harrington (Secretary of State).
13. Sir Robert Walpole (Chancellor of Exchequer).
14. Sir C. Wager (First Commissioner of the Admiralty).

the Cabinet for the years 1737 and 1740; the one contains sixteen, the other fourteen names, and to this last three were subsequently added. The Archbishop of Canterbury, the Lord Chamberlain, the Groom of the Stole, and the Master of the Horse appear in each. Both Lord Hardwicke and Lord Hervey, who furnish these accounts, describe a smaller group—Walpole, the two Secretaries of State, and the Chancellor—meeting for the discussion and virtual settlement of policy. The formality, amounting to futility, of the meetings of the whole Cabinet Council is apparent in these memoirs. The business generally consisted in the verbal revision of some document, important no doubt, the purport of which had been settled by the confidential servants of the King[1].

The formal and the efficient Cabinet.

Walpole's Cabinets.

In 1754, when Henry Pelham died, the King was anxious to get the advice of the entire Cabinet as to the future conduct of public business, but the matter was practically settled by Hardwicke and Newcastle. The former wrote to the Archbishop to obtain his opinion, or rather to tell him what his opinion was desired to be; he informed the Archbishop that he need not attend personally, but must answer at once. A draft of the answer required was sent with the letter[2].

The Archbishop replied as he was instructed. The Cabinet met, and the King was advised to make the Duke of Newcastle First Lord of the Treasury, and virtually Prime Minister.

When George III came to the throne the number of titular Cabinet Councillors excited the mirth of Horace Walpole. The Duke of Leeds was removed from the Cofferer's place and made Justice in Eyre, 'but to break the fall, the Duke

The titular Cabinet.

There were subsequently added to these, Sir John Norris, the Duke of Montagu (Master of the Ordnance), and the Duke of Bolton. 'The Duke of Bolton, without a right to it from his office of Captain of the Band of Pensioners, in which employment he succeeded the Duke of Montagu on his removal to the Ordnance, was likewise admitted to the Cabinet Council, because he had been of it seven years ago, at the time he was turned out of all his employments.' Hervey Memoirs, ii. 551.

[1] Hervey Memoirs, ii. 556-71.

[2] Life of Lord Hardwicke, ii. 512, 515, 516.

is made Cabinet Councillor, a rank that will soon become indistinct from Privy Councillor by growing as numerous [1].'

But these men took no part in the decision of policy. In the Grenville Ministry, which lasted from the spring of 1763 to the summer of 1765, the business of government was settled at weekly dinners at which only five or six Ministers were present. The Cabinet minutes record 'meetings of his Majesty's servants' attended only by Grenville, the First Lord of the Treasury, the two Secretaries of State, the President of the Council, and the Chancellor: sometimes this body is reinforced by Lord Mansfield, the Chief Justice [2]. It is not easy to suppose that the number of honorary members of the Cabinet had diminished between 1760 and 1763, and there is other evidence to show that the Cabinet Ministers were of two sorts, efficient and honorary [3].

Illustrations of the distinction.

The distinction between the two groups was marked by the communication of important State papers to the 'efficient' Ministers.

When Lord Bute in 1762 was trying to drive the Duke of Newcastle from the Ministry by repeated slights, that which the Duke felt most keenly was a summons to a Cabinet Council to consider a declaration of war with Spain when no papers had been supplied to him by the Secretary of State, nor information as to the course which negotiations were taking. 'Even Mr. Pitt,' said the Duke, 'had that attention to me as constantly to send me his draughts with copies for my use, desiring me to make such

The circulation of papers.

Newcastle.

[1] Walpole Letters, iii. 384 or v. 36 (ed. Toynbee). A few days later he writes, 'Lord Hardwicke is to be Poet Laureate, and according to usage I suppose it will be made a Cabinet Counsellor's place' (ib. 386 or v. 40).

[2] Grenville Papers, ii. 256, iii. 15, 41.

[3] Lord Lyttelton in April, 1767, sent a list of a proposed Cabinet to G. Grenville. It consists of fourteen names. He says that he has mentioned 'only the principal Cabinet officers,' but the list includes the Lord Chamberlain and the Master of the Horse (Grenville Papers, iv. 8). The Chancellor of the Exchequer was not usually a member of the Cabinet unless that office was held together with the First Commissionership of the Treasury, but Charles Townshend teased Chatham into allowing him a place in the inner Cabinet, and when North succeeded him as Chancellor of the Exchequer the dearth of business capacity in the Ministry brought him at once into the Cabinet. Grafton Memoirs, pp. 92, 183.

alterations as I should think proper, before he produced them at the meeting of the King's servants[1].'

The same distinction is noticeable a few years later. The second Lord Hardwicke, when invited to become Secretary of State in Lord Rockingham's Ministry in 1766, declined to do so on the ground of health, but expressed his willingness to join the 'Cabinet Council *with the communication of papers*[2].' Shelburne described the Cabinet to Bentham as consisting of an outer circle and of the Cabinet *with the circulation*, that is, with access to important State papers sent round in Cabinet boxes to the inner circle of Ministers[3]. Hardwicke. Shelburne.

Again, in a debate of the year 1775 in the House of Lords, the former members of the Duke of Grafton's Ministry tried to free themselves from blame for the measures which had troubled our relations with the colonies. Lord Mansfield denied all responsibility, though he admitted that he had been a member of the Cabinet during the latter part of the reign of George II and the whole of the current reign. But he said that there was a 'nominal and efficient Cabinet,' and that he had ceased to be an efficient member from the close of the Grenville Ministry. In the same debate the Duke of Richmond told the House that 'the correspondence with our Foreign Ministers is sent round at a convenient time in little blue boxes to the *efficient* Cabinet Ministers, and that each of them gives his opinion on them in writing[4].' Mansfield.

The *confidential* Cabinet was another term applied to the inner circle of Ministers who determined the policy of the country. When the Duke of Grafton was out of office in 1771 the King gave orders that he should be kept informed 'of all business of any importance that was in agitation[5].' When he accepted the Privy Seal later in the same year, he did so on condition that he should not be summoned to meetings of the confidential Cabinet. George III agreed The confidential Cabinet.

[1] Rockingham Memoirs, i. 103. [2] Ibid. i. 330.
[3] Bentham, ix. 218. [4] Parl. Hist. xviii. 278.
[5] Grafton Memoirs, pp. 263-4.

to this, remarking that Grafton 'had ever thought the confidential Cabinet too numerous[1],' and had, when Prime Minister himself, desired that Lord Bristol, who succeeded Chatham as Privy Seal in 1768, should not be summoned to the meetings of that body. But it seems clear that the King and Lord North expected to have Grafton's advice whenever they wanted it, and the Duke, whether in or out of office, appears to have occupied the position of a 'non-efficient' Cabinet Minister.

Opposition in Cabinet.

One result of this distinction between efficient and non-efficient members of the Cabinet was that statesmen who had once been Cabinet Councillors considered themselves to remain within the outer circle of the Cabinet, even though their political opponents held the great offices of State.

Bath.

Thus the Pelhams in 1745, finding themselves in a position to make terms with George II, insist that Lord Bath, who had always been their most active political opponent, 'should be out of the Cabinet Council[2].'

Mansfield.

Still more noticeable is the position of Lord Mansfield as described by himself in 1775. He had been a member of the 'efficient Cabinet' down to the close of the Grenville Ministry. When Rockingham succeeded Grenville 'he had prayed his Majesty to excuse him: and from that day to the present day had declined to act as an efficient Cabinet Minister[3].' His reason for refusing to act with the Cabinet when Rockingham came in was, as appears from his speech, that he was opposed to its policy, but he considered that he had never ceased to be a Cabinet Minister, and was ready to give advice when asked.

Insecurity of Ministries.

This retention of Cabinet rank and position by men who had ceased to be in accord with those who were actually administering the affairs of the country must have been a constant source of insecurity to Ministries. There can be no doubt that it offered opening for intrigue to George III, who never trusted the Ministers whom he disliked, and who held himself entitled to consult these titular Cabinet

[1] Correspondence of George III and Lord North, i. p. 76.
[2] Coxe, Memoir of H. Pelham, i. 295.
[3] Parl. Hist. xviii. 274, 275, 279.

Ministers to the disadvantage of those who were, at the moment, in his service.

Disappearance of titular Cabinet.

The disappearance of this titular external Cabinet must have been gradual. The Rockingham Cabinet of 1782 was a definite group of eleven persons, each of whom held high office. Fox complained that the number was too large, but at the same time maintained 'that those who had great responsible situations should have more interest in the Cabinet than those who merely attended to give counsel, without holding responsible situations[1].' This contemplates an outer and an inner circle within the Cabinet: but Fox was probably thinking of the opposition which he had experienced from Camden and Grafton, the President of the Council and the Lord Privy Seal[2].

The last assertion of the right to attend a Cabinet meeting by a Minister who had ceased to hold Cabinet office was made by Lord Loughborough. When Addington succeeded Pitt in 1801 Eldon displaced Loughborough as Lord Chancellor, but Loughborough nevertheless continued to attend Cabinet meetings and retained his key of the Cabinet boxes. Addington was compelled to write and inform him that 'His Majesty considered your Lordship's attendance at the Cabinet as having naturally ceased upon the resignation of the Seals,' and added that his opinion, expressed and acted upon, was that 'the number of Cabinet Ministers should not exceed that of the persons whose responsible situations in office require their being members of it[3].'

The Grand Cabinet.

Perhaps the last appearance of the non-efficient, titular Cabinet is to be found five years later, when Lord Colchester, then Speaker of the House of Commons, records that before the opening of Parliament the King 'held (what is called) a Grand Cabinet or Honorary Cabinet, consisting of his Ministers, and also the Archbishop of

[1] Parliamentary Register, vii. 304.

[2] Memorials of Charles James Fox, i. 454. 'It was very provoking for you, I must own,' said Shelburne to Fox, 'to see Lord Camden and the Duke of Grafton come down, with their lounging opinions to outvote you in the Cabinet.'

[3] Campbell, Lives of the Chancellors, vi. 326–7.

Canterbury, and the great officers of the Household, viz., the Lord Chamberlain and the Master of the Horse, the Speaker, &c., at which the draft of his speech was read[1].' With the exception of the Speaker this recalls the Cabinet described by Lord Hardwicke.

Definition necessary to collective responsibility.

The definition and limitation of the Cabinet by Addington, though it probably did no more than express the usage of the previous twenty years, marks a stage in the history of the Cabinet. The existence of a circle of non-efficient Cabinet Ministers who might occasionally be called upon to advise, made collective responsibility impossible, because the persons composing this outer circle were often actually hostile to those who held 'responsible situations.'

Repudiations of responsibility.

In fact, responsibility was sometimes repudiated in a manner which we should now regard as inconsistent, not merely with party loyalty, but with self-respect.

Camden.

When the Duke of Grafton's Ministry was falling into discredit, Lord Camden, who had been Chancellor throughout the administration, and was holding office at the time spoke strongly in opposition to his colleagues, and stated that he had been an unwilling party to their actions in the matters concerning Wilkes and the Middlesex election[2].

Grafton.

A few years later he repudiated all liability for the action of the Cabinet, of which he was a member, in the imposition of the tea duties on the American Colonies. In the same debate, Grafton, while complaining of the manner in which Camden disavowed his colleagues in a matter to which the whole Cabinet consented, went on to say that this tax 'was no measure of his,' though he was Prime Minister at the time.

Party loyalty, as we understand the term, was practically unknown in the middle of the eighteenth century. The lack of definite political issues, and the state of our Parliamentary representation, resulted in a stagnation of political interest and the formation of parliamentary groups, whose action was determined almost entirely by personal ambition or the desire for lucrative office. George II

[1] Diary of Lord Colchester, ii. 26.
[2] Grafton Memoirs, i. 246

resented the domination of such groups, though he had to endure it. George III formed a group of his own. Both Kings desired to break up parties, and to find Ministers who would attend to the business of their departments, leaving general policy to the Crown. Hence the constantly expressed desire for a Ministry 'on a broad bottom,' that is, a Ministry representative of the various groups. Such a Ministry could only exist where political opinions were indeterminate rather than various. The Grenville connexion represented the ambitions of the Grenville family; the Bedford group, a desire for the emoluments of office; the followers of the elder Pitt were the admirers of a great but somewhat wayward personage; the Rockingham Whigs desired to make the King subservient to a party which should consist of the great Whig families; George III and his friends represented antagonism to this policy. A Cabinet formed out of any combination of these groups was not likely to possess any strong sense of mutual loyalty or collective responsibility.

Political condition of the eighteenth century.

The recognition of such responsibility begins in the last twenty years of the century. Fox in 1782 held himself responsible to Parliament for advice as to conferring a pension on Colonel Barré, although 'he was not the person in whose department it lay to advise the King on that subject[1].' Yet his views on this subject, as we shall shortly see, were not consistent. Ministerial responsibility meant to the statesmen of the eighteenth century something different from what it means to us. To them it meant legal responsibility, liability to impeachment; to us it means responsibility to public opinion, liability to loss of office. Legal responsibility could not fairly be fixed upon an entire Cabinet for the action of one of its members, and this comes out clearly in a debate which took place in 1806, on the acceptance by Lord Ellenborough, the Chief Justice of the King's Bench, of a seat in the Cabinet. Exception was taken to the appointment on the ground that the Chief Justice might, as a member of the Cabinet, be responsible for the institution of legal proceedings over

Collective responsibility in 1782.

[1] Parliamentary Register, vol. vii. 382.

Collective responsibility in 1806.

which he would have to preside as a judge. The supporters of the Government disputed the theory that each member of the Cabinet was responsible for the acts of the whole body; they maintained that each was responsible for his own department. 'The Cabinet was not responsible as a Cabinet,' said Lord Temple, 'but the Ministers were responsible as the officers of the Crown.' Fox maintained that there was a practical advantage in relieving the Cabinet of responsibility and fixing it upon the individual Minister. 'The immediate actor can always be got at in a way that is very plain, easy, and direct, compared to that by which you may be able to reach his advisers[1].'

It is noticeable that Mr. Hallam, writing in 1827, takes the same view of Cabinet responsibility[2]. At the present time we are more ready to fear that Ministers will mismanage our affairs than that they will break the law; they act under close and constant criticism, and since loss of office and of public esteem are the only penalties which Ministers pay for political failure, we can insist that the action of the Cabinet is the action of each member, and that for the action of each member the Cabinet is responsible as a whole.

It is needless to cite modern illustrations of the complete acceptance of the theory. A recent writer has given one which well serves the purpose[3]. An amendment

In 1902.

to the Address was moved early in the Session of 1902, censuring the conduct of the Post Office in respect of the terms of an agreement with the National Telephone Company. Supporters of the Government moved the amendment and pressed it in debate: but they were told that if they carried the amendment, which censured the action of a single department, they would pass a vote of censure

[1] Cobbett, Parl. Debates (1806), vi. 308, 311.

[2] Hallam, Hist. iii. 187, note: 'I cannot possibly comprehend how an article of impeachment for sitting as a Cabinet Minister could be drawn, nor do I conceive that a privy councillor has a right to resign his place at the board, or even to absent himself when summoned: so that it would be highly unjust and illegal to presume a participation in culpable measures from the mere circumstance of belonging to it.'

[3] Low, Governance of England, p. 146.

on the Government, which would thereupon resign[1]. The amendment was consequently lost, by the failure of those who moved it, and spoke in its favour, to support it on a division. The collective responsibility of the Government for the action of one of its members could not be better illustrated.

Unanimity of advice to King.

Joint responsibility must produce unanimity, or at any rate is incompatible with such differences as make the dissentient unwilling to incur risk for the sake of opinions which he does not share. The efficient Cabinet was bound to keep up a semblance of agreement in the advice tendered to the King, but until collective responsibility was recognised, a Minister might be content to be outvoted, retain office, and carry out a policy with which he did not agree.

Whether the King should or should not be informed that there had been hesitation or difference of opinion among his Ministers, and the nature of the difference, must rest with the discretion of the Prime Minister, who reports to the King the substance of what has passed at every Cabinet meeting. The advice ultimately given must be unanimous.

Should differences be revealed?

When Lord Grey's Government resigned in 1832 on a difference with the King as to the creation of peers, a Cabinet minute which recorded the dissent of the Duke of Richmond from the opinion of his colleagues was shown to the Duke of Wellington, who was invited to form a Ministry. After the failure of the Duke and the return of Lord Grey to office, this difference of opinion among Lord Grey's colleagues was turned to their disadvantage in debate. But the trouble was occasioned, not so much by the disclosure of differences in the minute, as by the communication of a Cabinet minute to the opponents of the Minister who framed it[2]. This appears to be contrary to custom.

Although the Premier may determine whether he will disclose to the King such differences as have existed among his colleagues, it does not appear to be equally open to the King to probe these divisions of opinion among his confidential servants. 'They are a unity before the sovereign[3].'

[1] Hansard, N. Series, vol. ci. p. 1027.

[2] Corresp. of William IV and Earl Grey, ii. 395, 424, 431.

[3] Gladstone, Gleanings of Past Years, i. 74. But see Fitzmaurice, Life of Lord Granville, i. pp. 355, 459.

Should King inquire as to unanimity?

George IV was not pleased with the recognition by Canning of the independence of the Spanish American Republics, and he addressed a memorandum to Lord Liverpool, at the close of which he desired 'distinctly to know from his Cabinet, individually (*seriatim*), whether certain principles of policy *are or are not to be abandoned.*' The Cabinet returned an answer 'generally and collectively,' admitting that there had been differences, but assuring the King of their 'unanimous opinion' that their policy in no way conflicted with the principles to which the King referred [1].

Secrecy.

Closely connected with what has gone before is the secrecy which is imposed on Ministers as to what passes in the Cabinet. Formally this depends on the oath of the Privy Councillor, but the obligation to secrecy has been strengthened since the time when the members of the Grafton Cabinet, 1767–70, were quite ready to announce the part which they had taken in Cabinet discussions on the expulsion of Wilkes and the taxation of the American Colonies.

Information supplied to King:

No record is kept of transactions or discussions in the Cabinet. The Prime Minister sends to the King an account of what has passed, which may be more or less formal, according to circumstances or the discretion of the Prime Minister for the time. These memoranda are not available to succeeding Ministers, and in modern times we do not come across their contents. But Shrewsbury kept minutes, as we have seen, of what passed at the Cabinets of William III; and a hundred years ago, when George III dismissed the Grenville Ministry, Lord Grenville sent to the Speaker copies of a Cabinet minute, of the King's answer, and of the Cabinet's reply [2].

is confidential.

William IV had no strong sense of the confidential character of his communications with his Ministers. He communicated to the Duke of Wellington an account sent to him of what had passed at a Cabinet meeting by Lord Grey: and he addressed to Sir Robert Peel, on his taking

[1] Stapylton, George Canning and his Times, 418–20.

[2] See Lord Colchester's Diary, ii. 108. Melbourne Papers, 247.

office in 1834, a lengthy document setting out among other things the conversations which had passed between himself and Lord Melbourne, leading up to the retirement of the latter. It does not appear that Melbourne was invited either to assent to this communication or to test its accuracy [1].

Conditions of disclosure.

Disclosures of Cabinet discussions are now made only with permission of the Sovereign; and it is the practice that this permission should be obtained through the intervention of the Prime Minister, and that the disclosure should be strictly limited by the terms of the permission granted [2]. Lord Melbourne remonstrated strongly with William IV on learning that Lord J. Russell had, without reference to the Prime Minister, received the King's permission to disclose in Parliament a correspondence between himself and Lord Durham, and the discussions in the Cabinet on which this correspondence was based: 'If the arguments in the Cabinet are not to be protected by an impenetrable veil of secrecy, there will be no place left in the public counsels for the free investigation of truth and the unshackled exercise of the understanding [3].' The lack of any record of Cabinet discussions may, at times when disclosures are permitted to be made, cause questions to be raised as to their accuracy [4].

No record of Cabinet proceedings.

At times the veil is lifted. Sir William Molesworth, in the Ministry of Lord Aberdeen, took notes of what passed in the Cabinet of which he was a member, not without some remonstrance on the part of a colleague, nor without some ill consequences as to the maintenance of secrecy [5]. Lord Granville obtained permission from Queen Victoria and Lord Palmerston to send to Lord Canning, then Viceroy of India, a chronicle of Cabinet proceedings from day to day [6]. The Greville Memoirs for the last years of the Melbourne Ministry indicate pretty plainly that some member of the

[1] Melbourne Papers, 248. Stockmar Memoirs, ch. xiv.
[2] Hansard, cccix, p. 1186. [3] Melbourne Papers, 216.
[4] Hansard, 3rd Series, 341, pp. 1809, 1810, July 18, 1878.
[5] Autobiography of the Duke of Argyll, i. 461.
[6] Fitzmaurice, Life of Lord Granville, i. 126. See also a very interesting description of a Cabinet meeting at p. 356.

Cabinet confided to the Clerk of the Council very full accounts of what passed at Cabinet meetings.

Only Privy Councillors may attend.

It happens occasionally that a Minister who is not a Privy Councillor or a naval or military officer, attends a meeting of the Cabinet in order to give information or to receive instructions. It might be questioned whether a meeting can be regarded as a meeting of the Cabinet while a person is present who is under no obligation to secrecy. Attention was called, in 1905, to the fact that Lord Cawdor, after accepting the office of First Lord of the Admiralty, but before his appointment was complete, and before he had been sworn of the Privy Council, attended meetings of the Cabinet. His presence was placed, by Lord Lansdowne, on the footing of that of the Law Officers who are sometimes called in to advise the Cabinet; but it would seem that he was regularly summoned and sat as a Cabinet Minister [1].

§ 3. *The Relations of the Cabinet to the Prime Minister, the Crown, and the Commons.*

The Development of the Premiership.

Prime Minister a modern institution.

The existence of a Prime Minister may be said to date from the disappearance of the King from the Cabinet Council.

We are accustomed to regard a Prime Minister as a necessity of our constitution, and we understand the term to mean the party leader who has been invited by the King to form a Ministry, in the assurance that his followers are sufficiently numerous, and sufficiently loyal, to secure support for the measures which he may recommend to the Crown and to Parliament.

But the statesmen whom we are wont to call Prime Ministers, between 1660 and 1714, had no such power in

[1] Hansard, 4th Series, vol. cxlii. p. 863. This must have been an irregularity. In 1907, during the interval which elapsed between the acceptance by Mr. McKenna of the office of President of the Board of Education and his admission to the Privy Council, more than one meeting of the Cabinet was held. Mr. McKenna received no summons to these meetings, though he was informally requested to attend one of them for a short time, merely to discuss a matter connected with the business of the Education Office.

the choice of their colleagues or security for the support of their measures.

Unknown in seventeenth century.

The title itself was unknown till the commencement of the eighteenth century. Ormond suggested to Clarendon, in 1661, that he should give up office and confine himself to advising the King on questions of general policy. Clarendon declined to enjoy a pension out of the Exchequer 'under no other title or pretence but of being *first Minister, a title so newly translated out of French into English,* that it was not enough understood to be liked, and every man would detest it for the burden it was attended with [1].'

Clarendon and Charles II.

The suggestion shows the position which Clarendon occupied in the eyes of his contemporaries, and that he was, in point of power and influence, what passed for a Prime Minister in those times. But Clarendon had not the choice of his colleagues; the inner Council of Advisers was increased by the introduction of Ashley, and later of Coventry, without his concurrence [2], and without consulting him Charles made Bennet a Secretary of State [3]. Nor had Clarendon a decisive voice in measures which should be submitted by members of this inner Council to Parliament [4].

William III and his Ministers.

No one corresponding to a Prime Minister could be said to have existed throughout the reign of William III. The celebrated Whig Ministry of William III had no recognised leader. Judging from the extant correspondence one would say that Shrewsbury first, and Somers later, enjoyed the largest measure of William's confidence. Burnet speaks of the management of the King's affairs, for Parliamentary purposes, as being in the hands of Sunderland from 1693 to 1698 [5]; but Sunderland was too unpopular in the country to take any prominent part in public affairs, in fact he only accepted the office of Lord

[1] Clarendon, Autobiography, i. 420. In Sir John Reresby's Memoirs (ed. Cartwright) Clarendon is spoken of as 'the Great Minister of State,' p. 53. Buckingham as 'the Principal Minister of State,' pp. 76, 81. Danby as 'the Chief Minister,' p. 168.

[2] Clarendon, Autobiography, ii. 344, 460.

[3] Ibid. ii. 226.

[4] Ibid. ii. 344-9.

[5] Burnet, 'History of My Own Time,' iv. 207, 208, and notes.

Chamberlain in 1697, and held it for a year. It is significant that he was frightened into retirement by the wrath of the Whig junto at the appointment of Vernon as Secretary of State by the King, on his advice [1], and without consulting any other Ministers.

Godolphin and Anne.

Nor can it be said that throughout the reign of Anne any Minister had the commanding position which we associate with the Premier. Godolphin, by slow degrees, ousted his rivals, Harley and St. John, from the Cabinet, and when Anne determined once more to employ the Tory advisers who really possessed her confidence, Godolphin bore the dismissal of his friends and the appointment of his foes without seeming to consider that his own retirement was thereby rendered imperative.

Harley and Anne.

Harley is repeatedly described by Swift as first Minister [2], or chief Minister, and it is in the writings of Swift that we first find the term Prime Minister [3]. But Harley did not choose his own colleagues, nor could he exclude from the Cabinet persons opposed to his policy [4]. His reluctance to push measures to an extremity with his opponents, by insisting on their removal from all political office, caused something like a rebellion in his own camp. The October Club wanted a Prime Minister of their own choosing, and a full share of the spoils of victory; the Queen was not prepared to admit that any one ruled but herself. Harley stood between a party who wanted much, and a mistress who would concede little; he had not at his command the party-discipline, now at the command of a party-leader, which would have enabled him to put constraint on the Queen, nor the full confidence, now accorded to a Prime Minister by the Sovereign, which would have enabled him to satisfy the demands of his party.

Walpole.

Walpole was the first Prime Minister in the modern sense

[1] Macaulay, viii. 20.

[2] Memoirs relating to change in the Queen's Ministry, Swift, xv. 24.

[3] Inquiry into the behaviour of the Queen's last Ministry, Swift, xvi. 19, and again in the preface to the History of the last four years of Queen Anne, p. 38, we find the term used with a recognition of its novelty, 'those who are now called prime ministers.'

[4] Ibid. xv. 61.

of the word. It is true that he differed in many respects as to the extent and the sources of his power from the Prime Ministers of the present day. Within the Cabinet there was often a fierce struggle for predominance. Carteret sat there for nine years. For the first three he was a formidable rival as Secretary of State; for the last six he was a malcontent colleague, prepared to take every opportunity of weakening the power of the First Lord of the Treasury. Townshend, during the last months of his tenure of office as Secretary of State, struggled hard to displace Walpole. Nor was Walpole ever invited by the King, as a modern Prime Minister is invited, to form a Ministry of persons who will act harmoniously with him. He entered the Cabinet as a man of acknowledged political eminence, joining a body of men with whom he was in agreement on the chief questions of the time, and he established himself as Prime Minister by the gradual expulsion of those who were inclined to dispute his pre-eminence.

Walpole a Prime Minister in fact: his struggles with colleagues;

He owed his power to two causes, the favour of the King, and his skill in forming and keeping a compact working majority in the House of Commons. He enjoyed the favour of the King largely because he had impressed the vigorous understanding of Queen Caroline with a sense of his value to the Hanoverian dynasty. The bellicose temper of George II would have inclined him to prefer Carteret, who was for a spirited foreign policy. Caroline saw that peace and low taxes were the best security for her husband's throne, and in these matters she governed her husband.

sources of his power;

And the favour of the King reacted on his power of keeping a majority together. A Minister had money and places to bestow; Walpole used these advantages with skill, and without scruple[1]. His followers knew that they

[1] Mr. Morley (*English Statesmen, Walpole*, 121-9) has tried hard to exonerate Walpole from charges which have remained practically unanswered for more than a century: but the circumstantial evidence is almost irresistible. Mr. Edgecumbe and Lord Isla had managed respectively the Cornish and Scotch constituencies; the former was opportunely raised to the Peerage, and both pleaded privilege and refused to answer before the Committee of Inquiry. So did Paxton the Solicitor to the Treasury,

might not fare so well under a successor, but he never put their fidelity to the test by a resignation which would have shown whether they were prepared to stand by him in opposition and force him upon the King.

his deference to public opinion.

He was Prime Minister in fact because his will controlled the action of the Government, and because he had contrived to drive from the Ministry every one whose opposition was in any respect formidable. He watched public opinion, and deferred to it sooner than risk his continuance in office, and regardless of his own views of right or wrong. But he was most unwilling to be called a 'Prime Minister,' because to the popular mind that term did not signify a leader chosen by the people, but a favourite of the Court. Thus, when charged with being 'sole Minister' or 'prime vizier,' he replied that he was only one of the King's Council, and had no more voice in affairs than any other member of the Cabinet [1].

Development of party management.

I have dwelt thus on the position of Walpole because, widely though his position differs from that of a Prime Minister of modern times, it rested largely on the support of a Parliamentary majority which he knew better than any one else how to obtain. Not many years after his death the arts of Parliamentary management had so far progressed that the Pelhams were able to put pressure on the King to admit William Pitt to office. They and their friends resigned in a body, and left no possible Minister at once acceptable to the King and the majority of the Commons [2].

The efforts of George III to control the composition of Cabinets and the direction of policy produced confusion for the first ten years of his reign, and national misfortune during the next twelve. But there grew out of this a party,

though he was sent to Newgate for his refusal. And what are we to make of Walpole's advice, when out of office, to Henry Pelham: 'You must be understood by those that you are to depend upon; *and if it be possible they must be persuaded to keep their own secret.*' Coxe's Pelham, i. 93.

[1] Parl. Hist. xi. 1380: and see the protest of the dissentient Lords on a motion to remove Walpole, 'Because we are convinced that a sole, or even a first Minister is an officer unknown to the law of Britain, inconsistent with the constitution of this country, and destructive of liberty in any Government.

[2] Coxe, Memoirs of H. Pelham, i. 289.

not strong in numbers or Parliamentary influence, but connected together by a determination to resist Royal influence, and claiming that if they were to serve the King at all they must come into office as a party with a leader of their own nomination. Cabinet and party Government appear with some distinctness of outline in the theory, though not fully in the practice, of the Rockingham Whigs. The King resented and disputed the insistence by a party on its right to nominate its leader as Prime Minister[1], and politicians were not yet prepared to admit that such a personage was necessary for the working of Government.

A Prime Minister not recognised as necessary

In 1783 the Duke of Grafton, when asked to join Lord Shelburne's Ministry, told Shelburne that he would not consider him as Prime Minister[2], but only as holding the principal office in the Cabinet. In the Coalition Ministry which succeeded Shelburne, the Duke of Portland was placed at the Treasury, while Fox and North shared the practical control of affairs. A similar arrangement was proposed in 1803 by Addington to Pitt, the proposal being conveyed by Dundas. Addington thought it possible that he and Pitt might be Secretaries of State, with a First Lord of the Treasury of no political importance, and that there should be no Prime Minister. But Pitt had been for seventeen years a Prime Minister in the modern sense of the word, possessing the full confidence of the King, and working with a Cabinet in which his supremacy was undoubted. He told Dundas that it was '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[3].'

till Pitt's time.

Conditions of Premiership before 1832.

It may be said then that before 1832 it was essential to the position of a Prime Minister, firstly, that he should hold the 'principal place in the confidence of the King,' and next,

[1] Stapylton, Canning and his Times, 203, 208. Grafton Memoirs, 355.
[2] Fitzmaurice, Life of Shelburne, iii. 343. Grafton Memoirs, 361.
[3] Stanhope, Life of Pitt, iv. 24.

and following from it, that he should possess 'the chief weight in the Council.' The second of these requirements followed upon the first, because unless the Prime Minister possessed the King's full confidence he might be fettered in the choice of his colleagues, or they might embarrass his action by dissent or intrigue. A King such as George III might even use his Parliamentary influence to overthrow a Minister and a Cabinet loyal to one another but unacceptable to himself.

Smaller Cabinets

Two changes had come over the working of Cabinet Government in the latter part of the eighteenth century, both tending to define and strengthen the position of the First Minister of the Crown. Cabinets had become smaller and limited to their efficient members. The confidential Cabinet as distinct from the outer circle disappears. Cabinet and responsible office go together. Loughborough's claim to sit at Cabinet meetings when he had ceased to be Chancellor was twenty years out of date, though it is a useful event to the historian for the purposes of definition. The Rockingham Cabinet of 1782 consisted of eleven persons, and Fox thought it was too large. Pitt's Cabinet in 1784 consisted of seven persons only. Responsibility was thus concentrated, and was concentrated in the immediate and confidential friends of the Prime Minister.

consisting of heads of departments,

At the same time the Cabinet had become more closely connected with the administration of the departments of Government, not merely by the disappearance of the Archbishop, the Lord Chamberlain, and the Master of the Horse from among its number, but from the altered position of the Secretaries of State. They were no longer the mere channels of communication between the King in Council and the outside world. After 1782 they become responsible, respectively, for Home and Foreign Affairs.

We may note the closer connexion of the Cabinet with administrative duties if we follow the composition of Cabinets from Pitt's first ministry to his last.

In 1784 the Cabinet consisted of seven persons, the Chancellor, Lord President, and Lord Privy Seal, the First Lords of the Treasury and Admiralty, and the two Secre-

taries of State. In the Cabinet of 1805 we find in addition to these a third Secretary of State for War and the Colonies, the Master of the Ordnance, the President of the Board of Control, Trade and the Post Office were represented by a single Minister, and the Chancellor of the Duchy of Lancaster concludes the list.

The size of Cabinets has grown with the requirements of Scotland, Ireland, Local Government, Education, Agriculture to be represented therein. But this does not weaken the position of the Prime Minister. His colleagues are for the most part engrossed in the work of laborious offices; they have neither the leisure nor the inclination for the sort of political intrigue which was often fatal to the Ministries of George II and George III. Nor do they any longer claim, as Shelburne's colleagues claimed in 1783, that the Prime Minister should make no addition to their number without the consent of the entire Cabinet [1].

strengthens the position of Premier.

But the extension of the franchise has done more than anything else to enhance the position of the Prime Minister. He becomes more and more the direct choice of the people, as the House of Commons has become more and more the reflection or the mouthpiece of popular opinion. It is obvious that when the result of a general election sends to the House of Commons a large majority of members bound by promises to their constituents to support the policy of some one individual statesman, the relations of such a man with the Crown, with his colleagues, with the majority which supports him in the House of Commons, are very different to those of a Minister of the last century, who in the last resort could only appeal to nomination boroughs or close corporations, or at the best to county constituencies seldom stirred to a vivid interest in political affairs.

So does the extension of the franchise.

But enough has been said to indicate the growth of the idea that a Prime Minister, though unknown to our constitutional law, is a necessary part of our constitutional conventions. We should now regard the actual relations of the Prime Minister to the Crown and to his colleagues.

[1] Grafton Memoirs, 359.

The Prime Minister and his Colleagues.

Mode of appointment:

A man becomes Prime Minister by kissing the King's hands and accepting the commission to form a Ministry. If one Prime Minister succeeds another without a change of Government, as in 1894 and 1902, he is spared a process which is not unattended with labour and disappointment[1]. In such a case Ministers do not vacate their offices, for these are not held of the Prime Minister, but they are presumed to be at his disposal, and he can ask his colleagues to retain them or not as he pleases.

departmental duties;

The Prime Minister is usually First Lord of the Treasury, with departmental duties which are merely nominal. If he is a Peer it may be possible, though it can hardly be regarded as desirable, that he should undertake the duties of a department. Lord Salisbury's tenure of the Foreign Office illustrates this possibility. But the leadership of the House of Commons and the conduct of its business are so important a factor in the well-being of a Government, that no Peer can be Prime Minister with satisfaction to himself or advantage to the country unless he can find a man who is at once qualified to lead the House of Commons and able to work in perfect accord with him and under him. This is no easy matter. The power of the man who can say 'I will not be responsible for this or that to the House of Commons' is tremendous in the counsels of a Government, and almost incompatible with subordination to a Premier in the other House.

supervision of departments.

To spend eight hours of every day in the House of Commons or its immediate neighbourhood; to take an active and leading part in debate; to be present and to speak on many public occasions, political or non-political; to keep always in mind the general policy of the country, its relations with foreign powers, and the trend of colonial and domestic affairs; to recommend the right men to the king for the service of Church and State, is enough work for one man. The general supervision of the departments of Government which was possible to Peel is not possible

[1] Morley, Life of Gladstone, ii. 629.

to the Prime Minister of to-day. He can do no more than keep a watchful eye on those departments which are concerned with matters of current importance, and trust to the discretion and loyalty of his colleagues in other departments to take no important step without consulting him.

Rights of the individual Minister

The Prime Minister communicates the result of every Cabinet meeting to the King, and is the intermediary between the Cabinet and the Crown; but every minister who is head of a department is entitled to state his business directly to the King. The Prime Minister would not allow business peculiar to the department of one of his colleagues to be first submitted to himself, nor would he allow one Minister to interfere in the department of another. No loyal colleague would, in his communications with the Sovereign, discuss matters of novelty or importance which had not been previously discussed with the Prime Minister, or, if necessary, with the Cabinet as a whole [1].

as regards the work of his office.

Mr. Gladstone criticized severely the arrangement by which Lord Palmerston's dispatches were for a time submitted to Queen Victoria by the Premier, Lord John Russell [2]. Lord Melbourne returned to the Austrian Ambassador dispatches addressed to him as Prime Minister which should have been sent to Lord Palmerston as Foreign Secretary [3], and alleged as one reason for refusing office to Lord Brougham that when Chancellor he had interfered in the business of the Irish Office without communication either with the Prime Minister, or the Home Secretary in whose province the matter lay [4].

[1] This sentence may seem to need qualification in view of the correspondence which passed between Queen Victoria and Lord Granville in 1859 and in 1864. Palmerston and Russell were thought by the Queen to be acting contrary to her wishes and to the opinions of their colleagues, and she communicated her anxieties to Granville, who was a member of the Cabinet. His efforts to reassure her may be regarded by some as a departure from the loyalty due to his venerable leaders; but the situation was a very difficult one. Fitzmaurice, Life of Lord Granville, vol. i. 350, 459.

[2] Gleanings of Past Years, i. 86, 87. He says that the Premier's criticisms should have been addressed to his colleague, 'and the draft as it goes to the Sovereign should express their united view.'

[3] Melbourne Papers, 340.

[4] Ibid. 261, 262.

Cabinet Committees.

It may be asked how the Prime Minister and the Cabinet are now enabled to keep in touch with the departments of Government when these desire to make administrative changes, or require legislation for the development of their work. We have seen how engrossing are the labours of the Prime Minister. The Cabinet is made up of the chiefs of responsible offices the administration of which occupies most of their time and thoughts. The difficulty is partly met by the use of Committees of the Cabinet. If a department wants to take such action as is described—action needing the consideration of the Cabinet as a whole—the representative of the department in the Cabinet can introduce the business and obtain the appointment of a Cabinet Committee to consider the question and report, or decide upon it. The practical convenience of such a Committee is that persons who are not members of the Cabinet may be called to act upon it. If the department is represented in the Commons by a Minister who is not a member of the Cabinet, or if legal questions are involved needing the advice of the law officers, these men are available to serve on the Committee. By this means the Minister who is in charge of the business of the department in the House of Commons, if not a member of the Cabinet, has a full opportunity of expressing his views and of learning the mind of the Cabinet on the subject. The Prime Minister and the Cabinet obtain in a compendious form an account of the action contemplated, the reasons for and against it, and the materials for a decision.

Their working.

The assistance they give to Prime Minister.

This process to some extent supplies the lack of that constant supervision of the departments which a Prime Minister of to-day can no longer exercise.

It remains to be said that if a Minister were to take any important step without reference to his colleagues they might find it necessary to disavow his action, and under such circumstances he must resign.

An inner circle;

The Committees appointed as I have described are very different from the inner conclave which sometimes grows up within a Cabinet. It is quite plain that among a group of nineteen or twenty persons there must be some who

enjoy the special confidence of the Prime Minister, some whom he would be disposed to consult in respect of special lines of administration, others in general questions of policy, party or imperial. But this must depend greatly on the quality of a Cabinet and on the idiosyncracy of the Prime Minister. Every Cabinet must contain men of very unequal merit who are placed in the Cabinet for very various reasons. There is a good deal of specialism in politics: one man may be exceptionally useful for party purposes in platform speaking throughout the country, another a powerful debater in the Commons, a third a skilled administrator, a fourth an expert in the details of party management; and there is usually a heritage of previous Cabinets, men who are there because it is difficult to leave them out. It must rest with the Prime Minister whether he will present his policy to the Cabinet as the outcome of his single brain, or whether he will take previous counsel with such of his colleagues as he considers capable of dealing with general questions of public interest. not easily definable.

We may compare three Ministries of modern times, exceptionally strong in the experience and ability of their members, Lord Aberdeen's Coalition Ministry of 1859, Mr. Gladstone's Ministry of 1868, and the Ministry formed by Lord Salisbury in 1895. There is little sign of an inner circle in the history of the first two, though Lord Aberdeen did not possess the commanding qualities or strong will of Mr. Gladstone. But in the Ministry of 1895 the increased size of the Cabinet, the growth and pressure of departmental work, and perhaps the fact that the Prime Minister undertook the duties of a most exacting department, seem to have created a tendency to allow serious business to be transacted by the Ministers specially concerned, and to settle matters of general importance without a summons of the Cabinet for purposes of consultation [1]. Illustrations.

It is evident that in these respects the relations of a Prime Minister to his colleagues must vary with individual character and temperament, and to some extent with circumstances. More especially must this be the case Appointments to office.

[1] Low, Governance of England, p. 169.

with appointments to office. Here the Prime Minister must obtain the formal approval of the King, but need consult no one[1]. Of such consultations as may take place we obtain rare glimpses. That they take place sometimes we may fairly assume: that they should take place on a large scale or in a formal manner is most unusual. The Duke of Argyll describes a curious departure from constitutional usage in this respect.

Consultation exceptional.

When the Palmerston Ministry of 1855 was weakened, almost immediately after its formation, by the retirement of Gladstone, Herbert, and Graham, the Prime Minister summoned his Cabinet and consulted them as to the mode of filling the vacant places. As a result of this discussion Lord John Russell was offered the Colonial Office, and other steps were taken: a little later Palmerston proposed to his Cabinet to add Lord Shaftesbury to their number, but the proposal was not well received and was abandoned[2].

His duties to his colleagues.

His colleagues look to the Prime Minister not merely for direction and guidance, but for help in any Parliamentary difficulty in which they may find themselves. Formerly these difficulties arose chiefly from some misunderstanding between a Minister and the King. The correspondence of Lord Grey and Lord Melbourne affords illustrations of the efforts which these Premiers were compelled to make in order to avert causes of offence between William IV and Lord Durham, Lord John Russell and Lord Palmerston, each in his way a somewhat difficult colleague[3]. At the present time, and when the Prime Minister is usually a member of the House of Commons, such help is usually afforded by intervention in debate.

His power of dismissal.

The Prime Minister is not only supreme, among his colleagues, in the matter of appointment to offices, he is also entitled to demand of the King the dismissal from office of persons with whom he cannot work in the business of

[1] This was not the view of the Rockingham Whigs. Grafton Memoirs, 359.

[2] Duke of Argyll, Autobiography, i. 541, 543.

[3] Correspondence of William IV and Lord Grey, ii. 201. Melbourne Papers, 201, 261, 262.

government. We are here met by the distinction between political and non-political offices.

Commissions in the army and navy have been held without reference to political opinion ever since the dismissal of General Conway in 1764. Members of the permanent Civil Service are by law incapacitated from sitting in Parliament, and by custom exempt from political changes. The appointments to offices of the Household, especially those held by ladies, were formerly regarded as open to question as regards their tenure. In the days of the first Rockingham Ministry frequent complaint was made by the Prime Minister of the hostility or lukewarm support shown to the King's Ministers by members of the King's Household sitting in Parliament[1]. But for some time past it has been settled that 'great offices of the Court and situations in the Household held by Members of Parliament should be included in the political arrangements made on a change of administration[2].' As regards the Ladies of the Household, whose position gave rise to the well-known 'Bed-Chamber Question' in 1839, the arrangement seems to be that 'the Mistress of the Robes,' who is only an attendant on great occasions, changes with the Ministry. 'The Ladies in Waiting who, by virtue of their office, enjoy much more of personal contact with the Sovereign, are appointed and continue in their appointments without regard to the political connexions of their husbands[3].'

Political and non-political offices.

The holders of important political offices who oppose, or do not support, the Ministry in matters which are not treated as open questions are liable to dismissal, not, as formerly, in proof of royal confidence, but as a matter of necessity in transacting the business of government.

Grounds of dismissal.

At the present day such questions could only arise where administrative policy or practice is concerned. A Minister who voted against his party in a division for which the Government Tellers were employed would, by convention,

[1] Rockingham Memoirs, i. 294, 299. Minutes of Melbourne Cabinet.
[2] Hansard, 3rd Series, xlvii. 1001.
[3] Gladstone, Gleanings of Past Years, i. 40.

place his resignation in the hands of the Prime Minister as soon as he had determined on his course of action.

Conditions of dismissal.

Moreover, when it is said that the Prime Minister has the power of dismissing his colleagues, no more is meant than this, that he can say to the King, 'He or I must go.' We get a good illustration of this in the dismissal of Lord Chancellor Thurlow, in May, 1792. Thurlow had long been a false and froward colleague: at last he raised a sudden opposition to a Government measure in the House of Lords and nearly brought about its rejection. Pitt wrote to tell him that it was impossible for the King's service to be 'any longer carried on to advantage while your Lordship and myself both remain in our present situations,' and wrote in the same sense to the King. The King at once desired Dundas, the Home Secretary, to wait on the Lord Chancellor, and inform him of Pitt's determination, and further, that having to decide 'which of the two shall retire from my service,' and feeling the removal of Pitt to be impossible, he must call upon Thurlow to give up the Great Seal[1].

Thurlow.

Palmerston.

In the case of Lord Palmerston in 1851, the Prime Minister was well aware that Queen Victoria disapproved, as he did, of the communications made by Lord Palmerston to M. Walewski in London and to Lord Normanby in Paris expressing approval of the *coup d'état* of December, 1851. Lord Palmerston had made these important declarations of policy without consulting his colleagues in the Cabinet. Lord John was therefore 'most reluctantly compelled to come to the conclusion that the conduct of Foreign Affairs can no longer be left in your hands to the advantage of the country[2]'.

It may be said that the strength of a Prime Minister's position may be tested not only by his power of dismissing a colleague, but by his ability to withstand the weakening of his Government by the retirement of important members of the Cabinet.

The strength of Pitt's Ministry was unaffected by the

[1] Stanhope, Life of Pitt, ii. 148–50.

[2] Walpole, Life of Lord J. Russell, ii. 173.

dismissal of Thurlow, but that of Lord John Russell did not long survive the dismissal of Palmerston. Effect of resignations.

The resignation by Lord Althorp of the office of Chancellor of the Exchequer and of the leadership of the House of Commons in 1834 brought about the retirement of Lord Grey, and though Lord Althorp resumed these duties under Lord Melbourne, yet when, within a few months, he succeeded to a peerage the Ministry was so weakened that Lord Melbourne could suggest no course satisfactory to the King, and Sir Robert Peel was sent for.

Mr. Balfour's Cabinet survived, for more than two years, the retirement of five important members, but it was so far weakened that, except in the direction of Foreign Affairs, little serious work, legislative or administrative, could be entered upon.

On the other hand, Mr. Gladstone's Government of 1880 was little affected by the resignation in 1881 of Mr. Forster, who, as Irish Secretary, was responsible for the department the affairs of which excited most attention at the moment; nor was Lord Salisbury's Government of 1886 shaken by the retirement of Lord Randolph Churchill, at that time the most prominent figure in the Conservative party. There seems to be no doubt, for reasons which I will mention later, that the vitality of Governments is stronger now than heretofore, and that a Prime Minister is more absolute, and more capable of dispensing with the service of distinguished colleagues, than was the case before the latest Acts for the extension of the franchise and redistribution of seats.

It is said, and truly, that the Prime Minister is unknown to the law; no salary is attached to the office, if office it can be called; the term does not occur in any Act of Parliament, nor in the records of either House. In two formal documents only does he find place. Lord Beaconsfield described himself in the Treaty of Berlin as Prime Minister of England; and on December 2, 1905, the King by sign-manual warrant gave to the Prime Minister place and precedence next after the Archbishop of York. Precedence of Prime Minister.

The Relations of the Cabinet to the Crown.

Cabinet entitled to king's confidence:

The King's servants are entitled to his full confidence, and this means first, that he should not take advice from others, in matters of State, unknown to them; next, that he should not give public expression to opinions on matters of State without consulting them; and lastly, that he should accept their advice when offered by them as a Cabinet, and support them while they remain his servants.

The correspondence between William IV and Lord Grey affords some useful illustrations of these propositions, for William IV, with excellent intentions, was impulsive and unversed in the rules and practice of constitutional Government.

(a) he should not consult others;

The Duke of Wellington addressed the King directly on the subject of the arming of political societies at a time when the excitement occasioned by the Reform Bill caused some anxiety as to the maintenance of order. The King replied, and the Cabinet, though assured that his correspondence with the Duke did not indicate any want of confidence in them, remonstrated through the Prime Minister. Lord Grey writes that 'it might produce inconvenience if His Majesty were to express opinions to any but his confidential servants in matters which may come under their consideration[1].' The King promised that in future he would merely acknowledge such communications.

(b) nor act without their advice;

Again, on the occasion of Sir C. Grey being sworn of the Privy Council as a member of the Canadian Commission, William IV made a short speech in which he referred, unmistakably and in terms of severity, to advice received from the Colonial Secretary. The Cabinet remonstrated with the King for having done that which might 'have the effect of hereafter restraining the freedom of that advice which it is the duty of every one of your Majesty's confidential servants to offer to your Majesty without reserve.'

(c) nor refuse his support.

The third proposition is not so easy to illustrate. A Sovereign of this country either accepts the advice of his

[1] Corresp. of Will. IV and Lord Grey, i. 413-24.

Ministers in any matter to which they attach importance, or must dismiss them. But there are many ways in which the influence of the Crown may be used to assist the Ministry of the day. In domestic affairs we know how important was the effect on the passing of the first Reform Bill of the communications addressed by William IV to the opponents of the Bill in the House of Lords; and the efforts of Queen Victoria largely contributed to bring about a settlement of the threatened dispute between the two Houses in the case of the Disestablishment of the Irish Church [1]. In Foreign Affairs the international courtesies of King Edward VII lend valuable aid to the pacific policy of the Foreign Office.

Duties of Cabinet to King.

The Cabinet, on the other hand, are bound, as is each individual member, to inform the King on all important measures of the Executive. William IV expressed surprise and displeasure when he supposed that his Ministers had introduced, without his knowledge, a Bill for abolishing capital punishment in certain cases. He was assured that the measure in question was a private member's Bill, and that certain members of the Government had supported it, as they were entitled to do in the legitimate exercise of their private judgment.

Full information on acts of government

The necessity for giving this information to the Sovereign is well illustrated by the circumstances which brought about Lord Palmerston's retirement in 1851, and the memorandum communicated to him by Queen Victoria through the Prime Minister as to the duty of the Secretary of State for Foreign Affairs [2]. It was in these words:—

'The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to a measure, that it be not arbitrarily altered or modified by the Minister. Such an act she must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that Minister. She expects to be kept

[1] Life of Archbishop Tait, ii. 24, and see supra, pp. 43, 44.

[2] Hansard, 3rd Series, cxix. 90.

informed of what passes between him and the foreign ministers, before important decisions are taken, based upon that intercourse; to receive the foreign dispatches in good time, and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off.'

Briefly, one may say that the King is entitled to be informed of all important executive or legislative measures which have so far ripened towards action as to have come before the Cabinet for discussion.

and changes of administration.

Suggested changes in administration may begin in so vague and tentative a manner that it is hard to say at what point communication with the King becomes imperative. It is clear that the negotiations which Addington conducted with Pitt in 1804 went further than George III considered to be justifiable, and it would certainly seem right that when the confidential servants of the Crown contemplate a change in the character of the administration, the Sovereign should have early knowledge of the matter. Queen Victoria was offended, not without reason, when, in 1886, Lord Randolph Churchill communicated his resignation to the *Times* before it was made known to her[1].

§ 4. *The Relations of the Cabinet and the House of Commons.*

Changes of relation.

It remains to consider the relations of the Cabinet with the House of Commons. Here we must be careful lest we apply a theory of the constitution which really corresponded with practice for about fifty years of the middle nineteenth century to periods before the first Reform Bill, and since the last extension of the franchise, when, although the theory is true, it is true in a very different sense.

Without a majority in the House of Commons it is plain that the Cabinet cannot carry the legislation or obtain the supplies which it requires. But in order to determine the relations of the Cabinet to the Commons it is necessary to consider how that majority comes into existence and is kept together.

[1] Life of Lord Randolph Churchill, vol. ii. p. 255.

In applying our theory to the practice of the eighteenth and early nineteenth centuries, we must not allow ourselves to suppose that constituencies were always eager, well-informed, and uncorrupt, that the House of Commons was always really representative of such constituencies, that parties were always well defined, and that the Crown always loyally accepted the decision of the people and of Parliament as to the party which should govern and the men who should guide. Throughout the greater part of the eighteenth century these conditions were inadequately fulfilled. The public was often apathetic on political questions: the House of Commons was not representative of public opinion: nomination boroughs and constituencies subject to influence of one sort or another gave a large control over the representation of the House to great landowners, to the Crown, or the Government of the day. Thus it was that, in the absence of political interests and of party divisions based on such interests, an adroit Parliamentary manager might keep a majority together, although, like Walpole, he had fallen under the cordial dislike of the people, or, like Newcastle, had never attracted their attention. For the same reasons it was possible for George III, who busied himself in matters of patronage and corruption, to make, keep, or destroy a majority for any Ministry.

How majorities obtained in eighteenth century.

Apathy of country.

Corruption of members.

To enforce joint responsibility upon a body of Ministers it is necessary either that the Ministers themselves should be effectively agreed on certain lines of policy, and loyal to one another, or that they should represent a party strong enough in the country to enforce its policy upon its nominees. No King who aimed at personal influence would desire that his Ministers should represent a compact body of opinion, adverse perhaps to his own. George III, who not only desired to rule, but saw how the apathy of the country and the self-interest of public men made it possible for him to enjoy the reality of power, used every opportunity to break up parties and prevent the formation of strong Ministries. His successors were not so pertinacious or so astute, but the fact remained that, as the electorate was constituted before 1832 almost any Ministry

Influence of King.

which enjoyed the support of the Crown could command such a majority as would enable it to hold office. The great displays of public opinion at general elections, in 1784, in 1807, and in 1831, all served to confirm in office an existing Ministry. The ultimate legal sanction which the House of Commons can bring to bear on a Ministry of which it disapproves, the refusal to pass the Mutiny Act or grant supplies, has never in fact been applied. The only Ministers before the Reform Act of 1832 who resigned in consequence of defeats in the House of Commons were Sir Robert Walpole in 1741, Lord Shelburne in 1783, and the Duke of Wellington in 1830.

We may look at this relation of Cabinet to Commons as it existed before 1832, and again before and since 1885. It should be borne in mind that during the first of these three periods, and indeed for rather longer, it was not expected of a Ministry that they should do more than administer. The defeat which drove Walpole from power took place in a committee of the House sitting to hear an election petition. Shelburne was beaten on a vote of approval of the Peace of Versailles. There is no instance before 1830 of a Ministry retiring because it was beaten on a question of legislation [1], or even of taxation. So late as 1841 Macaulay maintained in the House of Commons, speaking as a Cabinet Minister, that a Government was not bound to resign because it 'could not carry legislative changes, except in particular cases, where they were convinced that without such and such a law, they could not carry on the public service.' Legislation which Ministers might need for administrative purposes was the only sort of legislation about which, in the opinion of the Melbourne Cabinet, a Government need feel sensitive.

Causes of fall of Cabinets before 1832.

But, generally speaking, one may say that from 1832 to 1867 a defeat in the House of Commons on what the

[1] Chatham was defeated on the Ways and Means of the year and on the proposed land tax, and Pitt on commercial policy with Ireland, Parliamentary reform, and national defence; these defeats were not treated as grounds for resignation. Massey, i. 307. Stanhope, Life of Pitt, i. 254, 272, 275, 288. Todd (Parl. Government in England, i. 253 et seq.) tabulates the causes of the fall of ministries since 1782.

Cabinet may have chosen to consider a vital issue was the ordinary mode of terminating the existence of a Ministry. Since 1867 there have been nine changes of Ministry: on four of these occasions Ministers have resigned because they were defeated in the House of Commons, on four because the verdict of the constituencies at a general election had been given decidedly against them. It was made a matter of reproach to Lord Salisbury's Ministry in 1892 that, being in an apparent minority of forty on the result of a general election, they did not resign at once, but awaited an adverse vote in the House of Commons. The circumstances under which Mr. Balfour's Ministry retired in 1905 are too peculiar to be likely to form a precedent. A Cabinet weakened by the retirement of five important members, warned by the result of frequent by-elections that it had lost the confidence of the country, conscious of divisions of opinion among its supporters on a serious question of economical policy, retained a majority of seventy to eighty, which enabled it to live through the Sessions of 1904 and 1905. During the recess Mr. Balfour resigned, mainly on the ground that he had no legislative programme to lay before Parliament in the ensuing Session. His opponents accepted office without hesitation, formed a Ministry, and dissolved Parliament. The results of the general election which ensued indicate that a Government which is conscious of failing popularity does better to accept defeat in the House of Commons, or to appeal to the country on its own account, than to follow the course adopted in 1905.

Since 1867.

The events of 1905-6.

The conditions under which Mr. Balfour's Government retained office during the years 1903, 1904, 1905 raise an interesting question as to the present relations of the Cabinet to the Commons. It is true, I think, to say that in the last 100 years the power which determines the existence and extinction of Cabinets has shifted, first from the Crown to the Commons, and then from the Commons to the electorate. But it is no longer true that the House of Commons is always a close reflection of the opinion of the country, or that it responds to changes of public

Changed relation of Cabinet and Commons.

opinion as they may occur during the existence of a Parliament.

Power of Commons between 1832–67.

The causes of these changes are various. Before 1832 the Crown and its servants could exercise considerable influence on the composition and conduct of the House of Commons. The Reform Act of 1832 was an attempt to make the House at once independent and representative, to distribute political power in correspondence with the conditions of the time, and to give representation to the great centres of industry as well as to the smaller boroughs and rural counties. Holding to the principle that representation should be local, and the voter a person of substance, the framers of the Bill made the House a fair representation of the middle classes. The result as it worked out between 1832 and 1886 was to give to the House a greater share of political power than it possessed before that date, or possesses now.

Effects of legislation of 1884–5;

The present conditions are attributable not so much to the extension of the franchise as to the distribution of political power by the creation of single-member constituencies, and to the development of party organization. Before the legislation of 1885 the constituencies for the most part returned two members, political organization was not fully developed, and there was greater opportunity for the representation of variety of opinion. The creation of the single-member constituency under existing political conditions has gone far to destroy the local character of our representative system, and the independence of the individual member.

of the single-member constituency;

When a constituency returned two members the elector had the choice of varieties of opinion even among members of the same party: under the present system, and with the increased strength of political organization, a candidate offers himself, not so much on his own merits, as because he is the nominee of the political association or caucus which professes to represent his party, and because he undertakes to support a given programme and the leaders of the party.

The result is that an important division in the House

of Commons, before 1832, represented very often the personal views of those who owned or controlled constituencies, since 1886 it represents the directions of external party organization. Between those dates a member enjoyed a greater freedom of judgment in the exercise of his vote, and hoped to justify his action to his constituency. *of party organization;*

Modern rules of procedure give to the Government of the day a large control over the time of the House for the purposes of its own business, while the introduction of the closure leaves the time for discussion of a Government measure very largely in the hands of the Government. Yet another element in the situation is that a slight but widely diffused change of political sentiment may, acting on the numerous constituencies of the present day, change the character of the House of Commons, and give to one of two parties a majority large beyond all proportion to the numerical majority of votes cast for them throughout the country. *of procedure rules;* *in increasing power of Cabinet.*

The consequence of these various features of our political life at the present time is to make the House of Commons dependent on the Cabinet rather than the Cabinet on the Commons. The threat of a dissolution suggests to the supporters of a Ministry the certainty of expense and the possibility of defeat, and this possibility may assume a more formidable aspect if by-elections have resulted unfavourably to the Government. Such a threat, issuing from the Prime Minister as representing the collective wisdom of the Cabinet, may secure the continued loyalty of a majority in the House of Commons long after the composition of the House has ceased to correspond with the political opinion of the country. A member may have ceased to be in sympathy with the leaders of his party, but he may also feel that small as will be his chances of re-election in any event, they would disappear altogether if he broke the bonds of party allegiance. In truth the Redistribution of 1885 has done much to destroy the independence of the members of the House of Commons. The power and influence which it has lost has gone partly to the Cabinet, partly to the constituencies, or rather in many cases, to the organizations by which the constituencies are worked.

§ 5. *The Imperial Defence Committee.*

The Imperial Defence Committee will be dealt with under the head of the Armed Forces of the Crown, but it should be mentioned here. It is not a Council of the Crown; it is not a Committee of the Cabinet; it has no executive power. The Prime Minister is always a member, and 'it practically never meets without having the assistance of the Secretary of State for War, the First Lord of the Admiralty, the head of the Army General Staff, the head of the Army Intelligence Department, the First Sea Lord, and the head of the Naval Intelligence Department[1].' Other persons may be summoned if the business under discussion needs their advice, as, for instance, the Foreign, Colonial or Indian Secretaries, the Chancellor of the Exchequer, or representatives of the self-governing Colonies[2]. Records are kept of the proceedings of this Committee, and for this purpose it possesses a permanent Secretary; these features at once distinguish it from the Cabinet. It exists for the purpose of framing and recording the best advice obtainable on questions of Imperial Defence for the benefit of the Departments concerned. The relations of this Committee to the Cabinet have sometimes been misunderstood, as also its powers and duties, and for this reason I mention it here. Incidentally its existence adds to the many labours of the Prime Minister, who habitually takes the chair at its meetings.

Section IV

The House of Lords and the Privy Council as Councillors of the Crown

§ 1. *The House of Lords.*

The House of Lords as a Council.

The House of Lords is still, in theory, a Council of the Crown. The peers have never been summoned in this capacity since 1688, but their historical rights are preserved in two ways.

Form of writ.

The writ of summons addressed to the temporal and

[1] Hansard, 4th Series, vol. cxxxix. p. 619.

[2] Speeches of Mr. Balfour on August 2, 1904 and May 11, 1905. Parl. Debates, 4th Series, vol. cxxxix. p. 68, vol. cxlvi. p. 62.

spiritual peers is a call 'to treat and give council'; the judges and law officers are summoned to attend them; whereas the Commons, before the Ballot Act reduced the writ to a form, were summoned to 'do and consent to such things, as by the said Common Council . . . shall happen to be ordained [1].'

Privilege of access to Sovereign.

It is the privilege of each individual peer to have audience of the Sovereign. Such a right was freely exercised in the eighteenth century, when parties were less coherent, members of Cabinets less loyal to one another, and the King more ready to listen to advice given to him by others than his responsible Ministers. At the present day a peer would hesitate to offer counsel to the Crown on any matter which fell within the province of the Ministry of the day. Nevertheless, the King has a right to demand, and any peer, whether of the United Kingdom, of Scotland or of Ireland, has a right to offer counsel on matters which are of importance to the public welfare [2].

§ 2. *The Privy Council.*

The Privy Council, as such, has ceased to be a Council of the Crown. It meets for the purpose of making Orders, issuing Proclamations, or attending at formal acts of State, such as the admission of a Minister to his office or the rendering of homage by a Bishop for the temporalities of his see. The Cabinet has acquired the place which the Council once held as the adviser of the Crown.

The Privy Council as advisers.

Some part of its earlier duties in this respect survive in the Committees of the Privy Council. At present there are, besides the Judicial Committee, three Standing Committees of the Council, but only one of these, the Committee for business relating to the Channel Islands, represents the old Standing Committees appointed by the King in Council at the commencement or in the course of his reign [3]. The

[1] Vol. i. pp. 55, 58.

[2] The right is to go singly, and the application for such an audience is made through an officer of the household, not through the Secretary of State. Diary of Lord Colchester, iii. 604.

[3] The Committee for Trade and Plantations rests on an Order in Council of August 23, 1786. See port, p. 198.

Judicial Committee is a statutory Court of Final Appeal from all parts of the King's Dominions outside the United Kingdom[1]. The two Committees which are constituted respectively for the Universities of Oxford and Cambridge[2] and for the Scotch Universities[3] are also the creations of Statute.

Committees of Council.

But the form of advice and counsel is maintained. The judicial Committee of the Privy Council when it gives judgment 'humbly advises His Majesty' that an appeal should be allowed or dismissed, or a judgment varied.

A Committee for Trade and Plantations used till recent times to advise other departments of Government on matters affecting commerce or colonial relations: and Committees of the Privy Council are appointed from time to time for various purposes of inquiry.

The main business of the Privy Council must therefore be dealt with in the next chapter, for it is important to distinguish the duty of settling policy and advising action accordingly, from the duty of actual administration in the various departments of State.

But since the advisers of the Crown are necessarily Privy Councillors, it would be well here to speak of the mode of appointment and dismissal of a Privy Councillor, and of any special matters appertaining to his *status*.

How appointed.

The Privy Councillor is nominated by the King; he takes the oath of office and the oath of allegiance and kisses the King's hand at a meeting of the Council.

The oath of office is as follows:—

The oath.

You shall swear to be a true and faithful Servant unto the King's Majesty, as one of His Majesty's Privy Council. You shall not know or understand of any manner of thing to be attempted, done, or spoken against His Majesty's Person, Honour, Crown, or Dignity Royal; but you shall lett and withstand the same to the uttermost of your Power, and either cause it to be revealed to His Majesty Himself, or to such of His Privy Council as shall advertise His Majesty of the same. You shall, in all things to be moved, treated and debated in

[1] 3 & 4 Will. IV, c. 41. [2] 40 & 41 Vict. c. 48, s. 46.
[3] 52 & 53 Vict. c. 55, s. 9.

Council, faithfully and truly declare your Mind and Opinion according to your Heart and Conscience; and shall keep secret all Matters committed and revealed unto you or that shall be treated of secretly in Council. And if any of the said Treaties or Councils shall touch any of the Counsellors, you shall not reveal it unto him, but shall keep the same until such time as, by the Consent of His Majesty, or of the Council, Publication shall be made thereof. You shall to your uttermost bear faith and allegiance unto the King's Majesty: and shall assist and defend all jurisdictions, pre-eminences and authorities granted unto His Majesty and annexed to the Crown by Acts of Parliament or otherwise, against all Foreign Princes, Persons, Prelates, States or Potentates. And generally in all things you shall do as a faithful and true Servant ought to do to His Majesty. So help you God and the Holy Contents of this Book.

An affirmation may now be substituted for the oath [1].

How dismissed.

No formality beyond this is required for the appointment of a Privy Councillor, and none for his dismissal: it is enough for this purpose that the King should send for the Council book and strike his name off the list of the Privy Council. The demise of the Crown formerly dissolved the whole Council in six months from the date of the demise, unless the new Sovereign should re-appoint the Council of his predecessors. The Demise of the Crown Act [2] provides that the death of the Sovereign does not affect the tenure of office held under the Crown.

Composition of the Council.

The members composing the Privy Council may be said to fall into three groups. Members of the Cabinet must necessarily be made members of the Privy Council as the confidential advisers of the Crown. Beyond these there are great offices which, though unconnected with politics, are usually associated with a place on the Council Board. Beyond these again is a group of persons eminent in political life or in the service of the Crown, upon whom the rank of Privy Councillor is conferred as a complimentary distinction [3].

[1] 51 & 52 Vict. c. 46. [2] 1 Ed. I, c. 5.

[3] A king's son is a Privy Councillor by birth, during his father's lifetime, and does not need to be sworn. Greville Memoirs, iv. 274.

Alienage. Until 1870 an alien born could not become a member of Parliament or of the Privy Council though naturalized. This disqualification was imposed by the Act of Settlement, and difficulties in removing it, even by Statute, were added
1714. by 1 Geo. I, c. 4. Thus in order that naturalization might confer political rights in an individual case, it was necessary to repeal that Act for the purposes of that case, before a bill could be brought in to remove the statutory disability created by the Act of Settlement. The Naturalization Act of 1870 confers upon naturalized persons the full political rights of a British subject, and the distinction between citizens by birth and naturalization is abolished so far as political rights are concerned.

The right to commit. The members of the Privy Council, like the judges of the High Court of Justice, are in the Commission of the Peace for every county. The right of the Privy Council, or of a Committee of the Council, or of individual members, to commit persons to prison seems to have been practically settled by this arrangement, and is limited by the security which the Habeas Corpus Acts supply, that a prisoner shall not be detained without the opportunity of speedy trial, bail or discharge. Thus the questions, which once were of interest[1], concerning the right of a Privy Councillor or of the collective Council to commit to prison are answered, and need no further discussion here.

[1] In the Seven Bishops' case much argument was expended on the legality of commitment by the lords of the Council, because it was not alleged in the warrant that the commitment was by the Privy Council, but only by certain lords. The right of the collective Council to commit for misdemeanour seems to have been admitted, and, equally, that an individual councillor could not so commit. 12 St. Trials, 183.

CHAPTER III

THE DEPARTMENTS OF GOVERNMENT AND THE MINISTERS OF THE CROWN

I HAVE traced the history of the Councils of the Crown to their issue in the Cabinet of the present day, dependent for its existence upon the continued support of Parliament and the electorate.

The Cabinet not the executive,

But the Cabinet is not the *executive* in the sense in which the Privy Council was the executive. The Cabinet shapes policy and settles what shall be done in important matters, and it consists mainly of the heads of great departments of government, but it is not therefore the executive.

The King in Council gives orders that certain things shall be done; but the Cabinet gives no orders; it settles that orders shall be given, or—if the personal intervention of the Crown is necessary—that the King shall be advised to act in a certain manner. When we have learned all that can be learned about the Cabinet, we have only ascertained, as it seems to me, what is the nature of that body which, while Parliament and the country support it, decides with an irresistible force of decision what action shall be taken, what orders shall be given. The Cabinet advises the King that war be declared with a foreign power, the Foreign Secretary in the name of the King recalls our representative at the Court of that power, the King in Council proclaims the declaration of war. The Cabinet decides that ships or troops shall be sent here or there; the First Lord of the Admiralty or the Secretary of State for War gives the necessary orders. The Cabinet decides that the King shall be advised to dissolve Parliament, the King in Council proclaims the dissolution of Parliament and the summons of a new one, the Chancellor issues the writs which bid the peers to attend and the constituencies to elect representatives.

but the motive power in the executive.

The Cabinet is the motive power in our executive. The decisions of the Cabinet and the advice thereupon tendered to the Crown bring into action the departments of government concerned. Of these and of the Ministers who supervise them we must now treat.

Section I

The Growth of Departments of Government

§ 1. *The Offices of the Household.*

The Ministers of the Crown represent a more universal requirement of royalty than do the Councils of the Crown. The principle that some form of representative consent is needed to alter the law of the land, and that the King should act with and through a group of advisers, is a feature common to our own and some other western constitutions: but every King must have Ministers to maintain the dignity of his household, to assist in the transaction of his business.

The King's household.

Official life may be said to begin with the King's household. The chamberlain, the steward, the horsthegn or marshal, and the cupbearer or butler, are the necessary ministers of the Teutonic court[1] in England and on the continent: and the Norman King had his Lord High Steward, his Lord Great Chamberlain, his Constable and his Marshal[2].

The ancient household.

On these it is not necessary to dwell, nor to trace their history down to the present time. Shortly it may be said that these great offices became hereditary and honorary[3], and then were duplicated in order that their work might be done. The Lord Great Chamberlain survives, as does the Earl Marshal, the head of the Herald's College. The Lord Great Chamberlain has the charge of the King's Palace at Westminster, and retains authority over the buildings of both Houses of Parliament when the Houses are not sitting[4]. Both officers discharge certain honorary duties at a coronation.

[1] Stubbs, Const. Hist. i. 343. [2] Ibid. 354. [3] Ibid. i. 345.

[4] See Journal of Speaker Denison, p. 215, and Report on the Presence of the Sovereign in Parliament, 1901.

A Lord High Steward is appointed for the purpose of presiding at the trial of a peer for treason or felony, and also for the ceremonial of a coronation; the Lord High Constable is brought into existence for the coronation only.

The modern household

But there is a Lord Steward, as also a Lord Chamberlain and a Master of the Horse; they have functions in the King's household at the present day, and the Lord Chamberlain is also a censor of plays, and of theatrical management. These were, as we have seen, Cabinet offices in the last century, before 1782, and they are still political offices in so far as they change hands, with other places in the household, on a change of government[1]. Two offices, those of Treasurer and Controller of the Household, are usually held by two members of the House of Commons who, together with the Junior Lords of the Treasury, act as Whips for the Government of the day.

The Chamberlain.

The Chamberlain, however, needs a fuller notice. This officer was originally responsible for the administration of the royal household. His office was therefore one of financial importance. Of this indications are afforded in the fact that in Saxon times the words *hordere* or *thesaurarius* were synonyms for the Chamberlain[2]; in the fact that some portions of the Norman King's revenues were not paid into the Exchequer but *in camera regis*[3]; in the frequent and elaborate ordinances for the regulation of the royal household; in the constant demand of the mediaeval Parliaments that 'the King should live of his own,' that the Chamberlain among other officers of State should be nominated in Parliament.

Importance of the office.

So when the office became hereditary and titular there

[1] These offices are :—

The Lord Steward of the Household.	The Captain of the Gentlemen at Arms.
The Lord Chamberlain.	The Captain of the Yeomen of the Guard.
The Vice-Chamberlain.	The Master of the Buckhounds.
The Master of the Horse.	The Chief Equerry.
The Treasurer of the Household.	The Lords in Waiting.
The Controller of the Household.	

[2] Kemble, Saxons in England, ii. c. 3.

[3] Report on Public Income and Expenditure, 1869, p. 341.

was need of a real minister to do its work: this was the King's Chamberlain, represented at the Exchequer by two *camerarii*. The duties of these Chamberlains of the Exchequer became merely formal after the reign of Henry VII, but the King's Chamberlain retained his importance.

He was not merely concerned with the economy of the King's household; he was a medium of communication between King and Council, and occasionally endorsed petitions which the King had signed, or carried them with his instructions to the Secretary of State [1]. In the Statute of Precedency he ranks above the King's secretaries [2].

As late as the reigns of William III and Anne the office was filled by statesmen of the first rank, by Shrewsbury and Sunderland in the reign of William, by Shrewsbury in the reign of Anne. But from this time forth, although the office was long regarded as one of Cabinet rank, it ceased to be held by persons of such political eminence.

§ 2. *The Political Offices.*

The Treasurer.

In the management of the King's household we find the beginning of the departments of government. But as the business of the kingdom increases, the keeper of the treasure, which is expended on national purposes, becomes an official distinct from the Chamberlain and Steward, who receive and expend the funds by which the royal household is maintained. The secretarial business is transacted by the chief of the royal chaplains, who in the reign of Edward the Confessor becomes the Chancellor. The Saxon King seems to have needed a great officer to act as his deputy or representative, and the Norman King of necessity appointed some one to act on his behalf when he was absent in France. Hence arises the Justiciar, whose name indicates the constant unresting activity of the Norman Kings in enforcing the justice of their courts, and in asserting their peace as against the justice and the peace of localities and

The Chancellor.

The Justiciar.

[1] Nicolas, vol. vi. pp. ccxiv, ccxxiii. Ordinance of 1443.

[2] 31 Hen. VIII, c. 10, s. 4.

great lords of lands. Thus side by side with the officers of the King's household arise officers for the conduct of national business. These fall at first into three groups: the administration of the King's justice and maintenance of the King's peace; the account, receipt, and issue of the King's treasure; the communication of the King's will expressed individually or in Council. Growth of political offices.

Throughout the greater part of our history the only organized department for the defence of the nation is the Admiralty; feudalism, and the institutions which grew out of feudalism, supplied the place of an organized military system for offence and defence; the War Office has slowly grown up as Parliament slowly recognized the need of a standing army, and the King as slowly surrendered his prerogatives in respect of military command. The union with Scotland, the union with Ireland, the growth of the colonies and the acquisition of India, have created new needs for organized administration, while the increased activity of the State has established central control over trade, over local government, over education, and agriculture. The Admiralty. Development of departments.

I propose in this chapter to deal with the history and constitution of these various departments, leaving to a separate chapter the administration of justice and the constitution of the courts. With some departments I must hereafter deal more fully, and shall therefore speak of them briefly in this chapter.

One searches for some logical arrangement of the functions of government which should give life and reality to an account of the offices of State, and in a previous edition I tried to find such an arrangement by a division of them into *executive* and *regulative*. Apart from the offices of the household, the departments of government might be regarded as falling into these two groups. There are some things which are necessary to be done, and some rules necessary to be enforced, if a State is to be solvent and orderly at home and to maintain independence and dignity abroad. There are other things which are not necessary but expedient to be done, and other rules in like Arrangement of chapter. Division of offices.

manner to be observed, for the well-being of the community. The first of these represent the duty of the executive *par excellence*, the essential business of government. The second represent the desire of the State to regulate human conduct so as not merely to secure the existence of the community, but to promote its well-being.

Historical arrangement.

This division, however, is not exhaustive, nor is the distinction always easy to substantiate. It seems better to treat these offices historically, and to group them according to their origin. Regarded thus they fall into four groups.

Offices in commission.

Two great offices, both of high antiquity, are now always placed in commission, the office of Lord High Treasurer and that of Lord High Admiral. The Treasury therefore, with its subordinate departments, and the Admiralty stand historically apart from the rest; and the rest may be divided into those which have grown out of the Secretariat and those which have grown out of the Council.

The Secretariat.

Under the Secretariat I would include all those offices which take their origin in the custody of the royal seals and the formal communication of the King's pleasure. The Chancellor, the Lord Privy Seal, the Secretaries of State, the Secretary for Scotland, and the Secretary to the Lord Lieutenant of Ireland would fall into this group.

The Boards.

In the remaining group we must place the Privy Council—for many purposes the formal executive of the country—and all those Boards which once were Committees of the Council, and which still, by their statutory composition, though not in practice, consist of a number of great officers of State with a President who is, for all purposes of administration, the Board.

The Privy Council.

It will be necessary to take the Privy Council apart from the various Boards which have grown out of its Committees, because the Privy Council is, as I have said, for many purposes, the formal executive of the country. But, with the exception of the Privy Council, I will take the departments, or groups into which they fall, in the nearest possible approach to their historical order, dealing first with the Chancery, the Privy Seal, and the Secretariat: then with the Treasury, the Admiralty, and the Boards

which have sprung from the Privy Council. There will still remain some offices which cannot be grouped, of which that of the Chancellor of the Duchy of Lancaster is politically the most important.

Section II

The Privy Council

I have spoken of the Privy Council as it once was, a Council of the Crown as well as a branch of the executive, a body which assisted the Crown to decide upon policy and, with the Crown, gave the orders for carrying that policy into effect.

The Council a means of expressing the royal pleasure.

But we must now regard it as divested of its consultative duties, as a formal medium for expressing the royal pleasure in certain matters of executive government.

These are dealt with either by Order in Council or by Proclamation; they are so dealt with either in virtue of the discretionary prerogative of the Crown, or under powers conferred by Statute; and where a Statute confers powers it may enable them to be exercised by Lords of the Council, or any two of them, without the presence of the King.

By Order.

Some matters are of a formal character. The entire Council was summoned to receive Queen Victoria's announcement of her intended marriage; in the Council persons are admitted to its membership or to the offices of State. It is in the Council that a Minister takes the official oath, kisses the King's hands, and receives the insignia of his office; that a Bishop does homage for the temporalities of his see; that the Sheriffs of counties for the current year are chosen.

When matters are merely approved or passed by the King in Council, an *Order* is made to that effect. When it is desired to render the action of the Council widely public, this is done by royal *Proclamation*.

By Proclamation.

Proclamations are of unfrequent use, except for the purpose of summoning, proroguing or dissolving Parliament, for declaring war or peace, in fact for announcing some

matter which may be supposed to concern the nation in its entirety.

Nature of Orders.

The multifarious character of the Orders in Council made under statutory powers may be seen by a reference to the index to any volume of the London Gazette. Some effect departmental legislation of a very important character. They are the instruments of government for Crown colonies, newly settled countries and protectorates; they confirm or disallow the acts of colonial legislatures; they give effect to treaties, grant charters to companies or municipal bodies, or regulate the business of departments.

Whence they originate.

In such cases the Council usually acts at the instance and on the responsibility of a department[1], the Colonial Office, the Foreign Office, or some office in which it may be desired to regulate or redistribute the duties and salaries. When a petition is addressed to the Crown for the grant of a charter, the matter is referred to a Committee of the Privy Council for advice. It is only thus, through the agency of Committees, that the consultative functions of the Council survive. In other cases in which the Council may be left to act on its own responsibility it can consult the law officers of the Crown. The modes of summons to meetings of the Council and of Committees have been set forth earlier: the persons summoned need not consist entirely of Cabinet Ministers, nor is it necessary that more than three should be present. The Orders of the Council are authenticated by the signature of the Clerk.

How authenticated.

The President.

The President of the Council is appointed by a declaration made in Council by the King. He is an officer of the highest dignity. In the House of Lords he ranks next after the Chancellor and Treasurer, and this was his position in the Council. He now, by a custom the commencement of which is not certain, takes the first place at the council table on the King's right hand.

Transfer of duties to departments.

We may note the constant tendency of the business of the Privy Council to pass into the hands of specially constituted departments of government. Much of the work

[1] See Commons Papers for 1854, vol. 27, p. 221. Reports from Commissioners [1715].

which is now done entirely by the Secretary of State for Foreign Affairs was formerly dealt with by a Committee of the Lords of the Council. The statutory duties of the Board of Trade are discharged, not by the still surviving Committee of Council for Trade and Plantations, but by the President and Secretary of the Board. The duties of the Council in regard to public health have gone to the Local Government Board; in regard to agriculture to the more recently constituted Board of Agriculture[1]. Until 1899 there was a Committee of Council for Education, but this, too, is now superseded by a Board[2]. This transposition of business has gone on ever since the Council, in its entirety, ceased to be a consultative and became a purely executive body. The process began with the development of the various Secretaryships of State, and we see it continuing in the constitution of the modern Boards.

Importance of business done in Council.

Another point to note is the immense importance of the business which may be transacted in the Council without discussion, and with no opportunity of question in Parliament, at the instance of the Cabinet or of a department. Some of these matters might attract the attention of Parliament, though not till their effects could no longer be cancelled or undone. Of others Parliament would hardly take heed. The redistribution of duties in the War Office or Admiralty determines the channels through which skilled advice may reach the Secretary of State or the First Lord in the business of his department; the extension of the powers of the High Commissioner in South Africa amounts to an assumption of sovereign rights over a vast territory[3], but the discussion on such action of the executive may be nearly nominal[4]. No doubt this is desirable in the interests of good government. The executive could not transact its business if every action depended on the approval of irresponsible politicians, and the collective House of Commons is well

[1] From 1883 to 1889 there was a Committee of the Council for Agriculture. Hansard, cccxxxvi. 1768.

[2] 62 & 63 Vict. c. 33.

[3] Order in Council, 9th May, 1891.

[4] Order in Council, 21st Feb. 1888. Hansard, cccxxii. 253.

advised if it leaves to the executive the responsibility in their inception for measures for the results of which a government must ultimately render an account to the country.

The Privy Council is one of the channels through which the pleasure of the Crown is expressed, but there are individual departments of government which exist or have existed for the same purpose. These are the Chancery, the office of the Privy Seal, and the Secretariat.

Section III

The Chancery and the Secretariat

§ 1. *The Chancellor.*

Original functions of Chancellor.

The great office of Chancellor dates back in our history to the reign of Edward the Confessor. He was the chief of the King's secretaries, the chief of the King's chaplains, and custodian of the royal seal. Edward the Confessor was the first King who used the Norman practice of sealing, instead of signing, documents to which he was a party, and the Chancellor is thus specially associated with the seal, though it is probable that earlier kings than Edward had employed one officer as chief of their secretarial and chapel staff[1].

Departmental,

All three functions combined to increase the Chancellor's importance. As Secretary he enjoyed the King's confidence in secular matters; as Chaplain he advised the King in matters of conscience; as Keeper of the Seal[2] he was necessary to all outward and formal expressions of the royal will. In the reign of Henry II he ranked next in dignity after the Justiciar, and was present at all Councils of the King.

In the reign of Edward I the Chancellor begins to appear in the three characters in which we now know him: as

[1] Stubbs, Const. Hist. i. 352. The derivation of the name is there traced to the *cancelli* or screen, behind which the secretary's business was conducted, not to the jesting explanation of John of Salisbury, 'Hic est qui regni leges cancellat iniquas.'

[2] For the history of the Great Seal, see Nicolas, Proceedings of the Privy Council, vol. vi. p. cli et seq.

a great political officer, as the head of a department for the issue of writs and the custody of documents in which the King's interest is concerned, as the administrator of the King's grace.

He was a prominent member of the King's Council, where as a learned lawyer his opinion would carry weight. His original staff in the Chancery consisted of certain clerks whose duty it was to hear complaints and afford remedy by writ, and six others who were busied in engrossing writs. The formation of the three Common Law Courts had doubtless removed from the Curia or the Council much judicial business in which the Chancellor had taken part, but he was brought into contact with the administration of justice as head of the department whence writs were issued, the *officina brevium*. and consultative.

To the Chancellor were also specially referred petitions the response to which involved the use of the seal; in common with the justices he was required to overlook all petitions, and determine what could and what could not be answered without reference to the King's grace. These latter the Chancellor and other chief Ministers were directed to take to the King[1]. His judicial duties.

But in the twenty-second year of Edward III matters which were of grace were definitely committed to the Chancellor for decision[2], and from this point there begins to develop that body of rules—supplementing the deficiencies or correcting the harshness of the Common Law—which we call Equity. Equitable,

It is with the formation and development of the rules of Equity that we commonly associate the history of the Chancellor's office. But the Chancellor as judge forms part of the history of the Courts. His equitable jurisdiction, thus created, dissociated itself by degrees from other jurisdictions springing from the high office which had made him 'great alike in Curia and Exchequer.' For some time, as appears from the Calendar of Proceedings in Chancery, he was called on to deal with cases of violence and oppression,

[1] Ordinance of 1280. Stubbs, Const. Hist. ii. 263.
[2] Ibid. 269.

such as more often came before the collective Privy Council [1]; and though he gradually dropped such cases, leaving them to the Council or to the Star Chamber, the tradition lingered late [2].

Miscellaneous.

It was doubtless because the Chancellor was the member of the Council to whom matters of grace were habitually referred, that the *petition of right*, the remedy possessed by the subject against the sovereign, went through its earliest stages in the Chancery. The procedure in respect of this remedy was changed in 1860 [3].

Again, as having once been a member of the Curia and a baron of the Exchequer, he had some powers in common with the judges of the Common Law Courts. He issued writs of Habeas Corpus, doing this in vacation as well as term, and writs of Prohibition to keep inferior Courts within their jurisdiction.

Again, the Chancellor acted judicially in the exercise of certain prerogatives of the Crown, its prerogative as to trade in matters of bankruptcy, its prerogative in respect of the persons and estates of idiots and lunatics, and the custody of infants. The jurisdictions in these matters are now governed almost entirely by Statute [4]. It remains to consider the official duties of the Chancellor.

[1] The following illustrate the text:—

William Midylton v. *John of Cotyngham.* Defendant assaulted and attempted to murder the plaintiff in Waughen Church in Holderness, and still lies in wait for him, so that he durst not abide in the country. Calendar of Proceedings in Chancery, vol. i. p. xx.

Robert Burton, Clerk v. *Walter Yerburgh and William Hert.* Bill filed against defendants (followers of Wyclyff) on account of various outrages against the plaintiff, in consequence of his opposition to the doctrines of Wyclyff. Calendar, vol. i. p. xxv *temp.* Henry VI, and see p. cxxviii *temp.* Henry VIII.

[2] Lord Campbell, writing in 1843, says, 'Anciently the Chancellor took cognizance of riots and conspiracies, upon applications for surety of the peace: but this criminal jurisdiction has been long obsolete, although articles of the peace still may be, and sometimes are, exhibited before him.' Campbell, Lives of Chancellors, vol. i. p. 14.

[3] 23 & 24 Vict. c. 34.

[4] The Chancellor is entrusted by sign manual warrant with the care and custody of lunatics, 53 Vict. c. 108 (Lunacy Act, 1890); for the form of warrant, see Campbell, Lives of Chancellors, i. 15. The wardship of infants and care of their estates is reserved to the Chancery Division of the

His parliamentary duties.

His place in Parliament, as Speaker of the House of Lords, is as much a matter for a treatise on Parliament, as his place in the Supreme Court of Judicature is a matter for a chapter on the Courts. We must pass to those special matters in which he advises, or acts on behalf of, the Crown.

Administrative duties:

He is responsible for the appointment of the judges of the High Court, for the placing of names on the Commission of the Peace, and for their removal in case of need, acting usually, though not necessarily, on the advice of the Lord Lieutenant in the case of the county magistrates. Here, although he does not expressly take the pleasure of the Crown, he acts as the exponent of the royal will; it would be possible, though it would be unusual, for directions to come to the Chancellor through a Secretary of State for the insertion or removal of a name on the Commission [1].

appointments.

In the appointment and removal of County Court Judges, or the presentation to Crown livings valued in the books of Henry VIII at £20 or less, he is not expected to take the King's pleasure. In the first case by Statute [2], in the second by custom [3], he acts independently of the Crown [4].

The Crown Office in Chancery.

Besides his duties as a judge, and his responsibility for many judicial and some ecclesiastical appointments, the Chancellor is the head of the office in which his first duties began. The Crown Office in Chancery is no longer the *officina brevium*, the place where new rights of action were created as new writs were devised. The inventive powers of the clerks in Chancery failed to keep pace with the requirements of suitors; Equity and fictions had superseded the original writs long before the modern simplifications of procedure. But it is in the Crown Office in Chancery that the Great Seal is, for most purposes, affixed [5]. At the head

High Court by the Judicature Act, 1873, s. 34. Bankruptcy is dealt with under the Bankruptcy Act of 1883, by the High Court and County Courts.

[1] *Harrison* v. *Bush*, 5 E. & B. 351.

[2] 51 & 52 Vict. c. 43.

[3] Blackstone (ed. J. Chitty, 1826), vol. iii. p. 48 and note.

[4] The second case is more especially noticeable because when the Prime Minister presents to Crown livings of greater value, he takes the King's pleasure before the appointment is made. Hansard, clxix. 1919.

[5] The duties of the Petty Bag Office are now transferred to the Crown Office, 37 & 38 Vict. c. 81.

The Clerk of the Crown.

of the permanent staff in this department is the Clerk of the Crown in Chancery, who holds an office of great dignity and antiquity. The duties and emoluments of this office were stated and defined as long ago as the twenty-second year of Edward III. The Clerk of the Crown may claim to be 'the first esquire and first clerk of England[1].' He is appointed by sign manual warrant, and he takes a part in many important acts of the State. From his office issue writs for election of members to serve in the House of Commons; he receives and makes a list of the returns; when the royal assent is to be given to Bills in Parliament he attends in the House of Lords to read the Bills, and the Clerk of the Parliament gives the royal answer; when Sheriffs are to be chosen, as described later, he attends in the Court with the list of justices of the peace and notes who are named. His name written or printed at the end of documents to which the Great Seal is affixed authenticates the fact that the sealing has taken place on due warrant[2].

Some few important matters, such as powers to treat, and ratifications[3], do not pass through this office, but the Chancellor is directly responsible in all cases for the use of the Great Seal, the ultimate expression of the will of the Sovereign.

The Chancellor is, and always has been, a member of the Privy Council, and of the Cabinet, not as of right, but because his duties as holder of the Great Seal make him a necessary party to the innermost Councils of the Crown.

His political duties.

His political and judicial duties do not come into conflict, because he is not concerned with the administration of the criminal law, and so is not liable to preside in Court over prosecutions which he has advised in the Cabinet.

There remain but a few points connected with the office:—

(1) The Chancellor is Chancellor of that part of the United Kingdom called Great Britain, and the Act of Union with Scotland provides that there should be but

[1] Crown Office MS.

[2] 47 & 48 Vict. c. 29.

[3] Treaties and ratifications were at one time prepared and enrolled in the Chancery. This practice was uniform till 1624. Thomas, Hist. of Public Departments, 33.

one Great Seal for the two kingdoms. There is a Lord Chancellor for Ireland, but the Great Seal, though it exists in duplicate for Irish use, is the Great Seal of the United Kingdom [1]. The Great Seal.

(2) The office is one subject to a religious disability. The Test Act [2] required that every one who held an office, civil or military, under the Crown, should not merely receive the sacrament after the ritual of the Church of England, but should take the oath abjuring the doctrine of transubstantiation. The religious disability.

The requirement as to taking the sacrament was removed in 1828 [3], and the Roman Catholic Relief Act, 1829 [4], altered the form of oath required, whether for a seat in Parliament or for entry upon a civil or military office, making it acceptable to a Roman Catholic. But it was provided that neither the Chancellor of Great Britain nor the Lord Keeper, nor Lords Commissioners of the Great Seal, nor the Lord Lieutenant of Ireland should be relieved from any requirements to which they were at the time subject. The Statute Law Revision Act, 1863, has wholly repealed the Test Act of Charles II, but it is still held that the exception introduced into the Catholic Relief Act disables a Roman Catholic for the offices therein mentioned [5].

(3) The office of Lord Keeper of the Great Seal originated, as it would seem, in the practice of entrusting the Seal temporarily to an officer of State during a vacancy in the Chancellorship, sometimes with limited powers, or a lower rank. This developed into more permanent appointments, in which the Lord Keeper held office during the King's pleasure. He often was not a peer, but he is by Statute entitled to the 'like place, pre-eminence, jurisdiction, execution of laws, and all other customs, commodities, and advantages [6]' as the Lord Chancellor. The last Lord Keeper The Lord Keeper.

[1] See, as to the title of the Lord Chancellor, McQueen, House of Lords and Privy Council, p. 20.

[2] 25 Car. II, c. 2.

[3] 9 Geo. IV, c. 17. [4] 10 Geo. IV, c. 7.

[5] See debate in House of Commons, Feb. 4, 1891. Hansard, cccxlix. 1734.

[6] 5 Eliz. c. 18.

was Sir Robert Henley afterwards Lord Northington [1], who was made Chancellor on the accession of George III.

Commissioner of the Great Seal.

(4) It is sometimes desirable to appoint by commission under the Great Seal certain persons to execute the office of Lord Chancellor. Their powers are declared by Statute to be in all respects such as the Lord Chancellor or Lord Keeper enjoys, but their rank is not the same. If peers, they take their place according to their peerage. If commoners, they take place after the peers and the Speaker of the House of Commons.

§ 2. *The Lord Privy Seal.*

The Privy Seal:

The office of Lord Privy Seal is conferred by delivery of the Seal and by Letters Patent, and is held, usually without emolument [2], by a member of the Cabinet; but its duties are historical; having long ceased to be more than formal, they were abolished in the year 1884.

its objects.

The authority of the Privy Seal was formerly needed mainly for two purposes, the issue of money from the Exchequer, and the affixing of the Great Seal to Letters Patent, for it had been the desire of mediaeval Councils and Parliaments to secure adequate responsibility for the issue of public money, or for the action of the King in matters of State.

The need of the Privy Seal as the warrant for passing Letters Patent under the Great Seal was made a rule of the Privy Council of Henry VI, and was enforced by Statute in 1535 [3].

The need of this Seal for the issue of public money is thus stated by Coke.

[1] Campbell's Lives of the Chancellors, i. 21, v. 186, 199.

[2] In 1705 the office was conferred upon the Duke of Newcastle by Letters Patent, with a salary of £365 *per annum*, and at the same time an order was made under the Privy Seal to the Treasurer of the Exchequer to pay to the Lord Privy Seal, during the Duke of Newcastle's tenure of the office, £4 a day in lieu of 'the dyet of 16 dishes of meat' to which that officer had previously been entitled. St. P. Home Office, Precedents, vol. i, pp. 15, 16.

[3] 27 Hen. VIII, c. 11, and see p. 55 supra.

'Every warrant of the Queen herself to issue her Treasure is not sufficient; for the Queen's warrant by word of mouth or, which is more, her warrant in writing under her privy signet is not sufficient. But the warrant which is sufficient to issue the King's Treasure ought to be under the Great or Privy Seal[1].'

The Great Seal Act, 1884[2], provided that 'it shall not be necessary that any instrument shall after the passing of this Act be passed under the Privy Seal'; and though the clause has been repealed by the Statute Law Revision Act, 1898, modern enactments as to the use of the Great Seal and the issue of public money, have superseded the employment of the Privy Seal for any purpose to which it could lawfully be applied. Its disuse.

Yet the office exists, and its history is a long one. 'A fit clerk to keep the Privy Seal' was one of the officers who by the ordinances of 1311 was to be chosen by the King with the counsel and consent of the baronage. In the reign of Edward III the keeper of the Privy Seal is a member of the King's Council: in the first Parliament of Richard II the Commons desire to control his appointment. The office was regarded with jealousy because of the frequent use of letters under Privy Seal to interfere with the ordinary course of law. History of Privy Seal.

From the middle of the sixteenth century the office has been held by statesmen of the first rank. Among the most interesting figures in the list of Lords Privy Seal are Thomas Cromwell (1536); Dr. Robinson (1711), who was at the same time Bishop of Bristol and Plenipotentiary for concluding the Treaty of Utrecht; and Lord Chatham, who held the office as Prime Minister in 1766. The office was assumed by Lord Salisbury in 1900, after he had retired from the Foreign Office, and held by him until his resignation in 1902; it was then held for a short time by Mr. Balfour.

§ 3. *The Secretaries of State.*

His Majesty's Principal Secretaries of State, now five in number, are the chief means of communication between The five Secretaries of State:

[1] Co. Rep. xi. 92.

[2] 47 & 48 Vict. c. 30, s. 3.

the subject and the King. Peers of Parliament are Councillors of the Crown, and have a right of access to the person of the Sovereign. Privy Councillors are the sworn advisers of the King, and as such may individually or collectively offer counsel for which they must hold themselves responsible to Parliament. But outside of these is the mass of the King's subjects who can only address the Crown in Council or the Crown in person, and in the latter case the only approach to the Crown is through a Secretary of State. A department of government may be reached by direct communication: an aggrieved soldier or sailor may complain to the War Office or to the Admiralty; a Civil servant whose emoluments do not correspond with his estimate of his deserts may address the Lords of the Treasury, but no communication can be made to the Sovereign save through the intervention of a Secretary of State: nor with a few exceptions can any authentic communication be made by the Sovereign that is not countersigned by a Secretary of State.

as a medium of communication with the Crown,

as departmental chiefs.

The Secretaries of State are not merely the channels of communication between subject and Sovereign. Each is the head of an important department of government, and in that department is invested with statutory powers, or administers certain prerogatives of the Crown, for the exercise of which he is responsible to Parliament. Of these powers it will be proper to speak hereafter in dealing with the special departments of these officers. It is enough here to trace the origin of the office of Secretary of State and the assignment to it of duties which necessitate the existence of five principal Secretaries of State.

The King's Secretary:

We first hear of the King's Secretary in the reign of Henry III. The duties of a Secretary had doubtless in earlier times been discharged by the Chancellor and his staff: but administrative business increased,—the severance of the Chancery from the Exchequer at the end of the twelfth century indicates the increasing importance of both departments,—and the King's Clerk or Secretary became an officer distinct from the clerks or chaplains who had acted under the Chancellor.

The office was at first a part of the royal household. Its holder might be a man of character and capacity, fit to be a member of the King's Council, or to be sent as an envoy to foreign powers. Such were the Secretaries of Henry III and Edward I. Or he might be an inferior officer of the household, and such seems to have been the position of the Secretary of Edward III, who ranked in place and emolument with the surgeon and the clerks of the kitchen [1]. a household officer.

In 1433 two Secretaries were appointed, one by the delivery of the King's Signet, the other by patent [2]. A second Secretary had become necessary for the transaction of the King's business in France.

In 1443 an Ordinance or Order in Council made various rules to ensure the responsibility of the Council and officers of the King for answers given or grants made in response to Petitions. Lords of the Council who promoted a petition were required to sign it: if the petition dealt with matters of grace, it was to be laid before the King thus endorsed: if he assented to it he was to sign it, or order the Chamberlain to do so, or to take it with his commands to the Secretary: if the answer involved a grant, the bill which contained the petition was to be delivered to the Secretary to prepare letters which, sealed with the Signet, should be authority for affixing the Privy Seal: and this in its turn authorized the confirmation of the grant by letters under the Great Seal [3]. Here we find the Secretary in a position of recognized responsibility for the expression of the King's will. And soon after, in 1476, a newly appointed Secretary is described as 'Principal Secretary,' not, as it would seem, to denote a difference in the rank of the two Secretaries, but to mark the responsible character of the office, as distinct from that of a mere clerk or amanuensis [4]. Becomes a responsible officer, a Principal Secretary.

The reign of Henry VIII marks an important advance in the position of the Principal Secretary. The responsi-

[1] Ordinances for the Royal Household, 10, 32, 162.
[2] Nicolas, Proceedings of Privy Council, vi. p. cviii.
[3] Ibid. p. clxxxviii; and vide supra, Appendix to ch. i.
[4] Ibid. p. cviii.

bility for the use of the Signet, indicated by the Ordinance of 1443, is confirmed by Statute[1]. The Secretaries are still members of the King's household, but they rank next to the greater household officers[2], and in Parliament[3] and Council they have their place assigned by Statute. The Secretary, if a baron, is to sit above all other barons; if a bishop, above all other bishops; if not a peer he is to sit on the uppermost form or woolsack of the House.

Yet they lived in extreme discomfort. In 1545 Sir W. Paget, one of the Secretaries and then ambassador in France, wrote to the other Secretary to beg that his lodging might be changed for the better. 'You know that the chambre over the gate will scant reseyve my bedde and a table to write at for myself. The study you know is not mete to be trampled in for diseasing his Majesty. I must nedes have a place to kepe my table in[4].'

The Secretaries of State, keepers of Signet.

And yet not long before this pathetic complaint a warrant, issued to Thomas Wriothesley and Ralph Sadler, in 1539, gave them 'the name and office of the King's Majesty's Principal Secretaries during his Highness' pleasure,' required them to keep two Signets and a book of all warrants which passed under their hands, and placed them in Council next after the Vice-Chamberlain. They were both members of the Commons, but one was always to sit in the Upper House, and one in the Lower House, interchanging weeks, unless the King was present in the House of Lords, in which case both were to be there[5].

Their growing importance,

The growing importance of the office is indicated not merely by the precedence given to the holders, but by the quality of the men who held it. Cromwell was for a short

[1] 27 Hen. VIII, c. 11.

[2] Ordinances for the Royal Household, 162.

[3] 31 Hen. VIII, c. 10. Stubbs, Const. Hist. iii. 471, 472. The presence of the Secretary, though a commoner, and of the judges, shows how the House of Lords, in the sixteenth century, did double duty as the *Magnum Concilium* and as a House of Parliament.

[4] Thomas, Hist. of Public Departments, p. 26. Vol. i. p. xiii of State Papers, 1830.

[5] Nicolas, vi. p. cxxiii, and see for the Warrant, vol. i. p. 623 of State Papers: published 1830.

time Secretary to Henry VIII, and Sir William Cecil was Secretary to Elizabeth from her accession until he was made Lord Treasurer in 1571. After the reign of Henry VIII it would seem that the Secretary ceased to be an officer of the household. He does not appear as an *item* in the household expenditure of Elizabeth, and in the reign of James I he was one of the few who might bring a servant with him to the King's Court[1].

During the greater part of Elizabeth's reign there was but one Secretary, but at the close of it Sir Robert Cecil shared the duties with another, he being called 'Our Principal Secretary of Estate,' and the other, 'one of our Secretaries of Estate.' From this time, until the year 1794, it was the rule that there should be two Secretaries of State; the exceptions occurred in 1616, when there were three,—from 1707 until 1746, when there was usually a third Secretary for Scotch business,—and from 1768 until 1782, when there was a third Secretary for Colonial business. Their number.

At this point one may stop to consider the duties and powers of the Secretaries of State. From the reign of Henry VIII, certainly, they were the channel through which alone the Crown could be approached in home and foreign affairs, and the medium through which the pleasure of the Crown was expressed. Duties of a Secretary of State.

Thus the Secretary of Henry VIII complains that the Lord Mayor of London has communicated with Wolsey on a matter of State without first addressing him in order that the King's pleasure might be taken[2].

The rules made by Edward VI for the conduct of business in the Council make the Secretary the medium of communication between the King and his Council or its Committees, a practice observed in the transmission of Cabinet minutes until comparatively recent times[3].

Cecil in his treatise on *The Dignity of a Secretary of Estate with the care and peril thereof*, speaks of the Secre-

[1] Ordinances for the Royal Household, p. 304.
[2] Nicolas, vi. p. cxviii.
[3] Grenville Corresp. iii. 16 note.

tary's liberty of negotiation at discretion, at home and abroad, without 'authority or warrant (like other servants of princes) in disbursement, conference or commission, but the virtue and word of his Sovereign.'

The duties of a Secretary are very clearly set out in a memorandum, probably by Dr. John Herbert, who was second Secretary about the year 1600. They are a formidable list. The Secretary was expected to possess a general knowledge of our relations with foreign countries, of the affairs of Wales and of the state of Ireland, while he had charge of all the Queen's correspondence with foreign princes, and, as it would seem, of the preparation of business for the Council, including the assignment to the Council, the Star Chamber, and the Court of Requests of matters falling within their respective provinces[1].

in the Privy Council,

The Secretaries were members of the Privy Council, and after the Restoration they were members of that inner Council which prepared and settled the business to be brought before the larger body, the Privy Council, with whose consent and advice the King acted. But it was not until the Privy Council ceased to combine deliberative and executive functions that the office of Secretary of State assumed its present importance.

Before this change took effect, a Secretary of State assisted at the private discussion of business to be brought before the Privy Council, he was a necessary instrument for carrying out the pleasure of the King, he might even be a personage whose opinion carried great weight, and yet he exercised little independent discretion in executive government. He was responsible directly to the King and the Council, remotely, to Parliament. The Tudors from their own force of character had given importance to the office. It was something to be the exponent of the will of one who always had a will of his own. But throughout the greater part of the seventeenth century we find no Secretary of the calibre of Cromwell or Cecil, and in the reign of William III, although Shrewsbury, who held the

[1] Prothero, Statutes and Constitutional Documents, 166.

office for some years, stood high in the confidence of the King and was a great figure in the State, it was always possible for a Secretary who was not of high rank to be regarded as a clerk. Sir William Trumbull resigned the office because, when the King was in Holland, the Lords Justices in Council treated him 'more like a footman than a Secretary [1].'

in the Cabinet.

But when the Cabinet superseded the Council the Secretary was not the servant of the Cabinet, as he had been the servant of the Council. He had been the medium of communication between the King and his Council, and between the Crown in Council, the recognized executive, and the outside world. But when the Privy Council became an administrative department, and the Cabinet took its place as the motive power, a body unrecognized by law, the Secretary of State as member of this inner circle became more independent, more responsible, and more important.

The tenure of the office by men of the political importance of Shrewsbury, Harley, and Bolingbroke may probably have helped to raise its character: and the difficulty with which George I made his wishes known in the language of his new subjects may also have contributed to the independence of the Secretaries. At any rate it would seem that from the date of the Hanoverian succession things were done by the direction of a Secretary of State which had previously been done by royal order countersigned by a Secretary [2].

The modern Secretary of State.

Domestic, foreign, and colonial business which had been transacted by Committees of the Privy Council passed into the hands of the Secretaries, and they became the authorized exponents of the King's pleasure in the various departments of government. In the management of his department the modern Secretary of State is checked by the collective responsibility of the Cabinet, but he does not receive the orders of the Council, nor, since the King ceased

[1] Shrewsbury Correspondence (Coxe), 504.

[2] The Warrant Books of George I and George II at the Record Office furnish evidence of this statement.

to preside at Cabinet meetings, does he work under the constant control of the Crown.

Increased responsibility to Parliament adds to the power of every Minister, for responsibility to Parliament means that the Minister is a representative of the majority in Parliament and has the support of that majority at his back. Thus the Secretary of State has grown from being merely a confidential servant to be a great executive officer.

The Northern and Southern Departments.

So much for the general history and powers of a Secretary of State. I will now speak of his departmental duties. From the Revolution until 1782, except during the temporary existence of the Scotch and the Colonial Secretary, the duties of the two Secretaries were divided by a geographical division of the globe into Northern and Southern Departments. The duties of the Northern Department consisted in communications with the northern powers of Europe, those of the Southern included our dealings with France, Spain, Portugal, Switzerland, Italy, Turkey, as well as Irish and Colonial business and the work of the Home Office.

The burden laid upon the shoulders of the Southern Secretary is greater in appearance than in reality. Irish business consisted in communications as to general policy, passing through the Secretary of State from the Ministry to the Lord Lieutenant; for Ireland had its own Parliament and administration. The business of the colonies was shared with the Committee of Privy Council for Trade and Plantations, and from 1768 to 1782 a third Secretary of State was appointed, to deal especially with colonial affairs. The bulk of the work now cast upon the Home Office is the creation of modern Statutes. The Secretaries of the eighteenth century represented the Foreign Office cut in two, with some miscellaneous business assigned to that portion which dealt with the Southern powers of Europe.

Inconvenient as this arrangement may seem, its inconvenience is not brought before us very perceptibly in the records of the time. But in 1782 came a great change.

The Southern Department became the Home Office, retaining Irish and Colonial business; the Northern Department became the Foreign Office; the Colonial Secretaryship was abolished. The change to Home and Foreign Secretaries.

This administrative reform, important at the time, and even more important as time went on, took place with singularly little noise or notice.

Down to 1782 the Northern and Southern Secretaries were described in official documents relating to the staff common to both, as 'His Majesty's Principal Secretaries of State for Foreign Affairs.'

The Northern Secretary on announcing his appointment to the resident Ministers of foreign powers tells them that 'Le Roi m'ayant fait l'honneur de me nommer aujourd'hui son Secrétaire d'État pour le département du Nord,' he will be glad to receive them on the following day to discuss matters committed to their charge[1]. Sometimes he included the Ministers of the Southern powers in this invitation: this was done by Lord Weymouth in 1768, but he informs them that it is not for purposes of discussion; and by Lord Stormont in 1779, but he is careful to say that he is allowed to do it by the courtesy of his colleague[2]. But on the 27 March, 1782, Fox announces to all the foreign Ministers that he will receive them 'le Roi m'ayant fait l'honneur de me nommer son Sécretaire d'État *pour le Département des affaires étrangères*'[3]: and the reason of the change of title is to be found in a document issued two days later.

This is a circular letter to our representatives at foreign Courts[4], and runs thus:—'The King having, on the resignation of the Lord Viscount Stormont, been pleased to appoint me to be one of His Principal Secretaries of State, and at the same time *to make a new arrangement in the Departments by conferring that for Domestic Affairs and the Colonies on the Earl of Shelburne, and entrusting me*

[1] St. P. Foreign, Entry Book, 262. p. 202.
[2] Ibid., 262. pp. 156, 202.
[3] Ibid. p. 203.
[4] St. P. Domestic, Entry Book, vol. 416. p. 102.

with the sole direction of the Department for Foreign Affairs, I am to desire that you will for the future address your letters to me.'

I cannot ascertain that any Order in Council or Departmental minute authorizes or records this important administrative change.

The Army Secretariat.

Meantime the Home Secretary was concerned, to some extent, with the army: at least he was the ultimate exponent of the King's pleasure in matters relating to the government and disposition of the army, and was responsible to Parliament for the amount of force to be maintained. There was a Secretary at War, who was not a Secretary of State, but who was concerned with the passing of the Mutiny Bill, and was responsible for all that related to the finance of the Army. He directed the movements of troops subject to the sanction of the Secretary of State. It may be mentioned in passing that the Master General of the Ordnance provided munitions of war and controlled the Artillery and Engineers, that the Treasury managed the commissariat, and the Board of General Officers the clothing of the soldiers. The Commander-in-Chief was concerned with discipline and promotions.

This medley of official responsibility needed some guiding spirit in time of war, and during the struggle with the French Republic it was found that the Home Secretary was unequal to the charge of home and colonial affairs, together with the conduct of a great war. In that year a third Secretary of State was appointed, for War: but his responsibilities in respect of the Army were limited to the amount of force to be maintained, to the allotment of garrisons to our colonies, and to the general control of operations in time of war.

The Colonies.

In 1801 business relating to the Colonies was transferred to the Secretary of State for War, and during the long peace which followed upon the fall of Napoleon the development of our Colonies caused the war duties of the Secretary of State to fall into the background. The Crimean war revealed the chaos of our military system, and enforced the need of some simpler method of providing

for the discipline, arming, feeding, clothing, and general government of the army.

In 1854 the Secretary of State for War and the Colonies was relieved of his duties in respect of the army, and a new Principal Secretary of State for War was created, whose office was intended to concentrate and supervise the incoherent machinery which had attempted to provide an army and its equipment.

The constitution of this new Secretaryship of State for War involved the passing of Statutes, but it must not be supposed that these were necessary to the creation of the Secretary of State.

Secretary of State for War

Queen Victoria appointed a fourth Secretary of State by Declaration in Council[1]; and as it was intended that he should absorb the powers and duties of the Board of Ordnance and the Secretary at War, such powers and duties as had been conferred on these officers by Statute were by Statute transferred to the new Secretary of State[2].

and for India.

In like manner, when the territories of the East India Company were taken over by the Crown at the close of the Indian Mutiny, in 1858, Parliament enacted that the powers and duties hitherto vested in, and exercised by, the East India Company should be held and discharged by one of Her Majesty's Principal Secretaries of State. And it was further enacted that, if Her Majesty was pleased to appoint a fifth Secretary, the salaries of himself and his under secretary should be the same as those enjoyed by their colleagues[3].

The five Secretaries.

Queen Victoria appointed a fifth Secretary, and these five departments of Government, Home and Foreign Affairs, the Colonies, War, and India, are each superintended by a Secretary of State.

The relations of the Secretaries of State for War and for India with their respective Councils, and the composition

[1] Hansard, vol. xxxvi. p. 425.

[2] Ordnance Board, 18 & 19 Vict. c. 117. Secretary at War, 26 & 27 Vict. c. 12.

[3] 21 & 22 Vict. c. 106, ss. 1, 6.

of those Councils, do not fall within the scope of this chapter.

Their duties interchangeable.

Except in so far as Statute gives powers to one or other of the five Secretaries of State, each is capable of performing any one of the functions of the various departments which I have briefly described[1]. The Secretaries are in this respect like the Judges of the High Court of Justice, each individually possesses and may exercise the powers of any one of the others, but as its special business is assigned to each of the divisions of the High Court, so is a special department of government assigned to each of the members of the Secretariat. Each and all are primarily the means by which the royal pleasure is communicated[2], the work of each department is the work of the Crown, acting on the advice of responsible Ministers, and for such action and advice each of these Ministers must answer to Parliament.

The mode of appointment.

The Secretaries of State are all appointed in the same manner by the delivery to them of three seals, the Signet, a lesser seal, and a small seal called the *cachet*: all these are engraved with the royal arms, but the Signet alone bears the royal arms with supporters.

'The office of Secretary of State in the legal sense depends on the grant and delivery of the seals. The title of the office is "one of his Majesty's principal Secretaries of State." By the grant and the delivery of the seals[3], every one of these persons

[1] Mr. Pitt in 1797, defending the creation of the third Secretaryship, denies that 'each office of Secretary of State has (not by custom or convenience for practical purposes, but by law) a particular designation, department and division. I say the office of Secretary of State has no such department, designation and division, but is in the legal sense independent of any such distinction.' 33 Parl. Hist. 976.

[2] Much discussion took place in 1812, when the Prince Regent employed a *Private Secretary*, as to the constitutional position of such an officer. The House of Commons was assured that he was quite 'incapable of receiving the royal commands in the constitutional sense of the words or of carrying them into effect.' In fact he is not a means of expressing the *official will* of the Crown. Cobbett, Parl. Debates, 22, p. 339.

[3] It is stated by Todd (Parl. Gov. in England, ii. 495), and others, that a Secretary of State receives letters patent appointing him during pleasure. This is not so. Patents were issued from the time that a second Secretary was first appointed in the fifteenth century, and the practice appears to have been followed until 1852. In that year Lord

becomes a legal organ to countersign any act of State, and he is placed afterwards in that department of business which his Majesty thinks fit to allot for him [1].'

The Seals.

The Signet is of these seals the one which has the longest history, for the custody of it was the primary duty of the King's Secretary long before the Secretary became head of a department. The statutory requirement as to its use has been set forth earlier.

For this purpose the Secretary of State had an office and four clerks, and as the Secretaries increased in number, the Signet Office was considered to pertain to all alike, but the business was transacted through the Home Office [2].

This use of the Signet was abolished in 1851. The duties heretofore performed by the Clerks of the Signet, and not superseded by this Act, were to be performed in the Home Office. But such use of the Signet as continues to be made does not call for the intervention of the Home Office. In the Foreign Office the instruments which authorize the affixing of the Great Seal to powers to treat, and ratifications of treaties pass under the Signet as well as the sign manual, and are countersigned by the Secretary of State. In the Colonial Office, the Signet is affixed to Commissions, and also to Instructions; these last pass the sign manual but are not countersigned by the Secretary of State [3].

John Russell became Foreign Secretary and Leader of the House of Commons in Lord Aberdeen's Ministry and, as he did not expect to be able to combine these two duties for long, he did not take out a patent, and in fact resigned the Foreign Office within two months. From that time the practice was intermittent (see Hansard, cxlii. 620, cxliii. 1426, cliii. 1300, 1828) until 1868. Since the retirement of Mr. Disraeli's Ministry in that year patents have not been issued: nor in any case would they affect the powers of the Secretary, for these follow the seals.

From 1855 until 1861 a supplementary patent was issued to the Secretary of State for War purporting to assign separate powers in respect of military appointments and discipline to the Commander-in-Chief. No such patent was issued after 1861.

[1] Speech of Mr. Pitt, 33 Parl. Hist. 976.

[2] 14 & 15 Vict. c. 82.

[3] This is an exception to the general rule of counter-signature. The King signs the Instructions at the head, and initials them at the foot. They are then sealed with the Signet.

The second seal is used for royal warrants and commissions, countersigned by the Secretaries of State.

The cachet is used to seal the envelopes of letters containing communications of a personal character made by the King or Queen to a foreign sovereign.

Thus in the Foreign Office all three seals are used. In the Colonial Office the first two; the second only in the Home Office and War Office; none are used in the India Office.

§ 4. *The Secretary for Scotland.*

Scotch business

From the date of the Union until 1746 there was a Secretary of State for Scotland. Thenceforward, until 1885, the connexion of Scotland with the central government was maintained chiefly through the Home Office, but the labours of that heavily burdened department were relieved in this respect by the assistance rendered to it by the Lord Advocate. The Lord Advocate is the first law officer of the Crown in Scotland, corresponding to the Attorney-General in England, and he added to his duties as a law officer those of a Parliamentary Under Secretary to the Home Office for Scotch business.

In 1885 a Secretary for Scotland was created[1]. In his office was concentrated the business relating to Scotland which had before been transacted in various departments.

transferred from Home Office and elsewhere to Scotch Office.

The powers and duties of the Home Secretary under 45 Acts 'and any Acts amending the said Acts,' the powers and duties of the Privy Council as regards manufactures and public health, certain business heretofore transacted at the Treasury and the Local Government Board, and the administration of the Scotch Education Acts were assigned to this new Secretary, whose duties as to education correspond to those of the President of the Board of Education in England. Though he keeps the Great Seal of Scotland he is not a Secretary of State, but a representative, for local purposes, of various departments of government. He is appointed by warrant under the royal sign manual, and since 1892 by the delivery of the Seal.

[1] 48 & 49 Vict. c. 61.

§ 5. *The Chief Secretary to the Lord Lieutenant.*

The Lord Lieutenant.

Theoretically the executive government of Ireland is conducted by the Lord Lieutenant in Council, subject to instructions which he may receive from the Home Office of the United Kingdom. Practically it is conducted for all important purposes by the Chief Secretary to the Lord Lieutenant.

The Chief Secretary.

The contrast in the history and legal position of this officer with that of the Secretary for Scotland is curious. The latter owes his existence to Statute, which gives him his title, powers, and duties. The former does not often appear in the Statute book. An Act of 1817 [1] says that he is to keep the Privy Seal in Ireland, an Act of 1872 [2] makes him President of the Irish Local Government Board, and from time to time his signature or other act is expressed to be of equal validity with that of the Lord Lieutenant.

Character of Irish government.

Scotland was wholly separate from England until the Union of 1707, and when united the two kingdoms were wholly united. Ireland has always been in the position of a dependency; to which from 1782 until 1800 legislative independence was conceded. Its separation from England by the sea has further contributed to keep up the apparatus of a provincial government; so that while Scotland has been governed directly from the Home Office, Privy Council, and other central departments, those same departments, in so far as they were not reproduced in Ireland, have communicated to the Lord Lieutenant the instructions of the central government.

Secretaries have varied in importance.

Thus the office of Chief Secretary has varied in importance from time to time. When Ireland had a Parliament, still more when it had an independent Parliament, the Chief Secretary was to the Lord Lieutenant what a Secretary of State is to the Crown, the exponent of the pleasure of the supreme executive.

After the Act of Union the Lord Lieutenant governed

[1] 57 Geo. III, c. 62, s. 11.

[2] 35 & 36 Vict. c. 69, s. 3.

Ireland subject to instructions from home, and his Chief Secretary, sitting in the House of Commons, did no more than explain small matters of local government. Thus when Sir Arthur Wellesley took a military command in Portugal in 1808 he did not give up the post of Chief Secretary, but employed Mr. Croker to explain to the House of Commons such Irish business as might arise during his absence [1].

Irish Office increases in independence.

But as the business of departments has multiplied, the Home Office has ceased to deal with the details of Irish administration [2]; and as communication has become easier, the formal apparatus of Irish government has become less necessary. The Lord Lieutenant represents the splendour and carries out the formalities of executive government, the Chief Secretary conducts the business of the various departments of Irish Government. One of the two is in the Cabinet, but not both. The Lord Lieutenant may have special experience in Irish policy and so be required in the Cabinet, or Irish business may need to be conducted in the House of Commons by a Chief Secretary who can speak with the weight attaching to Cabinet office.

Relations of Lord Lieutenant and Chief Secretary.

The Chief Secretary in such cases helps in the Cabinet to settle the policy which shall be pursued in Ireland, and is practically responsible for the government of the country, though formal communications may be necessary from the Home Office to the Lord Lieutenant and formal acts done by the Lord Lieutenant in Council. For most purposes the Chief Secretary is to Ireland what the Home Office and the Local Government Board are to England.

Ireland has not only a representative of royalty and a Privy Council of its own, it also has a Chancellor, law

[1] Croker Correspondence, i. 12.

[2] Sir William Harcourt, speaking in 1881 of the doctrine that he, as Home Secretary, was constitutionally responsible for the government of Ireland, says, 'In one sense that is true, in another sense it is not perfectly accurate. The Right Hon. Gentleman knows perfectly well that the Home Secretary is the only medium of communication between the Sovereign and the Lord Lieutenant, and he also knows that the details of Irish administration do not pass through the Home Office. Therefore, I do not think that the noble Lord can seriously suppose that I am the proper source of information with regard to the details of the dministration of the Executive of Ireland.' Hansard, cclxii. 22.

officers, and a complete duplication of Courts. Of these it is not necessary to speak here.

Section IV

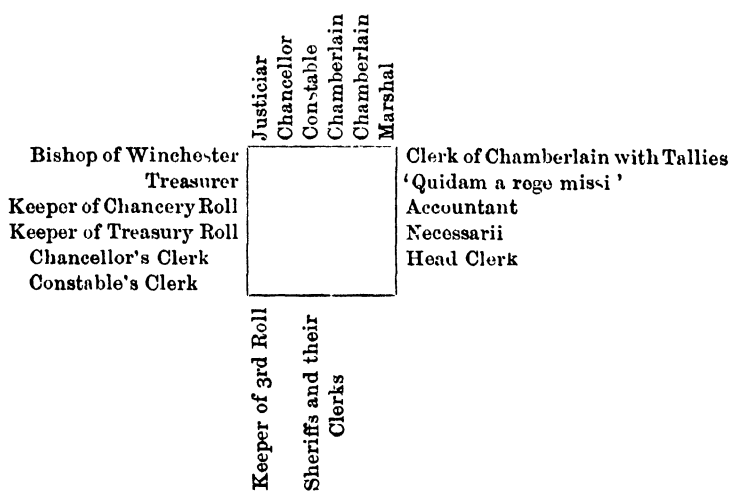
The Treasury and its Officers

§ 1. *History of the Treasury.*

The Normans introduced into our institutions a methodical system of finance. The Exchequer was the Curia sitting for financial purposes. But there were certain officers of the Curia whose duties lay specially in the Exchequer, and a clerical staff appropriate to the business of the department. The Norman Exchequer.

The Exchequer consisted of two offices, the Upper[1] and the Lower: the first was a court of *Account*, the second of *Receipt*. What was due to the King was ascertained in the Exchequer of Account and paid in to the Exchequer

[1] The Dialogus de Scaccario gives a description of the Upper Exchequer or Exchequer of Account which may be thus illustrated :—



It is plain that the position of Treasurer is one of less dignity than that of those who sat beside the Justiciar. His proper place would have been at right angles to the Justiciar, but that place was temporarily assigned to the Bishop of Winchester.

of Receipt, and for payments made in the latter acquittance was obtained in the former. The procedure of the Exchequer will be dealt with in a later chapter. I will deal here with the staff.

The Treasurer.

The Treasurer and barons sat in the Upper Exchequer to take account of what was due to the King, and to exercise a general financial control[1]. The Treasurer was also responsible for the receipts and issue of the revenue in the Lower Exchequer. He was the connecting link between the two departments, but by no means the most important person at the Exchequer board. Rather he was a busy official, necessary to the business of the office but overshadowed in dignity by the Justiciar and Chancellor. In the reign of Richard I the Chancery was separated from the Exchequer, and the Treasurer was thus relieved from subordination to one of the greater officers of State[2]. The Great Seal was now no longer used for Exchequer purposes, and in the reign of Henry III the Chancellor of the Exchequer was brought into existence, partly to take charge of the Seal of the Exchequer, partly to be a check on the Treasurer[3].

The Exchequer.

From the fall of Hubert de Burgh in 1232 the office of Justiciar rapidly lost importance, till, before the end of the reign of Henry III it disappeared. This further increased the importance of the Treasurer. In 1300 the Exchequer was fixed at Westminster, and the Treasurer and barons were forbidden to hear pleas between the King's subjects[4]. The attempt to confine the jurisdiction of the Exchequer to revenue cases was evaded by fictions, and the judicial business which had been transacted before the barons in the Exchequer of Account passed to a definite Court—the Court

[1] Thomas, Hist. of Public Departments, 37.

[2] Madox, History of Exchequer, ch. iv. s. 10.

[3] Ibid., ch. xxi. s. 3. The Chancellor of the Exchequer was not the 'lieutenant' of the Treasurer. The lieutenant was merely a deputy to whom the Treasurer might from time to time assign his duties. Ibid., ch. xxi. s. 2.

[4] 28 Ed. I, c. 4. This clause of the *Articuli super cartas* did but enforce a rule the breach of which had been matter of frequent complaint. See Madox, ch. xxii. s. 2.

of Exchequer. From the beginning of the fourteenth century a Chief Baron presided over this Court [1].

Henceforth the office of the Treasurer increased in importance, but it is not till near the end of the sixteenth century that he became an officer of State so engrossed in the general policy of the country as to be unable to attend personally to the detail of his department. Lord Burleigh was the first to employ a secretary to communicate his instructions to the Exchequer of Receipt [2]. Before this time the title underwent a change [3]. The person holding the office had been called the King's Treasurer or the Treasurer of the Exchequer, but when he became the second officer in dignity after the Chancellor his title of King's Treasurer develops into that of Lord High Treasurer. He was also Treasurer of the Exchequer, but the offices were distinct: the first was conferred by delivery of a white staff, the second by patent; the first was a great office of State; the second placed him at the head of the Exchequer [4].

The Lord High Treasurer.

31 Hen. VIII, c. 11.

The office of Treasurer was first put into Commission on the death of Lord Salisbury in 1612. From this period, though the Treasurers transacted business in the Exchequer of Receipt until 1643, the Treasury has become a separate department; its authority is necessary for the issue of money from the Exchequer of Receipt, and it exercises the financial control once possessed by the Exchequer of Account. When at the Restoration the Treasury was not only put for a short time into Commission, but located in a separate set of rooms at Whitehall, the severance of

The Commission of the Treasury.

[1] Haydn, Book of Dignities, 381. Madox, ch. xxi. s. 3. The title, 'capitalis baro,' seems to have been first used in the case of Walter Norwich in 1317.

[2] Madox, p. 568. Report on Public Income and Expenditure (1869), i. 336.

[3] Thomas, Hist. of Public Departments, p. 4.

[4] See the account of the admission of Godolphin; Thomas, Hist. of Public Departments, p. 2; and of Harley, Calendar of Treasury Papers, vol. iv. preface. The first account is taken from the Black Book of the Exchequer; the second from an entry made on a fly-leaf of the Treasury Minute Book. It is difficult to conjecture from these accounts what would have been the duties of the Lord High Treasurer if the staff and the patent had been conferred on different persons.

Severance of Treasury and Exchequer.

Treasury and Exchequer was complete. The Upper Exchequer may by that time be said to have passed away into (i) a law court—the Court of Exchequer, (ii) a body of auditors, of whom I shall have to speak later, and (iii) a department—the Treasury. Since 1835, the Paymaster-General and the Treasury have discharged the duties of the Exchequer of Account, apart from those of Audit which have gone to the Controller and Auditor-General; the Exchequer of Receipt is now the Bank of England. The office of Lord High Treasurer was filled from time to time until October 13, 1714, when the Duke of Shrewsbury resigned the white staff. Since then the Treasury has always been in Commission.

By the Act of Union with Scotland, the Scotch and English Treasuries were merged, but after the Union with Ireland the office of Lord High Treasurer for Ireland was continued until 1816[1].

§ 2. *The Commission of the Treasury.*

The Treasury Board is created by letters patent under the Great Seal[2] appointing the persons named therein to be Commissioners for executing the office of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.

The Board consists of the First Lord, the Chancellor of the Exchequer, and a varying number of Junior Lords.

Until 1711, whenever the Treasury was put into Commission, the King named all the Lords, and the First Lord was only a more important minister than the others, 'primus inter pares[3].' Since 1711 the First Lord has nominated the Junior Lords, and since the Ministry of Sir Robert Walpole (1721–1742) the office of First Lord has usually been associated with the position of Prime Minister. The exceptions to this rule are of two kinds.

The Prime Minister as First Lord.

[1] As to the inconveniences which arose from the existence of the two Treasuries, see Parker, Memoirs of Sir R. Peel, vol. i. pp. 111–14.

[2] See the form of patent, Appendix i.

[3] Todd, Parl. Gov. in England, ii. 424.

There have been occasions in the last century when there was no definite Prime Minister, as in the chaotic state of parties after the fall of Walpole, when Lord Wilmington was First Lord of the Treasury, while Carteret and Henry Pelham struggled for ascendency in the Ministry; or again when William Pitt the elder was Secretary of State and controlled the policy of the country, while Newcastle distributed the patronage as First Lord of the Treasury; or again as in the coalition Ministry of 1783 when the Duke of Portland, who was First Lord, was Prime Minister only in name, and Fox and North divided the responsibilities of government. Exceptions (1).

There have also been occasions when the Prime Minister has deliberately chosen an office either less or more laborious than that of First Lord. Thus Lord Chatham in 1766, when entrusted by George III with the formation of a Ministry, chose the office of Lord Privy Seal. At this time the Treasury Board met twice a week for the transaction of business, and Chatham was perhaps desirous of being relieved from these routine duties. Fox in 1806, and Lord Salisbury in 1885 and again in 1887 and 1895, undertook to combine the duties of Foreign Secretary with those of Prime Minister. Such an arrangement seems hardly practicable nowadays, unless the Prime Minister is a member of the House of Lords. To control the general policy of the country, to manage the business of the Ministry as leader of the House of Commons, and to superintend an important department of government, is a combination of duties hardly within the compass of one man's powers. Mr. Gladstone united the duties of Prime Minister and leader of the House of Commons with those of Chancellor of the Exchequer for a few months in 1873 and 1874 when Parliament was not sitting, and again from the spring of 1880 to the beginning of 1882, but this combination tends to become less frequent [1]. Exceptions (2).

In 1885 the First Lord, Lord Iddesleigh, was neither Prime Minister nor a member of the House of Commons.

[1] Pitt, Addington, Perceval, and Peel are the only other instances in the last 100 years.

The arrangement was anomalous, though the large experience of Lord Iddesleigh in matters of finance may have rendered it not inconvenient.

Duties of First Lord.

The First Lord of the Treasury has a large patronage, but takes no part in the duties of the Treasury, unless questions should arise in the business of the department which the Chancellor of the Exchequer cannot settle; in such a case his position as titular head of the Board and as Prime Minister or leader of the House of Commons adds weight to his decision.

Business of Treasury Board.

The Treasury Board does not now meet except on extraordinary occasions, but until the beginning of the present century its meetings were a reality[1]. The Lords of the Treasury, and the Chancellor of the Exchequer, sat round the table, at the head of which the King, till the accession of George III, used to preside[2], seated in a large chair, which is still in the Treasury offices; the Secretaries attended with their papers; these were discussed and minutes kept by the Secretaries which were drawn out and read the next day. Business increased during the great wars of the last century, till it grew beyond the powers of a Board to transact; the meetings became formal, taking place twice a week; after 1827 the First Lord and Chancellor of the Exchequer ceased to attend; the business was prepared beforehand for the sanction of the lords[3]. Since 1856 the meetings have been discontinued; individual members of the Treasury staff are now personally

[1] In the reign of Anne the Board sat on four days of the week; on Monday, it dealt with Scotch and Irish business; on Tuesday, with the Treasurer of the Navy in the morning, Commissioners of the Customs in the afternoon; Wednesday, in the morning it made up the cash paper for the week, in the afternoon it waited upon the Queen to receive her approval of the cash paper, and to obtain her signature where necessary to warrants; on Friday, it received the Paymaster of the Forces and the Secretary of War in the morning, and the auditors and other officers of the revenue in the afternoon; Thursday was reserved, being a 'council day,' and on Saturday the Board seems to have taken a holiday. Calendar of Treasury Papers, vol. iv. p. xv.

[2] George III gave up the hereditary revenues for a fixed Civil List, and so had no personal interest in the business of the Treasury.

[3] Commons Papers, 1847, xviii. 141–8. Evidence of Sir Charles Trevelyan.

responsible for business which is transacted under the general control of the Chancellor of the Exchequer.

§ 3. *The Chancellor of the Exchequer.*

The Chancellor of the Exchequer is always one of the Commission of the Treasury, but he is appointed Chancellor of the Exchequer and Under Treasurer by separate patents, and by the receipt of the Exchequer Seals.

Duties of Chancellor of the Exchequer.

His duties originally consisted in the custody and employment of the seal, in the keeping of a counter-roll which should check the accuracy of the roll kept by the Treasurer, and in the discharge of certain judicial functions in the Exchequer of Account, of which there remains but one, and that merely formal. The more strictly financial duties of the Chancellor of the Exchequer belong to the post of Under Treasurer, which was connected with his office in the reign of Henry VII[1].

Recent importance of the office.

The post was not of great importance so long as the Treasury Board was in active working. Throughout a great part of the last century it was not necessarily a Cabinet office, unless held in conjunction with the first Lordship of the Treasury[2].

In 1809 Mr. Perceval offered the post to Lord Palmerston, who was then 25 years of age, and had made one speech in the House! 'Annexed to the office,' says the latter, 'he offered a seat in the Cabinet if I choose to have it, and he thought it better that I should have it.' Mr. Perceval added that as a matter of course he should himself take the principal share of the Treasury business both in and out of the House[3].

As the Treasury Board has diminished, so the Chancellor of the Exchequer has risen, in importance. At the present time he is in fact a Finance Minister, and the Board of which he is a member consists of persons whose duties are unconnected with the work of the Treasury, the chief of

[1] Report on Public Income and Expenditure, 1869, part 2, p. 335.
[2] Memoir of Right Hon. W. Dowdeswell. Cavendish Debates, 576.
[3] Bulwer, Life of Palmerston, i. 91.

them being the Prime Minister or leader of the House of Commons. Let us consider the duties which now fall upon the staff of the Treasury, of which the Chancellor of the Exchequer is the Parliamentary chief.

Change in character of its duties.

The duties of the old Exchequer of Account and of the Treasurer were to the King. It was the business of the office to see that the King's debtors paid all that they owed, and that the King's creditors got no more than was their due. The duties of the Treasury and of the Chancellor of the Exchequer are to the taxpayer. It is the business of the department to see that no more money is asked for than is wanted, and that no more money is spent than has been authorized by Parliament. The estimates are supervised in the Treasury before they are presented to Parliament, and Bills which lay a charge on the Consolidated Fund, or on money which Parliament is to provide for the services of the year, must receive the assent of the Treasury before they are introduced into Parliament. If this were not so the Chancellor of the Exchequer would not be able to balance revenue and expenditure. Besides this, the Treasury exercises a general control over official salaries, fixing them in the first instance, and afterwards ascertaining from time to time that work which is paid for is actually done. It is responsible not merely for the amount demanded of the taxpayer, but also for the expenditure of public money in the mode indicated by Parliament. With this I shall deal hereafter. It is impossible for the Chancellor of the Exchequer to attend personally to these matters in detail, they are supervised by the permanent staff of the department; but the policy which governs the action of the department is indicated by the Chancellor of the Exchequer.

To settle what shall be asked for:

to see that public money is properly spent:

to adjust taxation to outlay:

And he has other duties. It is his business when he knows the amount of the public income, and the extent of the demands upon it, to adjust revenue to expenditure, to raise or remit taxation as the occasion may justify, and to discover how money may be raised in greatest plenty, with least inconvenience.

Furthermore, it is his business to obtain the assent of

Parliament to his plans for the taxation of the year, and assisted by the Parliamentary Secretary to represent the department in the House of Commons. The Chancellor of the Exchequer and his staff may be regarded as living in perpetual conflict—with servants of the State, who want more pay than the Treasury thinks they are worth—with departments of government, which want more money than the Chancellor is prepared to ask Parliament to grant—with the House of Commons, which contests the amount demanded, and the mode in which it is proposed to be raised—and with the taxpayer who wishes to have everything handsome about him, and does not like to pay for it.

to represent his department in Parliament.

It remains to consider the remnant of the Chancellor's judicial powers. The Chancellor and Treasurer were entitled to sit with the Barons of the Exchequer when that Court sat as a Court of Equity. Sir Robert Walpole sat and gave a casting vote in 1735. But the Equity jurisdiction of the Court was taken away in 1841 [1], and the Judicature Act excludes the Treasurer and the Chancellor of the Exchequer from judicial powers in the High Court or Court of Appeal [2].

His judicial powers.

But in the appointment of Sheriffs the Chancellor resumes his old place as though in the Exchequer of Account. The ceremony which takes place on the 12th of November, the morrow of St. Martin, recalls the ancient Exchequer, wherein the Sheriffs were the connecting link between the shiremoot and the Curia. Not only are the Judges summoned for this appointment, but all the members of the Cabinet. The justiciarii and great officers of State sit once more on the Exchequer side of the Curia, only the Exchequer and its Barons have gone, and the Chancellor of the Exchequer finds himself presiding in the King's Bench division of the High Court of Justice [3]. The King's Remembrancer reads out the names on the list for the ensuing year, the Judges supply names sufficient to complete the number of three for each county, the Clerk of the Privy Council reads out excuses, and the Lords of

The appointment of Sheriffs.

[1] 5 Vict. c. 5. [2] 36 & 37 Vict. c. 66, s. 96.
[3] 44 & 45 Vict. c. 68, s. 16.

the Council and Judges accept or reject the excuses. The list is made out, and the subsequent proceedings take place at the Privy Council [1].

§ 4. *The Parliamentary Staff.*

The Junior Lords.

The Junior Lords who, with the First Lord and Chancellor of the Exchequer, make up the Commission of the Treasury, are usually three in number, and there is a tradition, not uniformly observed, that there should be an English, a Scotch, and an Irish Lord. They have from time to time some departmental business assigned to them, and to one is specially entrusted the consideration of claims of public servants to superannuation allowances. But their duties are mainly political; they act as assistant Whips, and help the Patronage Secretary, the senior Whip, to bring up the rank and file of the Government supporters when required for a division. One of them may represent the Board of Works, or the Board of Agriculture, if the head of either of those departments, each of which has but a single political representative, chances to be a peer.

The political side,

It will be seen that the Treasury as at present constituted has two sides, a political and a financial; the political represented by the First Lord and the Junior Lords, the financial by the Chancellor of the Exchequer. The First Lord is usually Prime Minister or leader of the House of Commons, or both, and is entrusted with the extensive patronage of the Treasury. Each of these great officers has a Parliamentary Secretary. The Patronage Secretary is the subordinate of the First Lord, assists him in the distribution of the patronage of the Treasury, and acts as the chief Government Whip, attending to the maintenance of the Government majority in and out of Parliament.

and the Patronage Secretary.

[1] The Sheriffs Act, 50 & 51 Vict. c. 55, does not require that more than one great officer of State should be present, and two judges. Practically it is necessary that six or seven judges should attend. Report of Select Committee of Lords on the office of High Sheriff, Com. Papers, 257, 1888. The Lords of the Council determine the order in which the names shall stand, and at a subsequent meeting the King pricks the name selected for each county.

The Financial Secretary is the subordinate of the Chancellor of the Exchequer. He is usually responsible for the estimates for the revenue departments and the civil service, and for votes of credit; he has to do the drudgery of the financial business transacted in Parliament, to take charge of Bills which affect the Revenue, and to defend the estimates laid before the House of Commons. The financial side, and Secretary.

The history of these last-mentioned officers is somewhat obscure. Lord Burleigh appears to have been the first Treasurer who employed a Secretary to give his instructions to the Treasury. The first notice of joint Secretaries was when Lord Rochester was Treasurer in the reign of James I; after that there was but one until 1714, when there were again two. From the commencement of the eighteenth century the post was held with a seat in the House of Commons[1]. Since then they have generally, and for some time past always, been members of the House. Their offices are not held *from* or *under the Crown*, and they are appointed simply by being 'called in' to the Treasury Board.

The mode of appointment is a curious anomaly. The position of the Financial Secretary gives him an intimate knowledge of the work of an important department, and therewith an administrative and Parliamentary experience which usually leads to Cabinet office. The Patronage Secretary, as chief Whip, guides the Parliamentary destinies of a Government, and may be called upon to advise a Cabinet on questions of Parliamentary policy of the gravest importance. But these two officers, though their selection is a matter of concern in the formation of a Government, are nominally and formally appointed by a Board of which the majority consist of the assistant Whips, the junior Lords of the Treasury, whose duties, as defined by Canning, were 'to make a House, keep a House, and cheer the Minister.'

§ 5. *The Permanent Staff.*

So far I have spoken of the Treasury as a body of political officers, some connected very remotely, if at all,

[1] See, as to the history of the Secretary to the Treasury, Thomas, Hist. of Public Departments, 16, 17.

with financial business, others, such as the Chancellor of the Exchequer and the Financial Secretary, responsible for the course of our financial policy, and with its exposition and conduct in Parliament.

The Permanent Secretary

But these political officers who change with the rise and fall of parties are the temporary chiefs of a permanent staff. The practical inconvenience of frequent change in the Secretaries of the Treasury was felt in 1805, and was met by the creation of a Permanent Secretary, whose office is incompatible with a seat in Parliament, whose duty it is to supervise the daily work of the Treasury, and to inform and assist the Parliamentary representatives of the department.

and staff.

The wide-reaching financial control exercised by the Treasury over all the departments of government gives a peculiar importance to its permanent staff; for all estimates must be approved by the financial head of the Treasury, the Chancellor of the Exchequer, and the details of these estimates must necessarily be scrutinized by the persons who are from long experience familiar with such matters, and can supply the Chancellor with materials for forming conclusions. All expenditure must, in one form or another, receive the authority of the Lords of the Treasury; and this phrase is kept in use although neither the First Lord nor the junior Lords concern themselves with the details of departmental expenditure. When the applicant for money is informed that 'my Lords' cannot assent to his demands, he must understand that the permanent staff have raised objections, and that if he wants the matter to go further he must obtain access to the Parliamentary Secretary or to the Chancellor of the Exchequer. Statutory control is given to the Treasury in respect of the form of keeping the public accounts; and in the employment, as well as in the grant, of public money the Treasury possesses, either by Statute, by custom, or by arrangement, a wide supervision.

This control can only be efficient, or even possible, by reason of the permanence of the body of officials who exercise it. Economy can only be maintained by constant

watchfulness over the springs and sources of expenditure. It would be idle to expect officials, who were dependent for their position on the continued existence of a government, to take up the threads of departmental policy just where their predecessors had laid them down, to incur the unpopularity which is the lot of the economist, without the prospect of seeing the fruits of their labours. The importance of the permanent Civil Service will be dealt with later: but it is impossible to conclude an account of the Treasury and its powers without alluding to the necessity to such a department of a skilled and permanent staff.

§ 6. *Departments connected with the Treasury.*

Departments connected with Treasury.

In close connexion with the Treasury are several departments of government. The reason of such connexion differs in the different cases, as does the character of the connexion. Of some of these departments I shall have to speak later in dealing with the revenue and expenditure of the Crown.

Control and Audit.

The Comptroller and Auditor-General is an official independent of any government department, but discharging functions which keep him in constant communication with the Treasury: for the departments of government cannot obtain money without the intervention of the Treasury, and the Treasury cannot supply their needs or check their expenditure without the aid of the Comptroller and Auditor-General. But he stands apart from politics: his salary does not come under the annual consideration of Parliament, but is charged on the Consolidated Fund [1].

The other departments which are in immediate connexion with the Treasury are somewhat miscellaneous, with the exception of those which are concerned with the collection of the revenue: these are the Commissioners of Customs; of Inland Revenue; of Woods and Forests, i. e. of the Land Revenues of the Crown; and the Postmaster-General.

[1] 29 & 30 Vict. c. 39, s 4. For a fuller account of the duties of this officer, see chapter vii.

The Paymaster-General.

Certain offices appear in the estimates as the departments of the Treasury; such is that of the Paymaster-General, an office which has by successive Statutes[1] absorbed all the offices through which public money voted by Parliament was previously paid. The office is political, but honorary; it is tenable with a seat in the House of Commons, and the holder is not required to offer himself for re-election on its acceptance. The appointment is by Sign Manual warrant. The duties are discharged by the permanent staff of the Pay Office, with powers granted by the Paymaster-General.

The Parliamentary Counsel.

Such also is the office of the Parliamentary Counsel, who are appointed by Treasury Minute. The duty of these gentlemen is to draft the Bills which embody the Government measures. It is a difficult duty to discharge, for they must not only put the intentions of the Government into an artistic statutory form, making this form consistent with previous legislation on the subject, if necessary by repeal of portions of existing Statutes, but they have to deal with the unskilled energies of the private member in the way of amendment, and to keep in view the more formidable ordeal of judicial ingenuity in the way of construction. Thus they are required to watch the Bill through every stage in either House, and to supply the Minister in charge of it with the necessary arguments to meet amendments which would frustrate the object, or embarrass the construction, of a clause.

Other minor departments figure in the Civil Service estimates as subordinate to the Treasury, but we may pass from these to the departments which are concerned with the collection of Revenue.

The Revenue Departments.

These are the Commission of Woods and Forests, the Board of Customs, the Board of Inland Revenue, and the Post Office.

Woods and Forests.

The Commissioners of Woods and Forests are a department of the Civil Service entrusted with the duty of administering the Crown Lands and collecting the land revenues of the Crown.

[1] 5 & 6 Will. IV, c. 35, and 11 & 12 Vict. c. 55.

They are appointed, two in number, by Sign Manual warrant. They are connected with the Treasury as being responsible for a branch, though a small branch, of the revenue: and also because, not being otherwise represented in the House of Commons, they must look for explanation or defence of their conduct, if called in question, to the representatives of the Treasury.

Customs and Inland Revenue.

Boards of Commissioners of Customs and of Inland Revenue are appointed by Letters Patent, and the Chairman of each Board by Sign Manual warrant. They are distinctly revenue departments, and their work is more appropriately considered when we come to deal with the sources of public revenue, distinguishing that which springs from duties levied on foreign goods entering the country and that which comes from other forms of taxation. The Post Office demands separate treatment.

§ 7. *The Post Office.*

The Post Office differs from the Commission of Woods and Forests in that it is treated as a revenue department, and not as a branch of the Civil Service. It differs from all three of the foregoing departments in that it is directly represented in Parliament.

The Postmaster-General is a political officer appointed from time to time by letters patent under the Great Seal.

History of Post Office.

From the early part of the sixteenth century it would seem that postal arrangements existed, not for public convenience, but for the use of the King and his Court, and these were under a Master of the Posts. In the reign of James I and Charles I posts were organized for general convenience, and from the reign of Charles II they furnished an appreciable item of the revenue settled upon the King. But until 1710 the duties were carried on by one or more persons under the supervision of a Secretary of State.

The Postmaster-General, 9 Anne, c. 10,

In 1710 a Postmaster-General was appointed, holding office by Letters Patent: and the office fell under the disabilities attaching to new offices by the Place Bill of 1707. Throughout the last century, and until 1823, the

office was held usually by two joint Postmasters; since then it has been held by one person. Except for the short period of Mr. Canning's Ministry, it was always held by a peer, with a view to the Parliamentary representation of the Post Office, until in 1866 the disability was removed and the Postmaster-General rendered capable of sitting in Parliament[1], subject to the rule that acceptance of the office vacates the seat of the holder, leaving him eligible for re-election.

may sit in Commons

In 1831 the English and Irish Post Offices, which had until that date been under separate management, were brought under one head, and since 1837 the office of Postmaster has been regarded as political, changing hands with changes of Ministry.

Privileges of Post Office.

The year 1837 marks an epoch in the history of the Post Office. In that year a group of Statutes[2] was passed, one of which repealed in its entirety the immense mass of legislation which had then accumulated about the Post Office, while another defined its privileges and conditions of management. It is the latter Act which gives a monopoly to the Post Office in the carriage of letters and newspapers: private enterprise is not allowed to compete with the Government, although in the process of crushing private competition the Post Office may be stimulated to new efforts for meeting the public convenience.

Position of Postmaster-General:

The position of the Postmaster-General is exceptional. From one point of view the office is a department of the Revenue, and as a revenue department it is controlled by the Treasury. But, unlike other such departments which are merely concerned with collection and receipt, the Post Office transacts a business which is immense in compass and variety, which no private enterprise could transact so cheaply or conveniently to the public, and which, though conducted primarily with a view to public convenience, incidentally produces revenue[3]. As head of a great business concern the Postmaster-General is a large employer of labour; he is also concerned in dealings with steamship companies as

[1] 29 & 30 Vict. c. 55. [2] 7 Will. IV. & 1 Vict. c. 32, c. 33.
[3] Post, ch. vii. sect. i. § 5.

regards contracts for the carriage of mails; and with international questions in respect of treaties as to postal arrangements with foreign countries [1]. He is also therefore the head of a great administrative office, but, though he may suggest and advocate means for increasing the usefulness of his department, his powers are conferred and very precisely defined by Statutes, and their exercise, wherever it goes beyond mere regulation and touches the Revenue, is subject to Treasury control.

his power limited by Statute:

His power to fix rates of postage where they are not settled by Parliament must be used subject to the approval of the Lords of the Treasury. So too Parliament gives authority for contracts for the conveyance of mails; but if Parliament does not fix the rates, they must be settled by the Postmaster-General, with the consent of the Treasury.

subject to Treasury control.

His regulations as to the Post Office Savings Banks, and money-orders, are in like manner subject to the approval of the Treasury, and the consent of that department is required to enable him to purchase, sell, or exchange land, and to purchase, lease, or regulate the business of the Telegraph [2].

His position is in this respect different to that of the other chiefs of great spending departments. The Treasury has a voice in the amount of the sums asked of Parliament for the various services of the army and the fleet, but the assent of the Treasury is not required to the pattern of a new rifle or the design of a ship. In the department of the Postmaster-General Parliament lays down the rules of management in great detail, and leaves it to the Treasury to see that these rules are carried into effect. The Postmaster-General is no more than the acting manager of a great business, with little discretionary power except in the exercise of the very considerable patronage of his office. He may suggest to the Government an extension of postal

[1] See Hansard, N. S., vol. clxxxii. pp. 1077, 1082, speeches by Mr. Childers and Mr. Gladstone on the Bill which made the office tenable with a seat in the Commons.

[2] I have not attempted to give references to the numerous Statutes by which the powers of the Postmaster-General are conferred and defined. Such information may be found in the Chronological Table and Index to the Statutes.

arrangements with foreign countries, which the King may effect by treaty: but it is only in Parliament and by legislation that he can introduce new methods for the conduct of his business, or new departments of work to be undertaken by his office. And it is from his Parliamentary position that his office derives the influence which gives it importance.

Section V

The Commission of the Admiralty

§ 1. *Its History.*

The Admiralty Board,

The Admiralty, like the Treasury, represents a great office entrusted from time to time to Commissioners appointed by Letters Patent under the Great Seal. The office is that of Lord High Admiral, and it has been in Commission since 1708, except in the year 1827, when for a short time the Duke of Clarence was Lord High Admiral.

But before 1832 the Commissioners of the Admiralty were not entrusted with the entire management of naval affairs: they dealt with 'the appointment and promotion of officers, the movements of ships, and the general control of the policy of the navy[1].' There were two Boards subordinate to them, the Navy Board, which dealt with pay and stores, other than ordnance, or victuals, and the Victualling Board, which attended to the supply of meat, biscuit, and beer; besides these the Treasurer of the Navy, though a member of the Navy Board, had a separate office; he obtained from the Treasury and paid over the sums which the Navy Board directed him to pay[2].

Navy Board,

Victualling Board,

Treasurer.

In 1832 Sir James Graham, then First Lord of the Admiralty, obtained the passing of an Act[3] which abolished

[1] Report of Royal Commission to inquire into civil and professional administration of naval and military departments, 1890 [c. 5979], Appendix i.

[2] The Laws, &c., of the Admiralty of Great Britain, Civil and Military, vol. ii. p. 410 (published 1746).

[3] 2 & 3 Will. IV, c. 40.

these two Boards and placed their duties in the hands of officers each of whom was subordinate to a Lord of the Admiralty. Three years later the office of Treasurer was abolished, and its duties assigned to the Paymaster-General[1].

Thenceforth the entire business of the Navy has been conducted under the supervision of the Admiralty Board. The Letters Patent constituting the Commission of the Admiralty, after revoking the previous Patent, appoint certain persons named to be Commissioners for executing the office of Lord High Admiral, with power to do everything which that officer might do if in existence, to discharge all the duties which had once been done by the Navy and Victualling Boards, and to make all appointments, not only professional, as the Lord High Admiral had been wont to do, but in the civil departments of the service.

It will be necessary hereafter to speak again of the Admiralty and its working in a chapter on the Armed Forces of the Crown, but at the risk of repetition some points may be mentioned here.

§ 2. *Its Constitution.*

The Board.

The constitution of the Board is now settled by Order in Council, of the 10th August, 1904[2], and consists of the First Lord, four Sea Lords, and a Civil Lord. There are two Secretaries appointed by the Board, one Parliamentary and Financial, a political officer changing with a change of Government; one Permanent, and independent of political changes.

Its meetings.

The Board now meets once a week, or oftener if the First Lord so pleases. In former times it met more frequently, but much administrative work is done by the Lords and Secretaries in their respective departments.

The position of the First Lord.

The Lords Commissioners are nominally upon an equality. The Patent makes no distinction in their respective positions: the political chief of the Admiralty is only the Lord whose name stands first in the Com-

[1] 5 & 6 Will. IV, c. 35.

[2] 1905. [Cd. 2416.]

mission. But in fact the First Lord is supreme, and for two reasons.

(1) as a member of the Cabinet;

The First Lord has for a very long time been a member of the Cabinet. He therefore speaks to his colleagues with the force of the Cabinet behind him. If the other Lords differ from him at the Board he can say that unless his wishes are carried out he will not remain a member of the Board[1]. If, as would be probable, the rest of the Cabinet support the First Lord against his colleagues, the King would be advised to issue fresh Letters Patent, constituting a new Commission of the Admiralty, in which other names would be substituted for those of the dissentient members of the Board.

(2) Under Orders in Council.

Again, successive Orders in Council have made the First Lord responsible to the King, and to Parliament, for all the business of the Admiralty, and have, in addition, made the other members of the Board responsible to the First Lord for the business assigned to them.

The distribution of business.

By Order in Council of the 10th of August, 1904[2], the First, Second, and Fourth Sea Lords are to be responsible to the First Lord for so much of the general business of the Navy, and the movement, condition, and *personnel* of the Fleet, as may be assigned to them or each of them by the First Lord; the Third Sea Lord and Controller is similarly responsible for the *matériel* of the Navy; the Parliamentary Secretary for the Finance of the Department and for such other business of the Admiralty as may be from time to time assigned to him; while the duties of the Civil Lord and the Permanent Secretary are left to be assigned to them from time to time.

§ 3. *Distribution of Business.*

The present distribution of business rests on a Minute of the First Lord, made on the 20th October, 1904[3]. Its

[1] Report of Select Committee of the Commons on the Board of Admiralty, 1861, p. 185. Evidence of Sir John Pakington.

[2] [Cd. 2416.]

[3] Statement showing present distribution of business between the various members of the Board of Admiralty, 1905. [Cd. 2417.]

general character is indicated by the terms of the Order in Council, but we may note that the Civil Lord has to do with the Civil business of the Navy, and the Permanent Secretary with the internal working of the office, with correspondence, and with the transaction of routine business.

The Parliamentary Secretary.

Two things may be noted about the distribution of business. The Parliamentary Secretary holds a position of very high importance in the Ministry, though his office does not bring him into the Cabinet. He commonly represents the Department in the Commons, and is responsible to the First Lord for the Finance of the Navy, for all proposals for new expenditure, and for the purchase and sale of ships and stores. But he is not a member of the Board, he is appointed by the Board, and a minute of the Board is the only record of his appointment. Among those who appoint him is the Civil Lord whose name appears in the Patent constituting the Commission, whose office, unlike that of the Parliamentary Secretary, requires him to seek re-election. And yet the political positions of these two ministers in point of importance and responsibility curiously reverse the technical and formal rank of their respective offices.

The First Sea Lord.

The First Sea Lord is given a position of greater importance than heretofore in the Minute of the 20th October, 1904. In any matter of great importance he is always to be consulted by the other Sea Lords, the Civil Lord, and the Secretaries, and though these officers have direct access to the First Lord, if they desire it, the First Sea Lord becomes, in all matters of great importance, the necessary intermediary between them and their political chief.

This is not the place to speak more fully of the working of the Admiralty or of the large permanent staff which secures continuity in the details of administration.

General Constitution of Admiralty.

The Admiralty is constituted with the object of securing responsibility to Parliament by entrusting the affairs of the Navy to a civilian who shall represent the department in one or other House, while care is taken to supply this

civilian minister with the best professional advice. As regards the general policy of the Board this advice comes through the Sea Lords, who change with changes of government: in matters of detail the First Lord has the assistance of an efficient permanent staff in all the numerous departments of naval administration.

Section VI

The Boards

There is one large and distinct group of those departments of government which remain, consisting of a number of Boards. These, unlike the Treasury Board and the Admiralty Board, do not represent great offices put into Commission. In earlier times they would have been Committees of the Privy Council. The oldest of them, the Board of Trade, has never, strictly speaking, ceased to be a Committee of the Council: the youngest, the Board of Education, was a Committee of the Council until the year 1899. In every case the Board includes, besides the President, a number of great officials, usually the President of the Council, the five Secretaries of State, and the Chancellor of the Exchequer. The President, except in the case of the Board of Works, is appointed by Order or Declaration in Council; the Board is a phantom; the President, though by its statutory constitution he would play a minor part among the great officers of State of whom the Board consists, is, in fact, the sole head of his department. These Boards are not merely indications of diminished administrative importance of the Council; they mark also the increased activity of the State in compelling or controlling the action of the individual in many departments of human affairs.

§ 1. *The Board of Trade.*

History of the Board.

This Board has a long history. In 1660 Charles II created two Councils, one for Trade and one for the Foreign Plantations. These were combined under one Commission in 1672, which, being revoked in 1675, the control of trade

returned to the Privy Council. In 1695 the Board of Trade and Plantations was created. This Board was abolished in 1781. The sarcasms of Burke[1] on its costliness and inefficiency were doubtless justified; but the Board would seem to have had difficulties from a want of executive power, which might account for its incapacity. It could collect information and make suggestions to the Secretary of State for the Southern Department, but it could do no more, and in the hands of persons not naturally very zealous to give a return of work for their salaries, it became an expensive machine for making inquiries which were seldom made, and for having in readiness advice which was seldom asked for. From 1782 until the present time the Board of Trade has been a Committee of the Privy Council. An Order in Council of August 23, 1786, never since revoked, constitutes a Committee of the holders of certain high offices, conspicuous among whom are the Archbishop of Canterbury and the Speaker of the House of Commons. A President and, until 1867, a Vice-President were from time to time appointed in Council, and individuals were added to the Committee for special purposes[2]. The Committee very rarely met, and its duties were discharged by the President and Vice-President.

In 1862 it was enacted that this Committee of Council should henceforth be described as the Board of Trade, and the Board is defined in the Interpretation Act, 1889, as 'the Committee of the Privy Council appointed for the consideration of matters relating to Trade and Plantations[3],' and in 1867 the Vice-President ceased to exist, and a Parliamentary Secretary was appointed. The President and Secretary are both capable of sitting in the House of Commons.

Its consultative duties.

The duties of the Board before 1840 were almost entirely consultative; it collected statistics on the subject of trade, and was ready to offer advice to the Foreign Office on the subject of commercial treaties, and to the Colonial Office on

[1] Burke, Speech on Economical Reform; but see Life of Shelburne, by Lord Fitz-Maurice, i. 240.

[2] See Return to an Order of the House of Commons for 1871 (482).

[3] 24 & 25 Vict. c. 47, s. 65, and see 52 & 53 Vict. c. 63, s. 12.

questions arising out of our dealings with the colonies. In 1840 it began to acquire its modern executive functions; it was then for the first time called upon to settle and approve the by-laws of railway companies. Its duties in this respect grew, and for some time the department had a double aspect. It was the Committee of Council for trade and foreign plantations; in this capacity the Committee met to consider and report to the Colonial Office upon the constitutions proposed for our colonies in Africa and Australia[1]. It was also the Board of Trade, and in this capacity the President and Vice-President exercised an administrative control over railways, harbours, and other matters committed to the Board by Statute. Gradually the consultative functions dwindled, and the administrative functions grew. In 1865, after some discussion as to the relation of the Foreign Office and the Board of Trade, the former department established a new division to carry on correspondence in commercial matters, not only with the Board of Trade but with representatives of foreign powers in England[2]; and a few years later, in 1872, the consultative branch of the Board wholly disappeared[3].

Its regulative duties.

We have then to consider what are the present duties of the Board. They are now mainly executive and regulative rather than advisory.

Statistics.

The part of its present work which most nearly represents the old functions of the Board as an adviser in trade and colonial matters is the statistical department. The Board collects and publishes the statistics of the trade of the United Kingdom, the colonies, and foreign countries, and of agriculture, including the average price of corn in England and Wales, calculated from weekly returns. This department also keeps and publishes a record of the conditions of the labour market. Here too is kept a register of the rates of duty levied by foreign countries on British goods. In general it may be said that persons in search of statistical information on the subject of trade and naviga-

[1] Hansard, cvi. 1120 [2] Hansard, clxxvii. 1880.
[3] Hansard, ccix. 1150.

tion, and of the conditions of labour in the United Kingdom, will obtain it at the Board of Trade.

Beyond this it may be said that wherever the State regulates trade in the interest of the public safety, convenience, or profit, it is represented by the Board of Trade [1].

In some matters the Board exercises ancient royal prerogatives transferred by Statute to departments of government. In others it represents the modern activity of the State.

Patents.

The ancient claim of the Crown to create monopolies in the buying, selling, making, or using commodities was limited by an Act of James I to the grant of Letters Patent for the exclusive use of new inventions [2]. This prerogative has been regulated by subsequent Statutes: and the grant of patents, together with the registration of designs and trade marks, is now placed under the superintendence of the Board of Trade [3].

Standards.

Upon the commercial department is thrown the duty of keeping the standard of weights and measures, formerly the business of the Exchequer.

Bankruptcy.

The entire machinery of Bankruptcy, apart from the consideration of legal questions, is in the hands of the Board [4]; so is the registration of Joint Companies.

Stock Companies, conducted by a separate office, but one included in the railway department, of which something must be said.

The powers and privileges conferred upon companies which provide things of indispensable use or convenience are, generally speaking, exercised under the control of the Board.

Railways and Tramways, Water and Gas.

Such bodies are railway and tramway companies, gas and water companies. They are in possession of a practical monopoly of things which man cannot do without—light, water, and the means of locomotion. The State entrusts to the Board of Trade the task of seeing that these bodies act

[1] I do not attempt to refer the reader to any but the most important of the vast accumulation of Statutes whence the Board derives its powers. The Chronological Table and Index to the Statutes must be referred to for further information.

[2] 21 Jas. I, c. 3. [3] 46 & 47 Vict. c. 57. [4] 46 & 47 Vict. c. 52.

with due regard to the interest and to the safety of the public. Safety would seem to be the main object of the control exercised by the Board over electric lighting.

Electric lighting.

The control is exercised in various ways. Where legislation by private bill or provisional order is required to effect the objects of the company, a government department can effectively intervene. When the company is in possession of its powers, it is controlled by inspection of works, by approval of by-laws and regulations, by inquiry into accidents.

Harbours.

The Harbour department is one in which the Board exercises an ancient royal prerogative. The soil of ports and navigable rivers was, under the feudal land law, vested in the Crown. This right of ownership involved a duty to secure the safety of the country from hostile invasion and the due payment of revenue arising from the Customs.

These prerogatives reappear in the departments of government which have charge of ports. The Treasury and the Commissioners of Customs determine what shall be landing-places for merchandise [1], the Board of Trade has charge of harbours, subject to the intervention of the Admiralty where national safety is concerned, and of the Commissioners of Woods and Forests as regards the pecuniary interests of the Crown in the soil [2]. Closely connected with its responsibility for the maintenance of harbours is the control exercised by the Board over the bodies to whom is entrusted the business of managing lighthouses [3], and the funds for their maintenance. The power of regulating sea and fresh-water fisheries has been transferred to the Board of Agriculture [4].

Light-houses.

The Marine department offers a very complete representation of State control over commercial transactions.

Merchant shipping.

A merchant ship when built is measured, her name entered with a description of her in the books of the Board, and a certificate of registry given to her owner which is hence-

[1] 10 & 11 Vict. c. 27, s. 24. [2] 25 & 26 Vict. c. 69.

[3] These are the Trinity House in England, the Commissioners of Northern Lighthouses in Scotland, and the Commissioners of Irish Lighthouses for Ireland. [4] 3 Ed. VII, c. 31.

forward the evidence of her identity and nationality; the register is, in addition, the owner's title, and this does not merely put his title under the protection of a department of government, it enables him by a change of the registered name to sell and convey his ship to another with the minimum of expense.

The safety of ship and crew is the next concern. 'The officers of a merchant ship are required to pass examinations in technical proficiency, and to produce evidence of character; they then receive certificates enabling them to act as masters, mates, and engineers[1].' Certain rules are made and enforced by the Board for the conduct of officers and men, for the settlement of disputes, and for the discharge of the crew, with their due wages if at home, with means of return if discharged abroad.

Besides securing that the ship shall be competently officered and manned, the Board makes rules as to the number of passengers, the lights to be shown, and the boats to be carried, the position in the ship of certain sorts of cargo; and it is further invested with power to detain ships which are suspected of being unfit to go to sea.

The Finance department of the Board is the outcome of all the above-mentioned duties. The staff required to effect this elaborate supervision, the maintenance of harbours and of lighthouses, the arrangements for merchant seamen's savings banks, money orders, pensions for the relief and conveyance home of distressed seamen, for the custody and transmission of the wages and effects of deceased seamen—all these matters involve not merely the keeping of accounts, but the administration of funds. The financial business of the Board involves therefore considerable labour and some cost[2]. Finance.

§ 2. *The Board of Works.*

The Board of Works traces its origin to the control provided for the expenditure on royal buildings which at one time fell entirely upon the Civil List.

[1] The State in its Relation to Trade, Sir T. Farrer, p. 123.

[2] See Return to an Order of the House of Commons for 1871 (482).

In 1782[1] these were placed under the control of a Surveyor of Works, who was to be an architect, and regulations were made as to outlay on new buildings and repairs. In 1814[2] a Surveyor-General was appointed 'for His Majesty's works and public buildings,' whether provided out of the Civil List or by Parliamentary grant.

In 1832[3] the work of the Surveyor-General was taken from him and entrusted to a department of revenue, the Commissioners whose duty it was to manage the Woods, Forests, and Land Revenues of the Crown.

These Commissioners, as was inevitable, applied the proceeds of the Crown lands to the repair of buildings and the maintenance of the public parks, and they did this without Parliamentary sanction. In 1851[4] these departments were severed. The salaries of the Commissioners of Woods and Forests were brought into the annual votes for Civil Service expenditure, and the revenues which they collected were to pass into the Exchequer. A new department, the Board of Works and Public Buildings, was created, consisting of a First Commissioner, the Secretaries of State, and the President of the Board of Trade. The Commissioners must apply to Parliament for funds to carry out any public improvement. The First Commissioner may sit in the House of Commons, and the Commissioners of Woods and Forests were by the same Statute declared ineligible for seats in that House.

The First Commissioner.

The First Commissioner is appointed by warrant under the royal sign manual: he acts alone; the Board never meets unless it should so chance that the office of First Commissioner was vacant and business had to be done.

His duties

The First Commissioner, then, with or without his Board, has charge of royal palaces and parks, and beyond this he has charge of the fabric and furnishing of all public buildings, including the Palace of Westminster, unless these should be specially assigned to any other department. He is thus responsible not merely for the

[1] 22 Geo. III, c. 82, ss. 6, 7, 8.
[2] 54 Geo. III, c. 157.
[3] 2 & 3 Will. IV, c. 1.
[4] 14 & 15 Vict. c. 42.

security of these buildings, but for the comfort and convenience of their inmates.

§ 3. *The Local Government Board.*

The Local Government Board is the creation of an Act of 1871[1], by which the powers possessed by the Privy Council, by the Home Secretary, and by the Poor Law Board in respect of public health, local government, and the administration of the poor law, were transferred to a Board consisting of the Lord President of the Council, the Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer, and a President, to be appointed by an Order in Council and to hold office during pleasure.

To this Board was given power to appoint Secretaries, Inspectors, and the necessary staff, with the sanction of the Treasury. The President and one of the Secretaries were made eligible for a seat in the House of Commons. As I shall have to deal hereafter[2] with the government of the United Kingdom, central and local, I will leave for consideration at that point the wide and important duties and powers of the Local Government Board, merely saying here that, as in the case of the Board of Works, the Board does not meet, and that responsibility for the conduct of its business is vested in the President and Parliamentary Secretary.

§ 4. *The Board of Agriculture and Fisheries.*

The Board of Agriculture dates from the year 1889[3]. Like its brethren the Boards of Trade, Local Government, and Works, it consists of a number of distinguished persons who never meet, of a President, who may sit in the House of Commons, as its political chief, and a permanent staff.

The Board of Agriculture.

It does not represent to any great extent a new interference by the State with the ordinary business of life. The Act which constitutes it does no more than assign to a Board powers exercised by various bodies, create a new office so as to enable the exercise of those powers to be represented and criticized in Parliament, and impose a duty to promote the studies of agriculture and forestry by collecting and publishing statistics, by assisting courses of

[1] 34 & 35 Vict. c. 70. [2] Ch. v. sect. i. § 5. [3] 52 & 53 Vict. c. 30.

instruction, and by inspecting schools in which such instruction is given.

Exercises powers taken from Privy Council:

The Board of Agriculture has acquired powers from three sources. From the Privy Council it has taken the powers, given in 1877, for the destruction of the Colorado beetle, and by various subsequent Acts for preventing the spread of contagious disease among animals. The only new power of this sort created by the Act is a control with which the Board is invested over dogs for the purpose of muzzling them at its pleasure, or making rules for their detention or even destruction if they stray.

from Land Commissioners:

Perhaps the most important are the powers taken over from the Land Commissioners, who, having themselves accumulated the powers and duties of other Boards, are wholly absorbed and disappear in the Board of Agriculture. The commutation of tithe, the enfranchisement of copyhold, and the enclosure of commons took place under the provisions of various Statutes, the operation of which was subject to the control of bodies of Commissioners. So, too, were the powers of limited owners of real property to pledge the credit of the land which they enjoyed for drainage or other purposes of improvement, or to employ for like purposes the produce of sale of such property effected under the Settled Land Act. So, too, were the powers of the Universities and the Colleges therein to deal with property in the management of which the public was supposed to have an interest. All these powers had been concentrated in a body of Commissioners, who were not represented in Parliament.

from Board of Trade.

From the Board of Trade are taken, by an Act of 1903, powers and duties in respect of the fishing industry [1]: and the King may, by Order in Council, transfer to the Board of Agriculture any powers and duties of a Government Department which appear to relate to agriculture, to forestry, or to the industry of fishing [2].

[1] 3 Ed. VII, c. 31. These duties may seem incongruous, but Lord Onslow, the President of the Board, urged that the department which had the care of the loaves should also be entrusted with the fishes. Hansard, cxxiv. 222: 23 June, 1903.

[2] 52 & 53 Vict. c. 30, s. 4; 3 Ed. VII, c. 31, s. 1 (3).

§ 5. *The Board of Education.*

Character of the Department.

This department of government illustrates the extent of State interference in a matter which seems so essentially one of private judgment as the education of children.

History.

When first the State came in contact with education, in 1833, it contributed, by a grant of £20,000 a year, administered through the Treasury, sums in aid of voluntary contributions for public elementary education. In 1839 the grant was enlarged to £30,000, and the duty of administering it was transferred to a Committee of the Privy Council. This Committee developed into a department, and in 1856 the Queen was empowered by 19 & 20 Vict. c. 116 to appoint a Vice-President of the Committee of the Privy Council on Education, who should be capable of sitting and voting in Parliament. Thus was created a Minister of Education, responsible to Parliament. The duties of this Minister have increased with the increased insistence of the State on the education of its citizens.

The Act of 1870[1] put compulsion upon every school district to provide school accommodation for its children, either by voluntary effort, or by the creation of a School Board and the imposition of a rate. The Act of 1876[2] imposed a duty on the parent of every child to cause that child to receive efficient instruction in reading, writing, and arithmetic. The Act of 1902[3] placed elementary education under the authority of municipal bodies, the councils of counties, and of boroughs and urban districts of a given population, and required all elementary schools, whether voluntary or rate-provided, to be maintained out of rates supplemented by a Parliamentary grant amounting to about £2 2*s.* per child. As the State contributes so largely to the maintenance of the schools, it exercises a corresponding control over their conduct. Unless the conditions laid down in the 'Minutes of the Education Department,' commonly called the Code, are complied with, the grant sanctioned by Parliament is not forthcoming in respect of the delinquent school. Voluntary aid has dropped out, except for keeping up

[1] 23 & 24 Vict. c. 75. [2] 39 & 40 Vict. c. 79. [3] 2 Ed. VII, c. 24.

the fabric of voluntary schools, and while the burden on the ratepayer is heavy, the taxpayer contributes a sum of nearly twelve millions a year to elementary education.

Its constitution.

The constitution of the Board concerns us. Until 1899 it was a Committee of the Privy Council, but its chief was the Lord President of the Council, not, as in the case of the Board of Trade, a President for that particular Committee. Nor has the course of its history followed that of the Board of Trade. It has wholly ceased even in theory to be a Committee of the Council, and has become a Board similarly constituted to the Board of Agriculture and the Local Government Board. Like the latter Board it possesses a Parliamentary Secretary as well as a President, and this is necessary, for the Board needs to be represented in both Houses, since both take an amount of interest in educational details which is sometimes embarrassing to the Parliamentary representatives of the department. If both President and Parliamentary Secretary are in the House of Commons the Lord President of the Council attends to the business of the department in the House of Lords and is prepared to take responsibility for its action.

Transfer of powers of Charity Commission.

The Board of Education Act [1] (1899) made it lawful for the Crown in Council, by Order, to transfer to the Board any powers of the Charity Commissioners relating to education, and under Orders made in pursuance of this Act the powers exercised by the Charity Commission under the Endowed Schools Acts have been so transferred [2]. Hence the Board is enabled to frame, approve, and amend schemes for the use of educational endowments where lapse of time and change of circumstance have combined to render useless, or even harmful, the application of his property contemplated by the founder. It rests with the Charity Commissioners to determine whether an endowment or any part of it is held or should be applied for educational purposes [2].

The Education Acts of 1902–3 [3] have given large powers to Local Authorities, acting through Education Committees,

[1] 62 & 63 Vict. c. 33, s. 2. [2] See p. 216, note.
[3] 2 Ed. VII, c. 42; 3 Ed. VII, c. 24.

over all forms of education within their areas; but to discuss the nature and extent of these powers would involve an incursion into the field of Local Government.

Relations with Local Authorities:

But the relations of the Board of Education to these bodies need to be touched upon here. In elementary education there exists considerable administrative control. The Local Authority must maintain the number of schools requisite for the children of the area, and, in order to earn the money granted by Parliament for the maintenance of the schools, must comply with the conditions of the Code. The Code, or Minutes of the Board, annually issued, lays down regulations as to the subjects to be taught, the qualifications of teachers, the staffing of schools, and the dimensions and sanitary condition of the school buildings.

in elementary education,

in education other than elementary.

The powers of the Board in respect of education other than elementary, apart from those which it has taken over from the Charity Commission, depend for their extent almost entirely upon the funds at its disposal. By the offer of grants of money to schools and other educational institutions, conditioned on their satisfying the requirements of the Board, the types of instruction given may be determined, and the action of Local Authorities guided by the policy of the Board.

Educational duties of other departments.

But it must not be supposed that the Board of Education is the only department concerned with educational subjects. The Local Government Board exercises administrative powers over schools provided by Boards of Guardians for workhouse children [1]. The Home Office has the control of industrial schools, day or residential. These are for children found begging or destitute, or in bad company, or convicted of a criminal offence, or beyond the control of their parents in persistent truancy from school [2].

The Board of Agriculture has certain administrative powers in respect of education in agriculture and forestry. The Treasury makes grants to Universities and University Colleges, and these are determined in respect of amount

[1] 7 & 8 Vict. c. 101.

[2] 29 & 30 Vict. c. 118, Industrial Schools Act; 1 Ed. VII, c. 20, Youthful Offenders Act.

and conditions by the Chancellor of the Exchequer. Lastly, the Civil Service Commissioners, by determining the character of the examination for the higher branches of the Civil Service, can exercise an appreciable effect on the teaching of the universities and the public schools.

It must be admitted that the relations of the State to our educational system, though the Act of 1902 has done much to give them force and reality, are still unsystematic and incomplete.

Section VII

Miscellaneous, Subordinate, and Non-political Offices

§ 1. *The Chancellor of the Duchy of Lancaster.*

Historical position of the Duchy.

The Chancellor of the Duchy of Lancaster is the representative of the Crown in the management of its lands and the control of its courts in the Duchy of Lancaster, the property of which is not confined to Lancashire but is scattered over various counties.

These lands and privileges have always been kept separate from the hereditary revenues of the Crown, though the inheritance has been vested in the King and his heirs. The palatine rights of the Duke of Lancaster were distinct from his rights as King; writs and indictments ran in his name; the peace of the Duchy was his peace and not the King's; the Courts were his Courts and he appointed the Judges. The Judicature Act has left only the Chancery Court of the Duchy, but the Chancellor appoints and can dismiss the County Court Judges and their subordinates within the limits of the Duchy. Beyond this he is responsible for the management of the land revenues of the Duchy, which are the private property of the Crown, and he has charge of the Seal of the Duchy. He is appointed by letters patent, and his salary comes from the revenues of the Duchy and not from the Consolidated Fund.

In fact the office, except for some formal business, is a sinecure, since the judicial and estate work of the Duchy is done by subordinate officials. The Chancellor is usually

a minister whose advice or assistance is necessary to a government, although he may from health or other reasons be unable to undertake the charge of an exacting department.

§ 2. *The Law Officers of the Crown.*

Attorney- and Solicitor-General:

The King cannot appear in his own Courts in person to plead his cause where his interests are concerned. So from very early times he has used the service of an Attorney, or agent, to appear on his behalf. The list of Attorneys-General begins early in the reign of Edward I. The Solicitor-General, whose title and date of appearance suggest that he represented the King in matters arising in the Chancery, appears first in the reign of Edward IV.

their duties.

These law officers are not only the legal advisers and representatives of the Sovereign; they are at the service of the State where offences against the good order of the community are not left to a private prosecution but are dealt with by the government of the day.

The government may call for their advice, and so may each department of government; they are expected to defend in the House of Commons the legality of ministerial action if called in question. They are not necessarily or even usually Privy Councillors, but they receive a writ of attendance, together with the Judges, to the House of Lords at the commencement of every Parliament[1].

The Crown, or it is more true to say the Government, has its legal advisers for Scotland and for Ireland: the Lord Advocate and Solicitor-General for Scotland, the Attorney- and Solicitor-General for Ireland. The Lord Advocate and the Irish law officers are Privy Councillors.

The law officers of the Crown play a various part. They are the legal advisers of the Crown, the Ministry, and the departments of government; they are members of the

[1] These writs mark the position of the Attorney- and Solicitor-General as members of that outer Council, the *Concilium Ordinarium* as opposed to the *Concilium Privatum*, which was so noticeable in the sixteenth century. The summons is a form, but, like other constitutional forms, throws light on the character of the office to which it is attached.

Ministry, though never of the Cabinet, and come and go with the change of party majorities; they are members of the House of Commons, and responsible to Parliament for the advice given to the Crown and its servants; they are the chiefs of the legal profession in their respective countries, and represent the Bar when the Bar takes collective action.

§ 3. *Subordinate Offices.*

Subordinate political offices.

Most of the Parliamentary heads of departments have the assistance, in administration and debate, of a Parliamentary subordinate; and even in the case of those offices which appear to be single-handed, provision is made for their representation in the House of which the political chief is not a member.

Patronage Secretary or Chief Whip.

The First Lord of the Treasury is, almost always, the Leader of the House of Commons, and one of his most onerous duties is the arrangement of the business of the House. He is expected to insure the passing of a certain number of Bills which the Government of the day consider it necessary to pass, either in the fulfilment of promises made at a past general election, or with a view to the prospects of an approaching general election, or because they are needed for the advantage of the country. If he is to secure the legislation which he requires he must appropriate to the best advantage the amount of Parliamentary time which is at the disposal of the Government. In doing this the First Lord must rely on the assistance and advice of the Patronage Secretary to the Treasury who is *ex officio* the chief Whip of the party in power. He knows, or should know, the extent to which the habitual supporters of the Government can be relied on to aid the passing of Government Bills, what questions may arise which would have a tendency to divide the party, and how far the Leader of the House can tax the loyalty of his followers, if he should call upon them to sit for long or late hours, or to forego the time which would ordinarily be given to occupations other than Parliamentary.

The Patronage Secretary is the Parliamentary assistant

of the Leader of the House, but the Leader must be a man of strong character and business capacity if he would not have the Patronage Secretary mould the destinies of the party. The Financial Secretary to the Treasury assists the Chancellor of the Exchequer as I have described in an earlier part of this chapter.

Under-Secretaries.

Every Secretary of State has the assistance of an Under-Secretary. The Presidents of the Boards of Trade, Local Government, and Education have each a Parliamentary Secretary. An Under-Secretary is appointed by letter from the Secretary of State; a Parliamentary Secretary by a minute of the Board, which for these purposes is the President. Beyond this difference in the mode of appointment, and the fact that the Under-Secretary receives a somewhat larger salary than the Parliamentary Secretary, there is no difference in their duties. The subordinate who represents his department single-handed in the House of Commons has necessarily harder work, and a position of greater responsibility and influence, than the subordinate whose chief is with him in the Commons, or even than the subordinate who is single-handed in the House of Lords. But this feature of their political life is common to the Under-Secretary and the Parliamentary Secretary.

Parliamentary Secretaries.

The War Office has a larger Parliamentary staff, and so has the Admiralty. The Secretary of State for War is assisted by a Financial Secretary as well as by an Under-Secretary. The First Lord of the Admiralty by a Parliamentary and Financial Secretary as well as by a Civil Lord. The Boards of Agriculture and of Works, if their political chiefs are in the House of Lords, are represented in the Commons by two of the Junior Lords of the Treasury, and the Financial Secretary to the Treasury represents the Post Office if the Postmaster-General is a peer.

Irish business is dealt with in the House of Lords by the Lord Lieutenant; and if the Secretary for Scotland should be a peer the Lord Advocate represents that department in the House of Commons. The Lord President[1], Lord Privy

[1] Before the passing of the Board of Education Act, 1899, the Lord President of the Council would represent the Education Office in the

Seal, and Chancellor of the Duchy needs no Parliamentary assistance.

The Parliamentary Under-Secretaries are not considered as holding office under the Crown. They do not kiss hands or go through any other formality on their appointment, nor does the acceptance of such office vacate their seats [1].

§ 4. *Ministers and Cabinet.*

Cabinet offices.

The offices which necessarily bring their holders into the Cabinet used not to be more than ten in number. The First Lord of the Treasury, the Lord Chancellor, the Lord President, the five Secretaries of State, the Chancellor of the Exchequer, and the First Lord of the Admiralty, must be members of every Cabinet, though the Chancellor of the Exchequer was not considered essential to a Cabinet at the beginning of the last century, nor the First Lord of the Admiralty at the beginning of the eighteenth [2]. The Lord Privy Seal is assumed to hold an office of Cabinet rank, and Scotland, Ireland, Trade, Local Government, and Agriculture and Education have now acquired a prescriptive right to representation in the Cabinet. The Chancellors of Ireland and of the Duchy of Lancaster, the Postmaster-General and the First Commissioner of Works, may or may not be in the Cabinet; this would depend on the importance of the holder of the office, or on the willingness of a Prime Minister to gratify his supporters in the Ministry.

Size of Cabinets.

But the size of Cabinets tends to increase, and it may be that the system is changing under our eyes. Mr. Gladstone's Cabinet of 1886 consisted of 14 members. In 1892 Lord Salisbury's Cabinet had grown to 17. Mr. Balfour's Cabinet in 1905 reached the number of 20, and the Cabinet of Sir Henry Campbell-Bannerman consists

House of Lords, and he does so now if the Board is otherwise unrepresented in that House. The Act provides that the President of the Board and the President of the Council may be the same person.

[1] Vol. i, Parliament, ch. v. sect. i. § 6.

[2] See Bulwer's Life of Palmerston, i. 91, as to the Chancellor of the Exchequer. Hardwicke State Papers, ii. 461, as to the First Lord of the Admiralty.

of the same number. The work of deliberation cannot be facilitated or strengthened by this increase of numbers, and we may find that we are returning, in some respects, to the practice of the last century,—to an inner circle, the confidential Cabinet, and an outer group of persons to whom Cabinet office is given in order to please an individual, a constituency, or an interest.

§ 5. *Ministers and Parliament.*

Connexion of Ministers and Parliament,

The departments of government with which I have dealt are all in immediate contact with Parliament because their official chiefs, though holding office under the Crown, are excepted from the official disability imposed by the Act of 1707. So completely has opinion changed since the Act of Settlement forbade persons holding office under the Crown to sit in the House of Commons, that no one of the offices which I have described can be held for many weeks together without a seat in Parliament. This rule is based on custom created by convenience. For purposes of administration an officer of State could conduct the business of his department as well or better without a seat in Parliament. But the great departments of government are filled by the King from a group of statesmen indicated by the electorate, and their business must be conducted subject to the criticism of the representatives of the people. If a department is not represented in Parliament, criticism goes unheeded or the department is undefended. If comment upon bad administration is to be effective, if good administration is to be justified and supported by public opinion, it is essential that the great departments should be represented both in the House of Lords and also in the House of Commons. This matter will be better dealt with in the next section. Here it may be noted that the most recent instance of a Cabinet Minister remaining without a seat in Parliament for any length of time is that of Mr. Gladstone in 1846. On being appointed Colonial Secretary in December, 1845, he vacated his seat for Newark, and, failing to obtain re-election, he was out of Parliament until he went out of office with Sir Robert Peel in June, 1846.

necessary to the departments.

§ 6. *Non-Political Departments.*

Departments without a political chief.

We should bear in mind that when we have described the various departments of government as represented by their political chiefs, we have only drawn in outline the salient features of the executive. There are important departments which are not thus represented in Parliament, and every department, whether it does or does not possess a political chief, possesses a staff of permanent officials by whom the daily business of government is carried on.

The departments which may be described as non-political are, broadly speaking, the outlying departments of the Treasury, the Ecclesiastical Commission, and the Charity Commission.

Those connected with Treasury.

But since a department which has no authorized spokesman in either House is apt to fare badly under adverse criticism, it will be found that provision is made for some Parliamentary representation of each of these departments.

Offices connected with the Treasury.

The members of the Treasury Board would naturally defend or explain, if required, the action of the offices with which it is connected [1], and which have no political chiefs. Of these some discharge duties which are almost wholly ministerial. Such are the Inland Revenue and Customs Commissions. Others discharge duties which may bring them within range of criticism, as the Commissioners of Woods and Forests, who manage the Crown lands not

[1] The offices are:—

The Audit Office.
Customs Establishment.
Exchequer Office (Scotland).
Inland Revenue Department.
Meteorological Office.
Mint.
National Debt Office.
Paymaster-General's Office.
Public Works Loan Board.
Office of Woods.
Civil Service Commission.
London Gazette Office.
National Gallery and National Portrait Gallery.
Parliamentary Counsels' Office.
Board of Works (Ireland).
Stationery Office.
Post Office.
Office of Works.

The last two have their parliamentary chiefs.

only for revenue purposes, but in the interest of the public generally. Such, too, is the case of the Civil Service Commissioners, whose control over the topics and conduct of the examinations by which young men are admitted into public employment might enable them to exclude the Universities from the Civil Service or the public schools from the Army.

The Ecclesiastical Commission.

The Ecclesiastical and Church Estates Commission is not connected with any government department. I shall have to speak of it in a later chapter, so will only say here that in respect of the management and distribution of Church property it exercises large powers conferred upon it by various Statutes[1]. In the discharge of the duties thus laid upon the Commission it may very possibly become the subject of hostile criticism or inquiry, and this possibility is met, not by giving to the Commission a changing political chief, but by placing among its members the Bishops and certain great officers of State, and by the further introduction into its body of two paid Commissioners[2], one of whom is eligible for a seat in the House of Commons, and may there defend its action.

The Ecclesiastical Commission.

The Charity Commission.

The Charity Commission needs a longer notice. It dates from 1853; and its objects are to protect property held upon charitable trusts; to inquire into the administration of such property; to adapt the use of the charity from time to time to purposes corresponding to the intentions of the donor, where those purposes cannot profitably be carried out as originally expressed; and to cheapen and facilitate legal proceedings incidental to the use of charities.

The Charity Commission.

A charity is for these purposes a grant of property in trust for the benefit of the public, or of some class of the public, not necessarily for the benefit of the poor. In

Nature of a Charity:

[1] 6 & 7 Will. IV, c. 77, 3 & 4 Vict. c. 113, 13 & 14 Vict. c. 94, 31 & 32 Vict. c. 114 are among the more important of these.

[2] 13 & 14 Vict. c. 94, s. 3.

process of time such a grant may come to be lost, wasted or misapplied. The body of trustees may fail to be renewed, and funds which stood in their joint names may pass into the hands of the survivor, and thence, if the trust be not reconstituted, may become confused with his personal property. Careless administration of the property may lead to a diminution of its capital value, or an improvident distribution of its income. Lapse of time may alter the conditions of the grant so as to make its application useless or even harmful.

liability to loss,

or misuse.

Legal position of charities before 1853.

The legal position of charities before the appointment of the Charity Commission was this:—the trustees could not deal with the capital or *corpus* of the property without the approval of the Court of Chancery, nor without such approval could they alter the distribution of the revenue. Thus, though trustees of charities enjoyed some special facilities in coming before the Court, they could not make an advantageous sale of property or a suitable change in the disposition of the income without entering upon legal proceedings which often involved expense and delay.

Charitable Trusts Acts.

The better management of charities had been under the consideration of Parliament for a long time before the first Act on the subject was passed in 1853[1]. The object of this Act was to place in the hands of a public body many of the powers which before could only be exercised by the Court of Chancery. It empowered the Crown to appoint by sign manual warrant four Commissioners, three to hold office during good behaviour and one during pleasure. The last was to be unpaid, and a mode was thereby provided for representing the department in the House of Commons. To this body two Commissioners were added in 1874, when the work of the Endowed Schools Commission was transferred to the Charity Commission,

The Charity Commission.

The Endowed Schools Commission:

[1] A Parliamentary Commission sat from 1818–1837, and reported on all the charities in the country. A select Committee of the House of Commons, appointed in 1835, examined and reported on this report: and a Royal Commission sat in 1849 to consider the completed reports of the Commission of 1818.

and two more in 1883 under the City Parochial Charities Act. Under the Act of 1853 and successive Acts which have modified or extended the powers originally conferred, the Commissioners can inquire into the administration of charities and compel the production of their accounts[1]. In various ways they can cheapen and facilitate the management of property held on charitable trusts. They can appoint new trustees by simple order, can advise them in matters of doubt, and can give them a statutory indemnity for acting on such advice. They can sanction and control sales, mortgages and leases of lands. They can vest property in official trustees, thus not only securing the property, but simplifying the title to it. By these means charities are saved the delay and cost of proceedings in the Chancery Division.

their powers as to management;

Again, where it is desirable to alter the mode of administering a charity because of a change in the circumstances of the place which was to be benefited, or of the property constituting the endowment, or of the general conditions of society, the Charity Commission have received power, since 1860, to frame new schemes for effecting the intention of the founder of the charity. This power, as regards charities which have an income exceeding £50 a year, is exerciseable on the application of a majority of the trustees, in the case of charities which have a less income the Commission may act on the application of a single trustee or two inhabitants of the parish within which the charity is to be administered. In the case of educational endowments under the Endowed School Acts, an initiative was given to the Commissioners and very

as to change of scheme;

[1] The Acts relating to the Charity Commission are, as regards inquiry into administration of Charitable Trusts, 16 & 17 Vict. c. 137 (1853), 18 & 19 Vict. c. 124 (1855); as regards Schemes, 23 & 24 Vict. c. 136 (1860), 32 & 33 Vict. c. 110 (1869); as regards Endowed Schools, 32 & 33 Vict. c. 56 (1869), 36 & 37 Vict. c. 87 (1873); as regards the City Parochial Charities, 46 & 47 Vict. c. 36 (1883). The transfer to the Charity Commissioners of the powers of the Endowed Schools Commission was effected by 37 & 38 Vict. c. 87 (1874). They are also empowered by 45 & 46 Vict. c. 80 (1882) to promote and control the use of land held on trust for the poor for the purpose of allotments.

considerable powers of altering, or adding to existing trusts and of making new trusts.

its limitations.

The power is further limited in its exercise by the doctrine of *cy près*. This requires that the end contemplated by the founder should be kept in view, though the means may require variation. A wider range of variance appears to be permitted under the Endowed Schools Acts than under the Charitable Trusts Acts, though schemes under the former are now, by the Act of 1899, dealt with by the Board of Education. If the proposed scheme be regarded by trustees as too widely divergent from the objects of the founder, an appeal lies, in the case of a charity, to the Chancery Division of the High Court, in the case of an educational endowment, to the Judicial Committee of the Privy Council[1].

Transfer of powers to the Board of Education.

As has been already stated, the Board of Education Act, 1899, made provision for the transfer, by Order in Council, to the Board of Education the powers of the Commission in respect of such trusts as the Charity Commissioners determined to be educational. In pursuance of this enactment Orders in Council have transferred to the Board, in respect of educational trusts, all powers of obtaining information, of making schemes, and of dealing with property, which were previously possessed by the Charity Commission[2].

Section VIII

The Civil Service and the Terms of Official Tenure

§ 1. *The Permanent Civil Service.*

In one way or other every public office is provided, directly or indirectly, with a spokesman in Parliament, who has some special knowledge or official connexion with its business, though he may not be its political chief.

[1] See cases *in re* Campden Charities, 18 Ch. D. 310. St. Leonard, Shoreditch, Parochial Schools, 10 App. Ca. (P. C.) 304.

[2] The Orders in Council which affect this change are dated the 7th August 1900, the 24th July 1901, and the 11th August 1902. See Owen, Education Acts Manual, ed. 20, pp. 446-450.

Ministers alone can speak for departments.

This is the more important, because no one but a servant of the Crown can speak on behalf of a government department[1]; its officers are in the employ of the King; so are the great Ministers of State, who are individually responsible for their departments and collectively for the conduct of the King's business, and these latter are alone entitled to represent the service of the Crown in all its branches. If things go wrong it is for the King's advisers to suggest a change of measures to the department, or failing this, a change of men to the Crown. The Cabinet can almost always in the last resort ask the King to exercise his power of dismissal, and treat a refusal as a mark of want of confidence in themselves[2].

It is always possible to turn a non-political into a political department by removing the Parliamentary disability of its chief officer. Custom and convenience would then require that he should have a seat in Parliament, and direct responsibility to Parliament would at once give him the control over the policy of his office.

Political chief and permanent staff.

The Parliamentary chief for the time being personifies the department in the view of the public; but the business of the country is done by the permanent officials. They are severed from political life not merely by the Statutes which disable them from sitting in the House of Commons, but by the usage of the Civil Service, applicable to both Houses of Parliament, which secures 'that the members of the service remain free to serve the government of the day without necessarily exposing themselves to public charges of inconsistency or insincerity[3].' The Parliamentary chief changes, but they are unaffected by the ebb and flow of

[1] Mr. Todd (Parl. Gov. in England, i. 752) states that the votes in supply for the British Museum are an exception to this rule, being proposed by one of the trustees. This seems to have been the practice at least as late as 1866. When it was altered I do not know, but the vote appears now to be moved by the Parliamentary Secretary to the Treasury.

[2] See post, p. 221, as to offices tenable 'during good behaviour.'

[3] Order in Council, 29th Nov. 1884, whereby a civil servant standing for a constituency must resign his post when he announces himself as a candidate.

political opinion. To this circumstance we owe several advantages.

Advantages of permanence in securing better men

Security of tenure and the reasonable prospect of promotion induce men of distinguished ability to enter the public service. They take an interest in their work which they would not feel if they knew that their official careers might be brought to an end by matters over which they have no control—an adverse division in the House of Commons, or the blunders of another department, leading to the retirement of the Ministry. Thus the country is well served, and it is well served on more economical terms than would be possible if the tenure of office were precarious.

and better work.

And one may say further, that but for this rule of permanence the Civil Service would not merely fall short of its present standard of excellence; it would not attain to an ordinary standard of efficiency. If we picture to ourselves a new staff of officials on each change of Ministry beginning afresh to master the elaborate system of Treasury control or the multitudinous detail of the Home Office, we can form some idea of the difficulties which would befall us if the entire patronage of the Crown was placed at the disposal of an incoming Prime Minister. When we recollect that during two years—1885, 1886—four Ministries held office, that, in the case of two of these, one lasted for 227 days, and the other for 178, it is plain that a system which is said to lead to departmental inefficiency in America, where there is necessarily a four years' tenure of office, would lead, with us, to departmental collapse.

It is in the permanent character of our Civil Service that we find not only the security for its efficiency, but the opportunity of obtaining the highest class of ability at a comparatively low rate of emolument. Men of great organizing and administrative powers devote the best part of their lives to the discharge of duties which bring no great reward of wealth or fame, though the sense of power which the permanent head of a department must possess may be some compensation for the larger and more speculative prizes of public life which he foregoes. A Minister, however ignorant he may be of the work of the office over

which he may be called to preside, finds that the knowledge and capacity of a staff of able men are placed readily at his service, and that if he does not learn the business of the department it is not the fault of those who work the machine. It remains to ask how is the administration affected by the frequent change of the Parliamentary chief.

Advantage of a party chief.

Mr. Bagehot has dwelt at length on the advantages of the system. Official work, however capable and zealous the public servant may be, is apt to get into grooves. The Parliamentary chief brings a fresh mind to bear on the routine of office, and may ensure a circulation of ideas in its intellectual life.

Mr. Bagehot's ideal:

Perhaps Mr. Bagehot's ideal is not always attained. He pictures the political leader bringing intelligent curiosity and quickening impulse to bear on the work of his department, while a permanent staff with a precise knowledge of the action of the official machinery is prepared to welcome with zeal his suggestions for making it move quicker, more smoothly, more cheaply[1]. This may not always be so. Perhaps some heads of departments are too ready to assume that everything is right; and others, that everything is wrong. Some are willing to accept, without question, the traditions of the office, others are ready to pull to pieces, at once, a machine the working of which they have not had time to understand.

he defends it from attack;

But whether or no the Parliamentary chief promotes the administrative capacity of his department he is certain to render it one great service. He stands between his staff and the House of Commons.

It is possible that the permanent staff know too much to be tolerant of criticism; they may meet it with resentment and contempt: but assuredly it is certain that a popular assembly knows too little to be a fair judge. Its criticism may be perverse, its interest intermittent, its action capricious.

It is the duty of the Parliamentary chief to aid his department by answering criticism which needs to be answered, by resisting expressions of censure, or legislative action,

[1] Bagehot, English Constitution, ch. vi. 'Change of Ministry.'

which is ill considered or unjust. He can speak with some experience of the ways of the House of Commons, and with some sympathy for its ignorance, for he has but lately learned the business of the department himself: if his powers of persuasion fail, he has the government majority at his back.

He represents it in public.

And not only in dealings with the House of Commons is the Parliamentary chief of use to his department. He is to the general public the interpreter of official life; he represents his office in the view of the country. If he gets credit for its successes he also suffers for its shortcomings or failures.

It might be possible to have as good a public service if the departments were not represented in Parliament, but it is certain that we should not have so strong a public service, and that its place in popular esteem is raised, even at the cost of some want of appreciation of the merits of the permanent staff, by its connection with party politics.

Liability to a proscription.

It is well to bear in mind that the permanence of the civil service, though we regard it as following necessarily from the general disqualification of officials for a seat in the House of Commons, is really only a matter of convention. It is impossible to read Swift's diary or the letters of Bolingbroke without seeing that the American maxim—'the spoils to the victor'—was very present to the minds of the Tory party in the reign of Anne. Walpole and George Grenville deprived officers of their commissions for voting against the Government in Parliament. Henry Fox in 1763 dismissed opponents of the Government from non-political places on such a scale as to excite general disgust. Since then we have heard nothing of a proscription; but it would be perfectly legal, though neither just nor politic, for an incoming minister to obtain from the Crown as a proof of confidence the dismissal of every civil servant who holds his office during pleasure.

§ 2. *Conditions of Tenure.*

This brings us to the nature of official tenure. On what terms do public servants hold their offices? Tenure of public servants:

All offices, whether limited as to tenure by a specified time or not so limited, are held subject to one of two conditions: they are held either 'at pleasure,' or 'during good behaviour,' and unless it is otherwise stated their occupants hold 'at pleasure.' 'Persons employed in the service of the Crown, except in cases where there is some statutory provision for a higher tenure of the office, are ordinarily engaged on the understanding that they hold their employments at the pleasure of the Crown.' Thus Lord Herschell in the case of *Dunn* v. *The Queen* [1], and the rule is equally applicable to civil and to military appointments. Of the servants of the State some hold directly of the Crown, and are appointed either, at pleasure;

(1) By delivery of symbols of office, e.g. the seals of a Secretary of State; forms of appointment

or (2) by Order or declaration of the King in Council, e.g. the President of a Board or a Civil Service Commissioner;

or (3) by letters patent under the Great Seal, e.g. the Chancellor of the Duchy of Lancaster, or the Comptroller and Auditor-General;

or (4) by warrant or commission under the sign manual, e.g. the Viceroy of India, the First Commissioner of Works, or an officer when first given permanent rank in the Army.

Some are not directly appointed by the Crown, but are appointed with more or less of form by heads of departments. An officer in the navy, for instance, holds a commission from the Lords of the Admiralty, an Under-Secretary of State is appointed without form by his political chief, a Parliamentary Secretary by a minute of his Board,

[1] [1896] 1 Q. B. (C. A.) 116, and see *Shenton* v. *Stuart* (1895) A. C. 229. But statutory provision may be made for some restriction on the power of dismissal as in the New South Wales case of *Gould* v. *Stuart* (1896) A. C. 575.

the Receiver-General of Inland Revenue by treasury warrant.

during good behaviour.

But all hold on one or other condition, the royal pleasure or good behaviour.

To this last a third is sometimes added which has given rise to misunderstanding. The Judges, the members of the Council of India, the Comptroller and Auditor-General, hold office during good behaviour, '*but upon the address of both Houses of Parliament it may be lawful to remove them.*' This has been construed to mean that such officers can *only* be removed on address of the two Houses. But the words mean simply that if, in consequence of misbehaviour in respect of his office, or from any other cause, an officer of state holding on this tenure has forfeited the confidence of the two Houses, he may be removed, although the Crown would not otherwise have been disposed or entitled to remove him. Such officers hold, as regards the Crown, *during good behaviour*; as regards Parliament, also during good behaviour, though the two Houses may extend the term so as to cover any form of misconduct which would destroy public confidence in the holder of the office[1]. We may then dismiss this condition of tenure, as being part of the law relating to Parliament. Apart from this the question of dismissal is not wholly free from difficulty.

Sometimes to Parliamentary Address.

Grounds of Dismissal.

Appointments made during good behaviour create a life interest in the office, unless specifically made for a term of years. Such as are made directly by the Crown are made by sign manual warrant or by letters patent. Good behaviour means good behaviour in respect of the office held. Misbehaviour appears to mean misconduct in the performance of official duties, refusal or deliberate neglect to attend to them, or, it would seem, conviction for such

[1] For the procedure in such cases see Parl. Deb. N.S. xiv. 500, 502, for a statement by the Speaker, in the case of Mr. Kenrick, as to the courses open to the House. Todd. Parl. Gov. of England (ed. 2), vol. ii, p. 867, gives a full account of the case of Sir Joseph Barrington: a case in which the king acted upon an address of the two Houses.

an offence as would make the convicted person unfit to hold a public office [1].

Where an office is thus forfeited by breach of the condition of tenure, the mode of removal does not seem perfectly clear.

Modes of dismissal.

The forfeiture of an office held by letters patent must, it is said [2], be enforced by a writ of *scire facias*, which has been thus described:—

> The writ of *scire facias* to repeal or revoke grants or charters of the Crown is a prerogative judicial writ which, according to all the authorities, must be founded on a Record. These Crown grants and charters under the Great Seal are always sealed in the Petty Bag Office, which is on the Common Law side of the Court of Chancery and become Records there [3].

The duties of the Petty Bag Office are now discharged in the Crown Office in Chancery [4], but the writ of *scire facias* must none the less be founded on a Record, and thus would be inapplicable to the forfeiture of offices granted by sign manual warrant.

There appears to be authority [5] for saying that a sign manual warrant, making a grant of property, may be revoked simply: if so it would seem that a grant of office might on the occurrence of cause of forfeiture be revoked in like manner. Probably the warrant would, on just cause, be revoked and the ejected officer left to proceed, if so minded, against the Lords of the Treasury for his salary in the form of a Petition of right, or by writ of *quo warranto* against the person who had replaced him in his office.

[1] Coke, Rep. 9. 50. *R.* v. *Richardson*, 1 Burr. 539.

[2] 'Regularly there must be a *scire facias* to remove the party where he has the office by matter of record; for he cannot be removed without matter of record.' Com. Dig. Tit. Offices, k. 11.

[3] *R.* v. *Hughes*, L. R. 1 P. C., p. 87. [4] 37 & 38 Vict. c. 81. s. 5.

[5] Forsyth, Cases in Constit. Law. 385: but where a borough petitioned that a grant of a separate Quarter Sessions (made under 5 & 6 Will. IV, c. 76, s. 103) should be revoked the Law Officers advised that this could not be done, partly because a Court of Justice established by Law could not be abrogated by a mere act of prerogative, partly also because the office of Recorder *being tenable during good behaviour* could not be thus taken away from the holder. Ibid. p. 386.

There remain the cases of appointments, such as those of the Council of India, made during good behaviour, but not made by any formal document proceeding from the Crown. The power of the Secretary of State for India to dismiss a member of the Council for misbehaviour in respect of his office must be assumed. The form in which it could be questioned must remain matter for speculation.

CHAPTER IV

THE TITLE TO THE CROWN AND THE RELATION OF SOVEREIGN AND SUBJECT

§ 1. *The History of the Title to the Crown.*

THE title to the Crown of this country has been a very simple matter for a long time past, owing to the constitution of a Parliamentary entail by the Act of Settlement, and to the fact that the royal line has never failed since the House of Brunswick succeeded under the provisions of that Act.

But inasmuch as disputed titles have played a large part in our history, and since the forms of the coronation recall the elements which went to make up the title to the Crown, it is worth while to review the history of the matter.

The Saxon King was the elect of the Witan, but, as in many other cases of seemingly free choice, the Witan were practically bound by conventions to choose from within a narrow circle. Outside the royal family they did not go, till conquest put constraint upon them, and Canute was chosen King. But within the royal family they were not limited by the modern rules of hereditary succession. Thus the title was made up of various elements. Royal birth was a preliminary qualification; the election by the Witan gave the legal sanction to a claim which would not have been made if the elected had not been born in the royal line; the ceremony of coronation confirmed the election with the support of the Church, and the oath of fidelity sworn by the nobles gave substantial force to hereditary, legal, and religious claims. From the time that Canute's line failed no King reigned who could show a good hereditary right till Henry II. Edward the Confessor was the eldest surviving son of

Title by election.

Ethelred, but the son of his elder brother, Edmund Ironside, was still living. Harold's connexion with the house of Cerdic was remote if not imaginary, and here again Edgar, the grandson of Edmund, was the heir. William I claimed partly as next of kin, which was absurd, for he was a bastard: partly under the recommendation of Edward the Confessor, who certainly had not acquired any right to the regard of the English people. But each of these Kings established a good legal title in election by the Witan, a title which was valid enough so long as the holder had physical force at his command to maintain it. The first four Norman Kings, whatever their claims may have been apart from election, showed the utmost respect for an election by that body which corresponded to the Witan, the Commune Concilium.

Title by inheritance.

Gradually the notion of hereditary right grew stronger. This arose in part because the feudal land law, resting on the territorial character of kingship, assimilated the descent of the Crown to the descent of an estate in fee simple. Hence it is that so many medieval wars and dynastic quarrels bear so strong a resemblance to litigation of that tedious sort in which pedigrees are in question. In the endeavour to show that might is right the learning and arts of the conveyancer are called into play.

Causes of its acceptance.

And the rule of hereditary succession received readier acceptance in the more settled state of society. The fact that the Witan or Commune Concilium passed over the infant children of a deceased King in favour of a more vigorous member of the royal house, was evidence that hereditary right, popular election, and religious ceremonial, needed the help of a strong arm to maintain the right they conferred. The succession of Henry III and Richard II, especially of Richard, who had uncles living of full age and experience in affairs, shows that society so far recognizes legal right as to make an invasion of that legal right a difficult matter for an aggressor.

Election.

Meantime the title of our earlier Kings rested less upon such hereditary right as they might be able to assert, as in the solemnity of election and coronation. The election by

the Witan or Great Council of the realm gave the preliminary right to demand that the subsequent stages of the ceremonial which perfected the title should be gone through.

Coronation.

The ceremony of coronation, which gave religious sanction to the title by election, was preceded by the formal compact between King and people that the King should govern well, and that the people should obey. The King's promise made by oath or charter, or both, was to keep Church and people in peace, to forbid wrong and rapine in all degrees of men, and to do justice with mercy: the people by acclamation accepted him, the great men by oath promised him their fealty and allegiance, while the coronation service invested the title of the new King with the sanctity of divine approval.

The interregnum.

That these ceremonials were no mere form is plain from the fact that there was a real interregnum between the death of one King and the election and coronation of another. Hence until the new King was crowned the King's peace was in abeyance; the maintenance of order might well be in jeopardy, while the State had no one to represent it for the purpose of enforcing the peace [1].

Its inconvenience.

As the conception of hereditary right strengthened, the importance of the election and coronation dwindled, and the practical inconvenience of the interregnum was curtailed.

How obviated.

The reign of Edward I began before his coronation. He was absent in Palestine when his father died. Four days after his father's death the Barons swore fealty to him in his absence, and three days later the royal Council put forth a proclamation in his name, announcing that he reigned by hereditary right and the will of the magnates, and that he enjoined the peace. The formal coronation did not take place for nearly two years. Edward II dated his

[1] Before the accession of Edward I the peace had been maintained by the justiciar during the interval preceding the coronation of the new King (Stubbs, Select Charters, 446): and hereditary right so far came in aid of the maintenance of the peace, that the prospective King claimed to be *lord* of England, and to enjoin the peace in that capacity. Pollock and Maitland, Hist. of English Law, i. 507.

reign from the day after his father's death. Edward III proclaimed the peace before he was crowned[1], but he had been declared and accepted as guardian of the realm before his father's deposition, and in that capacity would be entitled to maintain the peace.

Depositions and Parliamentary title.

The depositions of Edward II and Richard II bring Parliament into the place occupied by the Witan and the Commune Concilium. The popular acclamation necessarily sinks into a mere form when the representatives of the Commons in Parliament become parties to the choice of a King. The accession of Henry IV is the best illustration of all the safeguards by which a medieval King could fence about his title to the throne. He was not satisfied with his election by the estates of the realm, with the resignation by Richard II of the fealty and allegiance of his barons, and the transfer of that fealty to himself. He claimed the Crown as descended from Henry III, reviving thus a tradition that Edmund Crouchback, the second son of Henry III, was really the elder. His title thus based on election, on feudal recognition by the vassals of the Crown, on alleged hereditary right, was further confirmed by Parliament, and the Crown entailed by Statute on him and the heirs of his body. But hereditary right, supported by force, broke through these carefully constructed defences.

Henry IV.

Edward IV.

Edward IV was proclaimed King as soon as he had successfully asserted his title by force and arms. His right to be proclaimed King was based not on election by estates of the realm, nor upon fealty sworn by the magnates, nor upon the formalities of the coronation. It was a mere question of pedigree. Edward IV was the nearest male representative of the eldest surviving line of Edward III, and on that ground he claimed to set aside not only the proceedings, regular otherwise and valid, which had placed Henry VI on the throne, but the Act of Parliament which had entailed the Crown upon the line of Henry IV.

Title by inheritance.

From this time forth our history illustrates the conflict between two views of kingship, the one based on

[1] Stubbs, Const. Hist. ii. 360, 368.

title by Parliamentary choice, the other on title by inheritance. The old forms of election give way to Parliamentary title.

Combination of titles.

Henry VII claimed the Crown by hereditary right, but gave his assent to a Bill which settled the Crown on himself and the heirs of his body. Henry VIII obtained from Parliament a power to dispose of the Crown by will, and devised it, failing issue of Edward, Mary or Elizabeth, to the grandchildren of his younger sister [1], thus disinheriting his elder sister Margaret and her issue. But when James, the great-grandson of Margaret, succeeded to Elizabeth in spite of the Parliamentary entail created by the will of Henry VIII, he claimed to reign by hereditary right, and Parliament, though it fortified his title by an Act of Recognition, recited in the Act that he was entitled to reign by descent.

1 Jac. I, c. 1.

They represent two views of kingship.

Title by descent, and title by choice of Parliament, came to express two different views of kingship. But the force of either ground of claim was always recognized. The King who claimed by hereditary right fortified his title by an Act of Parliament. The King who rested his title on an Act of Parliament recited in it his hereditary claims. The theory of hereditary right had in the middle ages possessed this advantage, that it dispensed with the interregnum which had prevailed when the title of the new King depended on his election. As feudalism passed away, the feudal bond ceased to furnish the ground of political obligation; hereditary right came in to supply the want, and was enhanced with divine sanction. Throughout the seventeenth century it was maintained by the upholders of the rights of kings, not only that the throne was never vacant and that the feudal rules of succession at once indicated an heir, but that the heir reigned by divine right, and that resistance to his rule or the recognition of any other title to rule was not merely unlawful but sinful. The official representative of his people was lost sight of in the ruler chosen by God.

[1] Bailey, Succession to the English Crown, p. 135.

The procedure of 1688.

The two theories came to a practical issue in the reign of James II. James left his kingdom and his subjects to take care of themselves: during his short reign he had not merely strained his indefinite prerogative in order to do violence to the spirit of the constitution, but had again and again broken the law of the land. The Prince of Orange, on arriving in London, desired to establish himself, as nearly as circumstances admitted, within the lines of the constitution. He therefore summoned the Peers, as many of the members of the Parliament of Charles II as were in town, and some of the citizens, and by their advice he issued letters to the same effect as writs to the Lords Spiritual and Temporal, and to certain officers in counties and boroughs for the summons of a convention. The estates of the realm were thus brought together to settle the affairs of the nation. The convention was a Parliament in every respect except the form of summons, and consisted of all the persons who would have been summoned to a regular Parliament. The want of formality in the summons arose from the fact that the King had fled, and the first business of the convention was to supply the place of an official whose existence was necessary not only for the conduct of the business of government but for the legal summons of Parliament.

Difficulties of the Stuart party.

Divine right.

The upholders of divine hereditary right were placed in a difficulty. To invite James to return without conditions was impossible, but to negotiate with a divinely appointed ruler was contrary to the principles of their political faith. What was to happen if King and subjects could not come to terms? Either the subjects must resist the King's return, or they must receive him back on his own terms. A middle course was proposed—the appointment of a Regent. This involved the assumption that James' unfortunate malady of misgovernment reduced him to the position of an infant or lunatic, and that his rights remained to him, though they must be exercised by a representative. But if the people could determine the moment at which the King's misconduct justified his supersession, there was no reason why they should stop short

at a Regency: the appointment of a Regent involved all the theoretical difficulties, without the practical convenience, of the choice of a new King. There were also these further objections, that a King *de facto* would coexist with a King *de jure*, neither of whom would acknowledge the rights of the other; that a Regency being necessarily a temporary arrangement afforded no permanent solution of existing difficulties, while it might create others peculiar to itself.

Practical convenience.

On the other side it was said that the relation of King and subjects had always been one of mutual obligations, that Kings had before now been deposed for misgovernment, and that James had not only committed divers acts of misgovernment and illegality, but had deserted his people and taken refuge with a foreign power.

The Declaration of Rights.

Common sense triumphed alike over sentiment and technicality. James II was alleged in the Declaration of Rights to have 'abdicated': it was left open to the one side or the other to interpret this as a voluntary or an involuntary retirement from the throne. More important were the next words—'the throne being thereby vacant'—for it was thus declared by the assembly of the estates of the realm that the throne, unlike a piece of real property, might be without an owner; that its occupant was not necessarily designated by the rules of succession to an estate in land; that the King might die in the sense that royalty might for the moment fall into abeyance; and that this might happen not through some catastrophe, which extinguished the royal line by the death of all its representatives, but by the misconduct of a King, who, having occupied the throne with an unimpeachable title, had been adjudged by his people to be unfit to reign.

A reassertion of ancient rules.

When therefore it is said, as it often is said, that the prerogative of the Crown was very greatly affected by what happened in 1688 and 1689, we do well to bear in mind that the changes which then took place were either declarations of principle, or changes of practice, and that of actual legal limitation there was but little. Parliament had settled the succession to the Crown before, and it settled the succession again, only since the last occasion

of a Parliamentary settlement the theory of divine right had arisen in support of the hereditary claim, and the conception of a royal prerogative superior to all the rules of law had survived the catastrophe of the Rebellion.

The Settlement of 1689.

To this the action of the convention was a final answer; it was an assertion that the nation could depose a King for misgovernment, could give the Crown to another, and could determine the course of succession, and further, that

Feb. 1689.

the Crown could be given upon conditions. The Declaration of Rights declared that James had abdicated, that the throne was vacant. As James did not admit this, he must be regarded as having been deposed. The Crown was then offered to William and Mary, during their lives and the life of the survivor, providing that the sole and full exercise of the royal power should be only in, and executed by, the said Prince of Orange, in the names of the said

Oct. 1689.

Prince and Princess, during their joint lives. By the Bill of Rights the limitations after the death of the survivor were to the heirs of the body of Mary, failing them to the heirs of the body of Anne, and failing them to the heirs of the body of William.

The Settlement of 1700.

Such was the settlement of 1689, but in the year 1700 a further limitation of the Crown had become necessary. For Mary had died, and William was dying, and Anne had survived her numerous offspring, and had reached a childless middle age. It became necessary then to look for a Protestant, of kin to the royal line, who could be brought into the succession, and the nearest so qualified was Sophia, widow of the Elector of Hanover, daughter of Elizabeth, Queen of Bohemia, the daughter of James I. The Crown, then, failing heirs of Anne and William, was settled on the heirs of the body of Sophia, and under this Parliamentary Settlement the Crown is now held.

Conditions of the Settlement.

But the right to the Crown under this Settlement is subject to conditions[1], for:—

(1) Every person who is or shall be reconciled to the Church of Rome, or shall hold communion with

[1] 1 Will. & Mary, st. 2, c. 3; 12 & 13 Will. III, c. 2.

the Church of Rome, or shall profess the Popish Religion, or shall marry a Papist, becomes thereby excluded from, and incapable of, inheriting the Crown, the government of the realm, Ireland, and the dominions of the Crown, or any part of them: and incapable of exercising any regal power, authority, or jurisdiction in the same: the people are absolved from their allegiance; and the Crown goes to the next in succession being Protestant, as if the person who incurred the disability was dead. Securities against a Roman Catholic king.

(2) Every King or Queen succeeding to the throne by virtue of the Act of Settlement is to make the declaration against transubstantiation [1] at the first day of the meeting of the first Parliament, or at the Coronation.

(3) Every King or Queen shall have the Coronation Oath administered at his or her Coronation, according to the provisions of 1 Will. & Mary, c. 6.

(4) Every person who shall come into possession of the Crown shall join in communion with the Church of England.

There is much vagueness, as Macaulay has pointed out [2], in the provisions of the first of these clauses. The Sovereign is subject to certain tests; no test is prescribed by which to ascertain the religious denomination of the person whom the Sovereign may marry. The words which follow as to the people being absolved from their allegiance have the same vague character; but this must needs be in attempting to make statutory provision for a revolution.

The Act of Union with Scotland in 1707 provided that the succession to the Crown of Great Britain should be the same as the succession provided for the Crown of England by the Act of Settlement, and a similar provision was inserted in the Act of Union with Ireland in 1800. The Union with Scotland.

The title to the Crown of the United Kingdom of Great Britain and Ireland is vested by statute in the heirs of the With Ireland.

[1] This is provided in 25 Car. II, c. 2.

[2] Macaulay, Hist. c. 15.

body of Princess Sophia, who is the stock of descent, whose lineal heir must be sought on each occasion of the demise of the Crown.

§ 2. *Modern Forms.*

The accession of the King.

The forms which took place on the accession and coronation of the King are worth noticing, as illustrating some statements which have gone before.

Queen Victoria died at Osborne, on the 22nd January, 1901, in the late afternoon, and on the following day the Lords of the Privy Council, of whom more than 100 were present, the Lord Mayor [1], Aldermen, and other officials of the City of London, and other noblemen and gentlemen assembled at St. James' Palace to approve a form of Proclamation, which proclaimed King Edward VII.

The Proclamation was in the following form:—

The Proclamation.

'Whereas it has pleased Almighty God to call to his mercy our late Sovereign Lady Queen Victoria of blessed and glorious memory, by whose decease the Imperial Crown of the United Kingdom of Great Britain and Ireland is solely and rightfully come to the High and Mighty Prince Albert Edward. We, therefore, the Lords Spiritual and Temporal of this realm, being here assisted with these of his late Majesty's Privy Council, with numbers of others principal gentlemen of quality, with the Lord Mayor, Aldermen, and Citizens of London, do now hereby with one voice and consent of tongue and heart publish and proclaim that the High and Mighty Prince Albert Edward is now by the death of our late Sovereign of happy memory become our only lawful and rightful Liege Lord Edward the Seventh, by the Grace of God King of the United Kingdom of Great Britain and Ireland, Defender of

[1] The Lord Mayor of London is summoned to the meeting at which a new Sovereign is proclaimed, but retires immediately after. He has no rights as a Privy Councillor (Greville Memoirs, iv. 79-82). But Greville does not seem to have taken note of the differences in character, as apparent from the Proclamation, between the meeting at which Queen Victoria was proclaimed and the meeting of the Privy Council held immediately after. The London Gazette for June 29, 1837, gives the names of those present. The same difference is apparent at the Proclamation and subsequent assemblage of the Privy Council on the 23rd of January, 1901.

the Faith, Emperor of India. To whom, we do acknowledge all faith and constant obedience with all hearty and humble affection; beseeching God, by whom Kings and Queens do reign, to bless the Royal Edward the Seventh with long and happy years to reign over us.'

It should be noticed that the King was proclaimed, not by the Privy Council, but by the *Lords Spiritual and Temporal, and others*. This body is something more than the *Privy* Council. It represents a more ancient assemblage, the Witan or *Commune Concilium* meeting to choose and proclaim the new King.

Fulfilment of statutory requirements.

The King then entered the Council Chamber and addressed the Council; and took and subscribed the oath for the security of the Church of Scotland, as required by the Act of Union. The late Queen's Privy Council were then sworn, and the King issued a proclamation continuing in their offices during pleasure all who, on the death of Queen Victoria, were 'duly and lawfully possessed of or fully invested in any office, place, or employment, civil or military,' within the dominions of the Crown[1]. On the 14th February the King made the declaration against transubstantiation in the presence of both Houses[2], as required by the Bill of Rights and Act of Settlement.

The Coronation.

The coronation of the King did not take place until the 9th of August, 1902. The ceremonial is full of historical interest. It falls into three stages. The first is an important and necessary preliminary, and comprises the Recognition or formal acceptance of the new King by the people, and the Oath which embodies the King's undertaking of the duties of royalty[3].

Next follows the series of ceremonies which invoke divine sanction upon the people's choice and confers upon royalty its sacred character, the anointing, the investiture, and the actual crowning. The third stage is the natural sequel to these. The King duly chosen, anointed, and

[1] *Times* Newspaper, 25 January, 1901, p. 11.

[2] Hansard, Fourth Series, vol. lxxxix, p. 27.

[3] The form and order of the Coronation Service is set out in Sir R. Phillimore's Ecclesiastical Law, ed. 2, p. 813, but the service was in some respects altered and curtailed at the coronation of King Edward VII.

crowned is placed upon his throne and receives the homage of the lords spiritual and temporal.[1]

First then comes the Recognition. The Archbishop, accompanied by the Lord Chancellor and the great hereditary officers of State, addresses the assemblage in these words:—

The Recognition.

'Sirs, I here present unto you King Edward, the undoubted King of this realm: Wherefore all you who are come this day to do your Homage, are you willing to do the same?

The people 'signify their willingness and joy by loud and repeated acclamations, all with one voice crying out, "God save King Edward."[2]'

Until the coronation of Edward VII the King had been presented by the Archbishop turning to all four points of the compass. On the 9th of August, 1902, the King was only presented once.

The Oath.

After some further ceremonials comes the Coronation Oath, administered by the Archbishop:—

'Will you solemnly promise and swear to govern the people of this United Kingdom of Great Britain and Ireland, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the respective laws and customs of the same?

'I solemnly promise so to do.

'Will you to your power cause Law and Justice, in mercy, to be executed in all your judgments?

'I will.

'Will you, to the utmost of your power, maintain the Laws of God, the true profession of the Gospel, and the Protestant reformed religion established by law? And will you maintain and preserve inviolably the Settlement of the Church of England, and the doctrine, worship, discipline and government thereof, as by Law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Church there committed to their charge, all such rights and privileges, as by law do, or shall appertain to them, or any of them?

'All this I promise to do.'

[1] Wickham Legg, English Coronation Records, Introduction xix.

[2] The people are for this purpose more especially represented by the boys of Westminster School, who rehearse beforehand the part played by the crowd at a medieval coronation.

The Anointing follows on the head, the breast, and the palms of both hands. Then comes the Investiture of the King with the regal vestments with the spurs, sword, orb and sceptre, then the putting on of the Crown, the gift to the King of a copy of the Bible, and the benediction. Then comes the final stage of the proceedings. The King has been accepted by his people and has given the assurances of the Coronation Oath: he has been, as it were, consecrated to the service of the State before the Crown is placed on his head. Now he ascends his throne and receives the homage of the Peers. At the Coronation of King Edward this was not done by every Peer, but first the Archbishop of Canterbury (the Bishops kneeling), then the Prince of Wales for himself and the Princes of the Blood Royal, and then the premier nobles in each of the five ranks of the peerage, the Duke of Norfolk, the Marquis of Winchester, the Earl of Shrewsbury, Viscount Falkland, and Lord de Ros, uttered the words of Homage, touched the King's Crown and kissed him on the left cheek.

The Anointing and Investiture.

The Enthronement and Homage.

The spiritual peer uses the following words:—

'I ——— will be faithful and true, and Faith and Truth will bear, unto our Sovereign Lord, and your Heirs, Kings or Queens of the United Kingdom of Great Britain and Ireland. And I will do, and truly acknowledge, the Service of the Lands which I claim to hold of you, as in right of the Church. So help me God.'

The Homage of the temporal peer is thus expressed:—

'I ——— do become your Liegeman of Life and Limb, and of earthly worship, and Faith and Truth I will bear unto you to live and die against all manner of Folks. So help me God.'

The portions of the ceremonial to which I have called special attention take us far back into the past.

The Recognition represents the great officers of the Witan or Council presenting the Sovereign of their choice to the assembled people, who are asked to record the national approval of the chosen King.

The Coronation Oath indicates the contractual character of English Sovereignty, a character which was common as

Survival of old requirements.

well to the official chief of Saxon times as to the territorial lord of feudalism. The form survived the high prerogative days of the Tudors and Stuarts and the theory of Divine Right. The wording of the oath was settled immediately after the Revolution [1]. Its substance—to keep the Church and all Christian people in peace—to restrain rapine and wrong—to temper justice with mercy—is as old as the eighth century [2].

The Anointing is that which would seem to confer upon royalty its sacred character, and to give the sanction of the Church to the choice of the people, while the investiture blends the knightly and religious elements in the symbolic vestments and insignia of sovereignty.

The Homage of the Peers represents the taking of the oath of fidelity by the *Ministri* of Saxon times, and later by the great vassals of the Crown, which gave practical security to the new reign.

§ 3. *Allegiance.*

The Oath of Allegiance.

The counterpart to the Coronation Oath is the Oath of Allegiance, which represents the undertaking of the subject to be loyal in return for the promise of the Sovereign to govern well; and we may now pass to the relation of Sovereign and subject. The subject owes allegiance to the Sovereign, as the Sovereign owes good government to the subject. The Sovereign is required to promise this in the Coronation Oath, but the subject is not, except for certain purposes, required to take the Oath of Allegiance.

The form of this is now settled by 31 & 32 Vict. c. 72: an affirmation to the same effect may be made under the Oaths Act, 1888 [3]. But allegiance is due whether oath or declaration of allegiance has or has not been taken or made: and it is due from resident aliens, as well as from citizens; in the first it is *local*, in the second it is *natural* allegiance. It was once, no doubt, a personal tie, binding

[1] 1 Will. & Mary, st 1, c. 6.

[2] Stubbs' Select Charters, p. 62, excerpt from pontifical of Egbert, Archbishop of York, *cir.* 760.

[3] 51 & 52 Vict. c. 46.

two individuals by mutual assurances of fidelity and protection; it is now a test of citizenship, a mode of ascertaining to what country a man belongs.

Nature of Allegiance.

Allegiance differs from homage and from fealty. Fealty is the simple undertaking to be faithful, an undertaking fortified by an oath. Homage is the undertaking to be faithful in respect of land, binding the vassal to the lord of whom he holds lands. Allegiance is the duty, which every man owed, to be faithful to the head of the nation, land or no land[1]. And as the King was supreme landowner and judge, the ideas of homage and fealty, in the case of the holder of lands, were merged in allegiance.

Test of nationality.

The territorial character of feudal sovereignty made a man's allegiance depend, not on his parentage, but on the place of his birth. A Frenchman, born in the dominions of the Crown, could not escape the liabilities, nor could a man born of English parents abroad acquire the rights, of an English citizen. *Nemo potest exuere patriam.*

But a man might be a citizen of this country, though by birth and parentage he belonged to another, if both were in allegiance to the same King. *Calvin's*[2] case decided that persons born in Scotland after James I succeeded to the English Crown were born in the allegiance of the King of England, and were citizens of both countries; and in like manner the English *post nati* were citizens both of Scotland and England. But if the Crowns are severed the citizenship thus acquired may be lost. Hanoverians born in Hanover while William IV was king of Hanover were citizens of the United Kingdom, but they became aliens upon the accession of Queen Victoria[3].

[1] The limitation of liege homage—free or undisputed homage—to the homage done to the King was of gradual growth. 'Liege' means 'free,' 'undisputed,' 'unconditional,' and has no connexion with 'ligare.' Skeat, Dict., s.v. *Liege*. Pollock and Maitland, Hist. of English Law, i. 279, 280. The oath of fealty required by the Norman Kings of their subjects was independent of all conditions of tenure, or of fealty due to another, and thus '*ligeaunce*' or 'allegiance' came to mean the fealty due to the King.

[2] St. Tr. 559 (e).

[3] Isaacson *v.* Durant *In re* Stepney Election Petition, 17 Q. B. D. 54.

Change of nationality.

The Common Law rule on the subject is clear. A person born in the dominions of the King is a natural born British subject; a person born beyond the limits of the King's dominions is an alien. A man might be made a citizen by statute, or a denizen by prerogative, but the Act of Settlement forbad such a person from holding office or a place in the Privy Council or either House of Parliament, or receiving lands from the Crown.

Statute has engrafted on these rules the following exceptions.

1. A person born abroad whose father was a natural born British subject[1], and the son of a person so born abroad[2], are to all intents and for all purposes natural born British subjects, always assuming that the father up to the date of the birth has done nothing to divest himself of his British nationality.

Naturalization.

But this statutory exemption is construed strictly. If a natural born British subject settles in France, his son and his grandson (assuming the family to continue to reside in France) are natural born British subjects. But his great-grandson is an alien[3].

2. An alien may obtain a certificate of naturalization under the Naturalization Act, 1870 (33 & 34 Vict. c. 14), after five years' residence in England, and may then acquire all the political and other rights and obligations of a natural born British subject[4]. He need not lose his earlier nationality, but then he will not be deemed to be a British subject when he is within the limits of the state whose citizenship he retains.

3. If the person who has obtained such a certificate of naturalization be the father or widowed mother of a child, who at the date of the certificate is an infant, and who becomes resident with the father or mother in the United Kingdom, such a child becomes a naturalized British subject[5].

[1] 4 Geo. II, c. 21, s. 1.
[2] 13 Geo. III, c. 21.
[3] De Geer *v.* Stone, 22 Ch. Div. 243.
[4] 33 & 34 Vict. c. 14, s. 7.
[5] Ibid. ss. 4, 10.

But here again the statutory exemption must be construed strictly. The child of a naturalized alien, if of full age at the date of the naturalization, is unaffected by it. If born abroad after the naturalization he would seem not to come under the provisions of 13 Geo. III, c. 21 [1]. In fact the child of a naturalized British subject is only a British subject if (1) he is born in the King's dominions, or (2) he be an infant at the date of his parents' naturalization and become a resident in the United Kingdom after it, or (3) he reside with his father, while the father is in the service of the Crown, out of the United Kingdom [2]. Naturalization.

4. The marriage of an alien woman with a British subject makes her a British subject; conversely, the marriage of a female British subject with an alien makes her an alien. Marriage.

5. A foreigner born in the United Kingdom may under the Naturalization Act make a declaration of alienage and so divest himself of the allegiance which the locality of his birth imposed upon him. And a British subject of the King may do what is equivalent to a declaration of alienage, and divest himself of his British nationality by becoming a naturalized citizen of a foreign state [3]. (§ 6 of the Act of 1870.) Alienage.

6. An Act of Parliament can do anything, and a foreigner may be naturalized by statute, so as to make his children under all circumstances citizens of this country [4].

The disabilities of aliens have been greatly diminished by the Naturalization Act, 1870. Formerly they could not acquire lands; now an alien is under no disabilities, proprietary or contractual, save that he cannot own the whole or any part of a British ship. But he enjoys no political privileges. He cannot vote at any parliamentary or municipal election, nor is he qualified to hold any office [5]. Disabilities of aliens.

Allegiance may be *natural* or *local*. One who is a natural

[1] *In re* Bourgeoise, 41 Ch. Div. 310. [2] 58 & 59 Vict. c. 43.

[3] But a British subject cannot divest himself of his nationality by becoming naturalized in an enemy's state in time of war. Not only would he have no defence on this ground for treasonable acts, but such naturalization is itself an act of treason. R. *v.* Lynch, [1903] 1 K. B. 444.

[4] Co. Litt. 129 a.

[5] The Crown can confer a *quasi*-naturalization by letters patent. The

born subject of the Crown, whether at Common Law or by statute, owes allegiance to the Crown wheresoever he may be. Local allegiance is due from an alien resident in the King's dominions, during the period of his residence. During such period he is bound to observe those rules of conduct which the State enjoins for the maintenance of order, and to respect the institutions under which he is living for the time by refraining from any such attempt to change them by violence as the law considers to be treason. Nor is he absolved from this liability by a foreign occupation which leads to a temporary withdrawal of the State forces, and their protection. 'It is the duty of a resident alien so to act that the Crown shall not be harmed by reason of its having admitted him as a resident[1].'

§ 4. *Treason.*

The law relating to treason is connected with the law relating to allegiance in two ways.

Treason and allegiance.

Treason committed by a person in allegiance, wheresoever he may be, has long been treated as triable in the English Courts, if at any time the offender can be brought within their jurisdiction[2]. The liability to be dealt with for treasonable practices by the Courts of this country adheres to the British subject, and is personal, not local. This is an exception to the rule of law which is expressed in the words 'all crime is local[3].' Murder and manslaughter, if committed on land, are triable in England or Ireland though the offence be committed without the King's dominions[4]; and the same rule applies to bigamy, though the second marriage has taken place 'in England, Ireland, or elsewhere[5].' Only in these cases can the Englishman

person so privileged is called a *denizen*. Blackstone, Comm. i. 374. He is, since 1870, in no better position practically than an alien.

[1] De Jager *v.* Attorney-General of Natal, [1907] A. C. 329.

[2] By 35 Henry VIII, c. 2, s. 2, this rule is laid down in all cases of treason, misprision or concealment of treason. The Act purports to be declaratory, and passed to allay doubts. 'Misprision' means failure to give information within a reasonable time.

[3] Macleod *v.* Attorney-Gen. for New South Wales, [1891] App. Ca. 455.

[4] 24 & 25 Vict. c. 100, s. 9.

[5] 24 & 25 Vict. c. 100, s. 57. Trial of Earl Russell, [1901] App. Ca. 446.

who commits a crime abroad be tried for it in England or Ireland.

The Statute of Treasons.

Again, treason, when we first get an approximate definition of the offence, depended, like allegiance, on the personal character of the feudal relation. Treason was an offence against the person, the representatives, or the personal rights of the King: it was a breach of the feudal bond, a betrayal in one form or other of a lord. The vagueness of the early law on this subject led to a request by the Commons in 1352 that the King would legislate on the subject of treason, and the answer to their request was the statute on which the law of treason is still founded [1]. 25 Edward III, stat. 5, c. 2 names seven distinct offences:—

(1) To compass or imagine the King's death, the Queen's, or that of the heir of the throne: (2) to levy war against the King in his realm: (3) to adhere to the King's enemies: (4) to violate the King's wife, the wife of his eldest son, or his eldest daughter, being unmarried: (5) to counterfeit the Great Seal, the Privy Seal, or coin: (6) to issue false money: (7) to kill the Chancellor, Treasurer, King's Justices of either bench, or of assize, in the discharge of his office.

Its definition of treason.

One cannot fail to notice the personal character of all these offences. The King—not the Crown in Parliament, or the State as embodied in the existing constitution—is the object which the statute designs to protect. The King's person; the King's sovereignty; the King's family relations; the *indicia* of the royal will in administration, the seals; the representatives of the royal will in judicature, the Chancellor and judges; the privileges of royalty, the coinage: these are what a feudal society thought it treason to infringe.

The last four offences need no special notice; they remain as treasons on the Statute book, though they may be dealt with as felony [2]. The first three have been extended by

[1] Mr. Maitland has pointed out that the object of the promoters of this Statute was not so much to define the limits of political obligation as to mark the distinction between treason and felony; the former resulted in a forfeiture to the king, the latter in an escheat to the lord. Pollock and Maitland, Hist. of English Law, ii. 506.

[2] 24 & 25 Vict. cc. 98, 99, 100.

construction, and have been the subject of much legal comment.

The additional treasons chiefly created in the reign of Henry VIII, of Elizabeth and Anne, none of long duration, and all now repealed, will be found to fall into two classes. They were the product of statutes which aimed at securing the kingdom against the aggression or influence of the Pope, or else at securing the succession to the throne as at the time settled.

Extension of definition.

But the extensions by construction of the statute of Edward III are important in legal history. Compassing or imagining the King's death was construed to mean any act directed to the deposition or imprisonment of the King, or to acquiring the control of his person, or any measure concerted with foreigners for an invasion of the kingdom, or going or intending to go abroad for such purpose[1]. Cases of mere riot were treated as 'levying war against the King[2].'

The Riot Act.

The Riot Act, 1 Geo. 1, st. 2, c. 5, made it unnecessary to strain the definition of treason in order to punish disorder which had no political end in view. But the law of treason took no cognizance of offences against the State which could not be construed to be also offences against the person or personal authority of the King. It was not until 1795 that statutory force was given to the extended interpretations of the Act of Edward III, and an actual or contemplated forcible attempt to make the King change his counsels, or to intimidate both Houses or either House of Parliament was made treason. This Act was made perpetual in 1817. In 1848 all the acts, or compassings mentioned therein, which did not tend to the death, personal injury, or personal restraint of the Sovereign, were made treason-felony, and so not necessarily punishable with death[3]. The treasons of 25 Ed. III still remain treasons on the Statute book.

Modern definition of treason.

Treason, therefore, as distinct from treason-felony, is the doing or designing anything which would lead to the death,

[1] Stephen, History of the Criminal Law, 266.

[2] Dammaree's Case, State Trials, vol. xv. p. 521.

[3] 11 & 12 Vict. c. 12.

bodily harm, or restraint of the King, levying war against him, adhering to his enemies, or otherwise doing acts which fall under the Statute of Edward III.

Treason-felony.

Conspiracies to levy war, to deprive the King of the crown, or of any part of his dominions, or to incite foreigners to invade the realm, are treason-felony, and may perhaps be dealt with as constructive treason[1]. And force contemplated, or applied, to make the King change his counsels, or to intimidate either House or both Houses of Parliament is treason-felony.[2]

I have thought proper to treat to this extent of the law of treason, because it is a consequence of the relation of Sovereign and subject, or, as it might be expressed, of State and citizen. It is necessary for the purpose of this chapter to explain what are the special liabilities of citizenship attaching to the subjects of the King, wheresoever they may be, as distinct from the general liability to obey the rules of public order, within the jurisdiction of the King's Courts. Beyond this it would be out of place here to deal with the legal definition of treason, or with the history of procedure in trials for treason.

§ 5. *Incapacity of the King.*

Causes of incapacity.

We have now to consider how the rights and duties of royalty are affected, when the King, from one cause or another, is incapable of discharging the duties of his office. This may arise in any one of four ways. The King may be absent from the kingdom. The King may be of imperfect capacity for his office by reason of his youth. The King may have lost the capacity for his office by reason of his insanity. The King may prove that he does not possess the capacity for his office from neglect of or contempt for the conditions under which it must be held.

In the first three cases the question arises of the constitution in one form or another of a Regency; in all four, difficulties may arise which are essentially similar in character.

[1] Stephen, History of the Criminal Law, vol. ii. p. 286.

[2] 11 & 12 Vict. c. 12, s. 3.

(a) Absence.

The Absence of the King, until recent times, was met by the appointment of one or more persons to transact the formal business of government in his absence. Until the office of Justiciar fell into disuse in the reign of Henry III it had been customary that the Justiciar should discharge the duties of royalty during the absence of the King.

Representatives of King in absence.

From this time it seems to have been most usual to appoint *custodes regni*, or *locum tenentes*, the first instance of such appointment being in the thirty-seventh year of Henry III, when the Queen and the Earl of Cornwall were made guardians of the realm during the King's absence in Gascony[1]. For the absence of Edward I at the time of his father's death special arrangements appear to have been made, and a small Council of Regency settled upon a year beforehand, but the arrangements were confirmed by a council of the magnates held shortly after the commencement of the reign[2].

The appointment of Lords Justices under the Great Seal began with the absence of William III after the death of Mary, who, during her short reign, had been given power by statute to exercise the royal prerogative whenever William was out of England[3]. The last instances of the appointment of a Regent, for this purpose, were in 1716, when the Prince of Wales was made Guardian and Lieutenant of the Kingdom, and in 1732, when Queen Caroline occupied the same position. On other occasions since 1695 Lords Justices have been appointed under the Great Seal with powers specified in the Letters Patent, which gave them their commission. This has not been done since 1821. The fact that the Sovereign is absent from the realm does not impair the validity of any executive act done during such absence; and modern facilities of com-

[1] Stubbs, Const. Hist. ii. 67. For a list of such appointments see Report of Committee appointed in 1788 to inquire into precedents in cases of the royal authority being interrupted by sickness, &c. Parl. Paper, 1781–1791 (Reports of Committees), iii. p. 80. Comm. Journ. 44, pp. 11–42.

[2] Stubbs, Const. Hist. ii. 104.

[3] This did not disentitle William from exercising royal powers when abroad. 2 Will. & Mary, st. 1, c. 6.

munication have enabled the King to give the royal assent to bills by commission, and to transact other business without inconvenience to the conduct of government during his visits to the continent[1].

(b) Infancy.

The Infancy of the Sovereign raises other questions. The fiction of law is that the King must always be in the full maturity of intellectual power, and so would be exempt from the ordinary disabilities and immunities of infancy. Testamentary guardianship is the creation of statute, nor has it ever been suggested that the prerogative enables a King to appoint a guardian to his successor.

Regencies during Infancy.

In our early history the case of an infant sovereign was variously met. The Barons appointed a *Rector Regis et Regni* during the minority of Henry III, and a small Council with whom he should act: in the cases of Edward III and Henry VI Parliament made the nomination: the King himself and the magnates appointed a Council of Regency during the youth of Richard II: but Edward III and Richard II were both capable of executing some of the formalities of government, and opened the Parliaments at which the Councils of Regency were chosen. The Privy Council made Richard of Gloucester protector of the realm during the brief reign of Edward V. In the reign of Henry VIII we come upon the first Regency Act, and the only one of the kind that ever took effect. Parliament gave to Henry the power of nominating a Council of Regency, by Letters Patent or by will. This Council was to act in case the successor was a male and less than 18, or a female and less than 16 years of age. The King made the appointment, and though the Council exceeded its powers by making Somerset protector of the realm, its action was confirmed by the Lords and by Letters Patent issued by the young King himself.

28 Hen. VIII, c. 7, s. 23.

On other occasions since the reign of Henry VIII Regency Acts have been passed, nominating, or giving to

[1] See May, Parl. Practice, ed. 11, p. 515, and the reply of Lord Lyndhurst to Lord Campbell on the occasion of Queen Victoria's visit to Germany in 1845; Hansard, 3rd Series, vol. lxxxii, p. 1510.

the King the power of nominating, a Regent or a Council. But the duties of royalty have never since been discharged by a Regent in consequence of the infancy of the King.

(c) Insanity. Regencies during Insanity.

The insanity of the Sovereign is not a matter which can be provided for beforehand, as is possible in the case of a minority. Happily the difficulty which it occasions has only arisen in two reigns, those of Henry VI and George III.

Henry VI.

The proceedings in the reign of Henry VI are marked with much simplicity and common sense, as compared with those of the later reign. Early in 1454 the insanity of the King was attested by a committee of the Lords, and the Duke of York was chosen by the Lords to be protector and defender of the realm. He accepted the appointment, the proceeding was thrown into the form of an Act which received the assent of the Commons, and the Duke was Regent until the King recovered ten months later[1]. At the end of the year of his recovery Henry VI became once more insane; Parliament, which had been prorogued, met, and at the request of the Commons the Lords nominated a Protector, their choice again falling on the Duke of York. This time the King seems to have been able to go through some formalities, and to appoint the Duke by Letters Patent. In a few months he recovered.

George III.

In the reign of George III Parliamentary procedure had become so far settled as to raise technical difficulties which had not occurred to the Lords and Commons of the fifteenth century. And yet, when George III became insane, the Houses had the precedents of 1688 before them, and might have followed the procedure of the Convention Parliament, with this advantage, that at the time of James' flight Parliament was dissolved, while in 1788 a Parliament was in existence, though not sitting.

The Convention Parliament had proceeded by Address, requesting William and Mary to undertake the kingly office. It would have seemed obvious that the same course should be followed in 1788, and that the two Houses should present an address to the Prince of Wales requesting him

[1] Stubbs, Const. Hist. iii, 166, 167.

to discharge the duties of royalty during the insanity of the King.

The disputes of 1788.

There was no practical dispute between Pitt and Fox as to the person who should be Regent. Fox maintained that the Prince had a right to the Regency, and that Parliament was bound to give effect to this right, Pitt held that the Prince had no right in the matter, but that he was the most proper person to be invited to become Regent. That which really exercised the two parties in the State was the limit which should be set upon the exercise of the prerogative by the Regent. Pitt wished to impose restraints but, inasmuch as the Prince was on friendly terms with the Opposition, Fox wished to minimize the restraints which were admittedly necessary. It was difficult, if not impossible, to combine procedure by address and limitation of powers. The Convention Parliament had affixed conditions to the tenure of the Crown but had not limited the prerogative. It followed that a Regency must be created by statute: but a statute needed the royal assent: the King could not give the royal assent in person, nor could he authorize by sign manual the affixing of the Great Seal to a Commission which should enable others to give his assent.

The fictions of 1788 and 1810.

The difficulty was overcome by a series of fictions. The two Houses were invited by Ministers to concur in directing the Chancellor to put the Great Seal to a Commission for opening Parliament, and subsequently to another Commission for giving assent to the Regency Bill when it had passed the two Houses. Before the matter reached this stage the King had recovered, but the same procedure was employed when in 1810 it became necessary to pass a Regency Bill.

It is to be observed that the Irish Parliament, being unaffected by the considerations of English parties, proceeded by address, and thus avoided the use of a fiction at once grotesque and dangerous [1].

The last form of royal incapacity for government is

[1] For a clear account of the Regency question as it presented itself to the British and Irish Parliaments, see Lecky, Hist. of England in the Eighteenth Century, vi. pp. 416-27.

(d) Moral incapacity.

illustrated in Edward II, Richard II, and James II. The cases differ, since the first two were cases of formal, if involuntary, resignation, the last was a flight.

Edward II.

The deposition of Edward II was marked by forms which do not conceal the violence of the transaction. Parliament was summoned by writs issued in the King's name by the younger Edward, who had been proclaimed guardian of the kingdom on the assumption that the King had fled. Before Parliament met the Great Seal had been obtained from Edward II, and the writs were issued in proper form. Parliament, having met, accepted the younger Edward as King, and drew up reasons for the deposition of Edward II; when the deposed King would not meet the Houses, they, by their procurator, renounced their homage and fealty.

Richard II.

In the case of Richard II a deed of resignation was executed by the King, and presented to the Parliament summoned to receive it. A statement of reasons for his deposition was drawn up, as in the case of Edward II; these were voted to be sufficient, Richard was deposed, and the sentence was communicated to him by Commissioners, who bore at the same time the renunciation of homage and fealty. It was not till then that Henry IV came forward to state to Parliament his claim to the throne; this was admitted, the assembly accepted him as king, and he was led to the throne.

James II.

The case of James II has been fully treated earlier in this chapter. It differs from the other cases mainly in two points. James did not resign but fled, and the members of the Convention Parliament treated this flight as a constructive abdication, while they added in the Petition of Right such a list of misdeeds on the part of James as made the construction which they put on his flight amount to a formal deposition. And secondly, the question was complicated by the political theories and Parliamentary forms with which a medieval Parliament did not allow itself to be embarrassed; while the religious questions unknown to the thirteenth and fourteenth centuries caused religious disabilities to be attached to the Crown and gave a distinctly conditional character to its tenure.

§ 6. *The Demise of the Crown.*

We have still to consider the effect of the Demise of the Crown, either by death, or by forfeiture under the conditions of the Bill of Rights. We need only deal with the effects as illustrated by the death of the Sovereign. Effect of Demise of the Crown,

I described in an earlier part of this chapter the steps by which the *interregnum* between the death of one King and the accession of another was bridged over. From the accession of Edward IV the new King was regarded as succeeding without interval of time to the rights of his predecessor; but the theory that Parliament was present in response to a personal summons from the King, and that ministers and others holding office or employment in the service of the State were the personal servants of the King, caused difficulties which have been gradually and almost entirely removed.

The rule that Parliament was dissolved by the death of the King might always have produced inconvenient results, but no steps were taken to remedy the inconvenience until the passing of 7 & 8 Will. III, c. 15, wherein it was enacted that a Parliament in existence at the time of a King's death should continue in existence for six months if not sooner dissolved by the successor to the throne. After the Union with Scotland this rule was extended by 6 Anne, c. 41, to the Parliament of Great Britain. The Act 37 Geo. III, c. 127, made further provision for the event of a demise of the Crown at a time when Parliament had been dissolved, and, finally, the Representation of the People Act, 1867[1], makes the duration of a Parliament independent of the demise of the Crown. on existence of Parliament;

The tenure of office has raised questions of a different character. The practical inconvenience, and even danger, to which the legal theory might give rise became evident in the reign of Anne. In all probability the successor to the Crown, designated by Statute, would be in Hanover at the moment of the Queen's death. A rival claimant to the Crown was no further off than St. Germains, and at this on tenure of office.

[1] 30 & 31 Vict. c. 102, s. 51, §§ 8, 9.

The Succession to the Crown

critical time the Privy Council would be dissolved, all the great offices of State would be vacant, and every com-

252 THE TITLE TO THE CROWN Chap. IV

The Succession to the Crown

critical time the Privy Council would be dissolved, all the great offices of State would be vacant, and every com-

(i. e. any office created since the 25th October, 1705) incapable of sitting in the House of Commons; and s. 25 provides that the acceptance of any office of profit from the Crown by a member of the House of Commons vacates his seat, but leaves him eligible for re-election. This provision has always been construed to extend only to offices in existence on the 25th October, 1705, or by Statute since rendered tenable with a seat in the House of Commons. The state of the law in 1901;

It would seem that on previous occasions of a demise of the Crown Ministers continued to hold office under the provisions of the Succession to the Crown Act, unless sooner dismissed, and that such forms as they went through for the purpose of indicating that they were ministers of the new Sovereign were not regarded as an acceptance of office such as would at once vacate a seat.

But on all such previous occasions Parliament was dissolved within six months of the commencement of the new reign, so that the expiration of the term of continuance in office must necessarily synchronize with the vacating of the seat, if indeed a dissolution did not send the minister back to his constituents before six months were out [1].

But in 1901 a new state of things had arisen, for the duration of Parliament was no longer affected by the demise of the Crown. The Parliament of 1901 had barely been in existence for a year, and ministers would have been obliged to re-accept office formally and thereupon vacate their seats within six months of the accession of the King. as affected by the Act of 1867.

On the 23rd of January, 1901, the King issued a Proclamation reciting the relevant provisions of the Succession to the Crown Act, and directing every person who, at the time of the death of Queen Victoria, held any office, place, or employment, civil or military, in any part of the King's dominions, to proceed in the duties of their respective offices during the royal pleasure. The King's Proclamation.

[1] William IV died on the 20th of June, 1837, and Parliament was dissolved on the 17th July. Between those dates certain of the principal ministers went through some of the formalities of re-appointment. See the London Gazette for July, 1837. But the re-appointment of the two Secretaries of State who were members of the House of Commons did not take place until the day of the dissolution

Events of 1901.

At the same Council orders were made for the preparation of warrants for the King's signature authorizing the use of the existing official seals until new seals could be prepared.

On the 23rd and 24th of January the principal ministers of the Crown kissed the King's hands and took the official oath.

'I, ——, do swear that I will well and truly serve His Majesty King Edward VII in the office of ——. So help me God.'

None of the formalities incident to an original appointment were gone through, no patents were cancelled and re-issued, nor were seals delivered up and returned; but it was questioned whether ministers had not by acceptance of office under the new King at once vacated their seats, or whether the vacancies would be postponed to the end of the first six months of the new reign.

These questions were raised in the discussions on the Demise of the Crown Bill[1] and settled by its passing.

The Demise of the Crown Act.

Some legislation on the subject was necessary, for the Succession to the Crown Act did not apply to offices held abroad, or held within the protectorates which technically are not included within the dominions of the Crown.

The Demise of the Crown Act[2] briefly enacts that:—

(1) The holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown.

(2) The Act shall take effect as from the last demise of the Crown.

Thus the demise of the Crown no longer affects the duration of Parliament, nor the tenure of office, though legislation has in no way affected the prerogative of the Crown as to the dissolution of Parliament or the dismissal of ministers.

[1] See debate on the second reading of the Bill, 1 April, 1901, Hansard, 4th Series, vol. xcii. p. 382.

[2] 1 Ed. VII, c. 5

§ 7. *The King's Family.*

We must, in conclusion, consider what are the relations of the King or Queen Regnant to the royal family, and wherein the family relations of the Sovereign differ from those of a subject.

A King's wife.

The Queen Consort is a subject, though privileged in certain ways. Her life and chastity is protected by the law of treason. She has always been regarded as free from the disabilities of married women in matters of property, contract, and procedure. She could and can acquire and deal with property, incur rights and liabilities under contract, sue and be sued, as though she were *feme sole*. She has her separate officers and legal advisers. But in all other respects she is a subject, and amenable to the law of the land, save in respect of some small privileges which are not in use. At one time she had a revenue from the demesne lands of the Crown, and a portion of any sum paid by a subject to the King in return for a grant of any office or franchise. This was the *aurum reginae* or queen-gold [1]. Provision is now made by statute for the maintenance of a Queen Consort.

A Queen's husband.

A Queen Dowager ceases to be under the protection of the law of treason. It is said by Coke that she may not marry again without the King's licence, but this is questioned [2].

Philip of Spain.

A Queen Regnant holding the Crown in her own right has all the prerogatives of a King [3]. The position of the husband of a Queen Regnant has varied in each case that has arisen.

On the marriage of Mary Tudor with Philip of Spain it was provided that the Queen should enjoy all the prerogatives and possessions and exercise all the powers of Crown as sole Queen, though official documents should issue in their joint names: that Philip should not alter the

[1] Blackstone, Commentaries, i. 220. Queen-gold is the subject of a learned treatise by Prynne.

[2] Blackstone, Comm. i. 223.

[3] This was declared by Statute in 1554. 1 Mary I, st. 3, c. 1.

laws, nor compel the Queen to leave England, nor introduce aliens into office, nor if he survived his wife set up any claim to power or property [1]. A later Act made it treason to compass his death. It is impossible to read the first of these Statutes without being struck by the difficulties which must have arisen if Philip had wished to reside in England or had taken an active interest either in his wife or her kingdom.

William of Orange.

William III declined to be a King Consort: and the Bill of Rights provided that 'entire, perfect, and full exercise of the regal power should be only in and executed by his Majesty in the names of both their Majesties during their joint lives.' When William was absent from the kingdom, Mary was given a general power to 'exercise and administer the regal powers and government,' saving the validity of acts of State done by William during his absence abroad [2].

George of Denmark.

George of Denmark did not occupy so favourable a position. He had been introduced into the Privy Council, though not sworn, in 1685, and he was naturalized by Act of Parliament in 1689. But by the time that Anne succeeded to the throne, the Act of Settlement had been passed, and he would have fallen under the disqualifications as to property and office which attached to aliens as soon as that Act came into force by the death of Anne. This disability was cured by a clause in an Act which enabled the Queen to grant him a revenue if he survived her [3], but he died before his wife. George was therefore a subject of the Queen, differing from others only in the conditions of his naturalization.

Albert of Saxe-Coburg and Gotha.

When Queen Victoria had declared her intention to ally herself in marriage with Prince Albert of Saxe-Coburg and Gotha, the Prince was given by Statutes [4] the full rights of a citizen of the United Kingdom when and so

[1] 1 & 2 Ph. & M. c. 10, s. 3.

[2] 2 Will. & M. st. 1, c. 6.

[3] 1 Anne, c. 2.

[4] 3 & 4 Vict. cc. 1 and 2. The first of these Acts set aside the effect of 1 Geo. I, stat. 2, c. 4, which forbade the passing of any naturalization bill without a clause confirming the political incapacities imposed by the Act of Settlement. This Act was repealed in 1867.

soon as he had taken the oaths of allegiance and supremacy. The Prince was therefore a subject of the Queen. Like George of Denmark he was introduced into the Privy Council but not sworn [1], unlike him he was never a Peer of Parliament. His precedence was determined by an exercise of the prerogative to be next to that of the Queen, and in 1857 the title of Prince Consort was conferred upon him by Letters Patent. As a matter of law he differed only in title and precedence from any other subject of the Queen [2].

The eldest son.

Of the children of a reigning Sovereign, the eldest son and daughter, and the eldest son's wife, alone have any special privilege. The eldest son is Duke of Cornwall by birth, and is created Prince of Wales and Earl of Chester by Letters Patent. It is treason to compass his death, or to violate the chastity of his wife, or of the eldest daughter, unmarried, of the King or Queen. But the royal children have only such precedence as is conferred upon them in the Parliament and Council Chamber by an Act of Henry VIII [3].

The custody of the royal children.

In 1718 the judges by a majority of 10 to 2 advised that the care and education of the King's grandchildren, being minors, belonged to the King, the rights of the father being to this extent superseded. The question arose in the quarrels of George I and his son. No such point was raised in the disputes which raged between George II and Frederick, Prince of Wales; but George III, early in his reign, quarrelled with his brothers for marrying subjects, and obtained the passing of the Royal Marriage Act [4]. By this Act no descendant of the body of George II, except the issue of princesses married into foreign families,

Their marriage.

[1] Greville Memoirs, iv. 269, and see Greville's pamphlet on 'The Royal Precedency Question,' printed as an Appendix to vol. iv.

[2] The question whether he should be made a peer was discussed. Queen Victoria urged sound reasons against such a course. Letters of Queen Victoria, i. 252.

[3] 31 Hen. VIII, c. 10. The King's sons are privy councillors by birth, and can be introduced into the Council when the King pleases. But on the demise of the Crown they are not privy councillors of the new Sovereign until sworn. Greville, iv. 274.

[4] 12 Geo. III, c. 11.

can make a valid marriage unless the King or Queen Regnant has given consent under the Great Seal. But such descendants at the age of 25 may marry without the royal sanction, after giving 12 months' notice to the Privy Council, unless during that time the two Houses of Parliament have expressed disapproval.

APPENDIX

§ 1. Letters Patent constituting the Commission of the Treasury [1].

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To Our right trusty and well-beloved Councillors A. B. and C. D., and Our trusty and well-beloved E. F., G. H., and I. J., greeting. Whereas We did, by Our Letters Patent, under the Great Seal of the United Kingdom of Great Britain and Ireland, nominate, assign, and appoint Our right trusty and well-beloved Councillors M. N. and P. Q., Our trusty and well-beloved R. S., T. U., and V. W., to be Our Commissioners during Our pleasure for executing the offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland, and to be called Commissioners of Our Treasury of Our United Kingdom of Great Britain and Ireland, as by the said Letters Patent (relation being thereunto had) may more fully and at large appear. Now know ye that We have revoked and determined, and by these presents do revoke and determine the said recited Letters Patent, and every clause, article, and thing therein contained. And further know ye that We, trusting in the wisdom and fidelities of you, the said A. B., C. D., E. F., G. H., and I. J., of Our special grace, certain knowledge, and mere motion, have nominated, assigned, and appointed, and by these presents do nominate, assign, and appoint you, the said A. B., C. D., E. F., G. H., and I. J., to be Our Commissioners [2] during Our pleasure, for executing the offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland, and to be called Commissioners of Our Treasury of Our United Kingdom of Great Britain and Ireland, and to do and

Recitation of earlier Letters Patent.

Revocation of the same.

The new Commission.

[1] The form of these Letters has undergone no change.

[2] The number of Lords Commissioners was limited by 6 Anne, c. 41, s. 26 to the number then existing. The Treasury Commission then consisted of a First Lord, the Chancellor of the Exchequer, and three junior Lords. By 56 Geo. III, c. 98 the Treasuries of Great Britain and Ireland were amalgamated, and power was given (s. 14) to increase the number of Commissioners by two. This power has been partially exercised since December, 1905: in Sir Henry Campbell-Bannerman's government there are four junior Lords.

perform all things whatsoever which might have heretofore been done and performed by the Commissioners of the Treasury in Great Britain or Ireland respectively, by whatsoever names or descriptions such Commissioners of the Treasury shall or may have been at any time known or described, save and except in so far as any powers or authorities heretofore vested in such Commissioners were altered or amended by an Act of Parliament made and passed in the fifty-sixth year of the reign of Our late Royal Grandfather, King George the Third, intituled

The union of British and Irish Treasuries.

'An Act to unite and consolidate into one fund all the public revenues of Great Britain and Ireland, and to provide for the application thereof to the general service of the United Kingdom.' And to that end and purpose We do, by these presents, give and grant unto you, Our said Commissioners, or any two or more of you, full power and authority, immediately from henceforth, from time to time during the vacancy of the office or place of Lord High Treasurer of Our United Kingdom of

Powers of Commission,

Great Britain and Ireland, to confirm and approve of all those Orders and Warrants which have been already signed by the late Commissioners of Our Treasury of Our United Kingdom of Great Britain and Ireland, and which are remaining unexecuted, and which unto you shall seem reasonable and for Our service, and to cause the same to be duly executed; and also to perform and execute all and every act and acts, thing and things, whatsoever, which heretofore might or ought to have been performed by the Commissioners of Our Treasury in Great Britain or Ireland respectively, except as aforesaid, in as ample manner and as fully and effectually to all intents and purposes as the Commissioners of the Treasury in Great Britain or Ireland respectively heretofore have done or might have done by virtue of any power or authority to them respectively belonging, or of any Act or Acts of Parliament, or any law, usage, or custom in force in Great Britain or Ireland respectively. And to the end Our pleasure in the premises may be the better effected, We do hereby require and authorize Our

or any two of them.

High Chancellor of Great Britain, or Our Keeper of the Great Seal of Our United Kingdom, or Our Commissioners for the Custody of the Great Seal of Our United Kingdom; and also Our High Chancellor of Ireland, or Our Keeper of the Great Seal there, or Our Commissioners for the Custody of the Great Seal there, and all other Officers, Ministers, and persons what-

soever for the time being whom these presents shall or may in anywise concern, to give full allowance of all things to be done by you Our said Commissioners, or any two or more of you, according to Our pleasure hereinbefore declared. In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the day of in the year of Our Reign.

By Warrant under the Queen's Sign Manual.

[To this the Great Seal is affixed.]

§ 2. Sign Manual Warrants.

(*a*) *Warrant as an executive act appointing First Commissioner of Works.*

VICTORIA R.

Whereas We being graciously pleased to give and grant during Our pleasure unto Our right trusty and well-beloved A. B. the office of First Commissioner of Works and Public Buildings, constituted and appointed under and by virtue of an Act passed in the fourteenth and fifteenth years of Our Reign entitled 'An Act, . . .[1]'

We do by these Our presents hereby constitute and appoint him the said A. B. to be First Commissioner of Works and Public Buildings during Our Pleasure, with all the interest, powers, titles, authorities, privileges, and duties appertaining unto and vested in the said office.

Given at Our Court at Windsor this day of in the Year of Our Reign.

By Her Majesty's Command.

(Countersigned by two Lords Commissioners of the Treasury.)

(*b*) *Warrant as an executive act, abolishing purchase in the army.*

VICTORIA R.

Whereas by the Act passed in the Session holden in the fifth and sixth years of the reign of King Edward VI, ch. 16, intituled 'Against buying and selling of offices,' and the Act passed in the forty-ninth year of the reign of George III, ch. 126, intituled 'An Act for the prevention of the brokerage and sale of offices,' all officers in Our Forces are prohibited from selling

[1] The Act is 14 & 15 Vict. c. 42, dealing with the management of Woods, Forests, and Land Revenues, and the direction of Public Works and Buildings, *ante*, p. 200.

or bargaining for the sale of any Commission in Our Forces, and from taking or receiving any money for the exchange of any such Commission under the penalty of forfeiture of their Commissions and of being cashiered, and of divers other penalties; but the last-mentioned Act exempts from the penalties of the said Acts, purchases or sales, or exchanges of any Commissions in Our Forces for such prices as may be regulated and fixed by any regulation made or to be made by Us in that behalf.

And whereas We think it expedient to put an end to all such regulations, and to all sales and purchases, and all exchanges for money of Commissions in Our Forces, and all dealings relating to such purchases, sales, or exchanges.

Now Our Will and Pleasure is, that on and after the first day of November in this present year, all regulations made by Us or any of Our Royal predecessors or any officers acting under Our authority, regulating or fixing the prices at which any Commissions in Our Forces may be purchased, sold or exchanged, or in any way authorizing the purchase or sale or exchange for money of any such Commission, shall be cancelled and determined.

Given at Our Court at Osborne, this twentieth day of July, in the thirty-fifth year of Our Reign.

By Her Majesty's Command.
EDWARD CARDWELL.

(c) *Warrant conferring Precedence on the Prime Minister.*

EDWARD R. & I.

Edward the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to our right trusty and right entirely beloved cousin and Councillor Henry Duke of Norfolk, Knight of Our most noble Order of the Garter, Knight Grand Cross of Our Royal Victorian Order, Earl Marshal, and our Hereditary Grand Marshal of England, Greeting.

Whereas We taking into Our Royal consideration that the precedence of Our Prime Minister has not been declared and defined by due authority, We deem it therefore expedient that the same should be henceforth established and defined.

Know ye therefore that in the exercise of Our Royal Pre-

rogative We do hereby declare Our Royal Will and Pleasure that in all times hereafter the Prime Minister of Us, Our Heirs and Successors shall have place and precedence next after the Archbishop of York.

Our Will and Pleasure further is that you Henry Duke of Norfolk to whom the cognizance of matters of this nature doth properly belong do see this Order observed and kept, and that you do cause the same to be recorded in Our College of Arms to the intent that Our Officers of Arms and all others upon occasions may take full notice and have knowledge thereof.

Given at our Court at Sandringham the second day of December nineteen hundred and five in the fifth year of Our Reign.

By His Majesty's Command,
A. AKERS DOUGLAS.

(*d*) *Warrant as an authority for affixing the Great Seal to the Ratification of a Treaty*[1].

EDWARD R.

Our Will and Pleasure is, that you forthwith cause the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to an Instrument bearing date with these Presents (a copy whereof is hereunto annexed) containing Our Ratification of a between Us and concluded and signed at on the day of 19 , by the Plenipotentiaries of Us and of duly and respectively authorized for that purpose. And for so doing this shall be your Warrant.

Given at Our Court of St. James's the day of 19 in the year of Our Reign.

By His Majesty's Command, (*Countersigned*)

To Our Right Trusty and Well-beloved Councillor

Our Chancellor of Great Britain

[1] This is an exceptional document: usually a sign manual warrant for affixing the Great Seal sets out (1) the authority, (2) the document to be sealed, (3) the purport of the document in a brief form called the docket (p. 51). The authority to seal powers connected with treaties does not pass through the Crown Office, as do most matters requiring the Great Seal.

(e) Warrant for affixing the Great Seal to the appointment of a Lord Lieutenant.

EDWARD R. & I.

Edward the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith TO Our right trusty and well-beloved Councillor

Our Chancellor of that part of Our said United Kingdom called Great Britain GREETING; WE WILL AND COMMAND that under the Great Seal of Our said United Kingdom remaining in Your custody You cause these Our Letters to be made forth Patent in form following:

Edward the Seventh by the grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith TO

GREETING; WHEREAS by the Militia Act 1882 it was (amongst other things) enacted that it should be lawful for Us with regard to Great Britain and for the Lord Lieutenant with regard to Ireland from time to time to appoint Lieutenants for the several Counties in the United Kingdom NOW KNOW YE that We by virtue of the said Act of Parliament HAVE nominated and appointed and by these presents DO NOMINATE AND APPOINT You the said

to be Our Lieutenant

of and in

and of all cities boroughs liberties places incorporated and privileged and other places whatsoever within Our said

and the limits and precincts

of the same for and during Our Pleasure in the Room of

AND WE DO by these Presents GIVE AND GRANT unto You full power and authority to do execute transact and perform all and singular the matters and things which to a Lieutenant to be nominated and appointed by Us for the said

do by force of any Law in anywise belong to be done executed transacted or performed AND THEREFORE WE DO HEREBY COMMAND YOU that according to the tenor of

these Our Letters Patent you proceed and execute all those things with effect IN WITNESS &c. WITNESS &c.

GIVEN at Our Court at the day of One thousand nine hundred and in the year of Our Reign.

BY HIS MAJESTY'S COMMAND.

H. J. Gladstone.

MAY IT PLEASE YOUR MOST EXCELLENT MAJESTY This contains a Warrant to the Lord High Chancellor to pass Letters Patent under the Great Seal whereby Your Majesty is pleased to nominate and appoint Your Lieutenant of and in during Your Majesty's pleasure in the room of

And this Warrant is prepared according to Your Majesty's Royal Command.

Signified by Mr. Secretary Gladstone.

MUIR MACKENZIE,

Clerk of the Crown in Chancery.

§ 3. Commissions and Orders.

(*a*) *Commission under Sign Manual for instituting an Inquiry.*

EDWARD R. & I.

Edward the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith to

A. B. C. D. E. F.

Whereas we have deemed it expedient that a Commission should forthwith issue to inquire into

Here the Subjects are Set Out.

Now know ye that We reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint the said A. B. C., &c. to be our Commissioners for the purposes of the said inquiry.

Then follow the Powers Conferred, e. g. to Call Witnesses, and Inspect Places, &c.

And Our further Will and Pleasure is that you do with as

little delay as possible report unto Us under your hands and seals or the hands and seals of any five or more of you your opinion upon the matters herein submitted for your consideration.

Given at Our Court at the day of 19 , in the year of Our Reign.

By His Majesty's Command.

(*b*) *Form of Commission on First Appointment to Permanent Rank in the Army.*

EDWARD R. & I.

Edward by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, &c.

To Our Trusty and Well beloved

We reposing especial trust and confidence in your Loyalty, courage and good conduct, do by these presents constitute and appoint you to be an Officer in Our Forces from the day of 19 . You are therefore carefully and diligently to discharge your duty as such in the rank of or in such higher rank as We may from time to time hereafter be pleased to promote or appoint you to, of which a notification will be made in the London Gazette, and you are at all times to exercise and well discipline in arms both the inferior Officers and Men serving under you, and use your best endeavours to keep them in good order and discipline. And We do hereby command them to obey you as their superior Officer, and you to observe and follow such orders and directions as from time to time you shall receive from Us or any your superior Officer, according to the rules and discipline of war, in pursuance of the trust hereby reposed in you.

Given at Our Court at Saint James's the day of 19 , in the Year of Our Reign.

By His Majesty's Command.

(c) *Royal Order for Public Supply Services.*

(For Her Majesty's Royal Sign Manual.)

Supply Services.

VICTORIA R.

Whereas the several sums mentioned in the Schedule hereunto annexed have been granted to Us [*by Act, or by Resolution of the House of Commons, as the case may be*] to defray the expenses of the Public Supply Services therein specified, which will come in course of payment in the year ending the 31st March, 18— ; Our Will and Pleasure is, that you do, from time to time, authorize the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, to issue or transfer from the Account of Our Exchequer at the said Banks to the Accounts of the persons charged with the payment of the said Services, such sums as may be required, from time to time, for the payment of the same, not exceeding the amounts respectively stated in the said annexed Schedule.

Provided that such issues or transfers shall be made out of the Credits granted or to be granted to you, from time to time, on the Account of Our Exchequer at the said Banks, by the Comptroller and Auditor-General, under the authority of the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39, s. 15), and shall not exceed in the whole the amount of the Credits so granted out of the Ways and Means appropriated by Parliament to the Service of the said year.

Given at Our Court at this day of 18

By Her Majesty's Command,

To be countersigned by two Lords of the Treasury.

To the Commissioners of Our Treasury.

SCHEDULE.

Supply Services for which voted or granted.	Amount.	Resolutions reported.
	£ s. d.	

(d) Order for a Free Pardon.

EDWARD R. & I.

Whereas A. B. was, at the Assizes holden at Chester in and for the County of Chester, on 1st January, 1907, convicted of Arson and sentenced to ten years' penal servitude.

We in consideration of some circumstances humbly represented unto Us, are Graciously pleased to extend Our Grace and Mercy unto him and to Grant him Our Free Pardon for the offence which he stands so convicted. Our Will and Pleasure therefore is, that you cause the said A. B. to be forthwith discharged out of custody.

And for so doing this shall be your Warrant Given at Our Court at St. James's the twenty-ninth day of February 1907, in the seventh Year of Our Reign.

To Our Trusty and Well beloved The Governor of Our Prison at Dartmoor and all others whom it may concern.

By His Majesty's Command.

(*Signed*)

H. J. GLADSTONE.

§ 4. Oaths.

For the *Coronation Oath* see p. 236.

For the *Privy Councillor's Oath*, see page 138.

The Oath of Allegiance.

I do swear that I will be faithful and bear true allegiance to His Majesty King Edward, His Heirs and Successors according to Law.

So help me God.

The Official Oath.

I do swear that I will well and truly serve His Majesty King Edward in the Office of

So help me God.

The following are the persons who are required to take this oath by 31 & 32 Vict. c. 72.

ENGLAND.

First Lord of the Treasury.
Chancellor of the Exchequer.
Lord Chancellor.
President of the Council.
Lord Privy Seal.
Secretaries of State.
First Lord of the Admiralty.
Chief Commissioner of Works and Public Buildings.
President of the Board of Trade.
Lord Steward.
Lord Chamberlain.
Earl Marshal.
Master of the Horse.
Commander-in-Chief.
Chancellor of the Duchy of Lancaster.
Paymaster-General.
Postmaster-General.
Secretary for Scotland by 48 & 49 Vict. c. 61, s. 3.
The President of the Board of Agriculture by 52 & 53 Vict. c. 30, s. 8.
The President of the Board of Education by 62 & 63 Vict. c. 33, s. 8.

[The President of the Local Government Board must, it is presumed, be required to take the Oath, as the President of the Poor Law Board was by the Act of 1868, but it is not so specified in the Act which constitutes his office.]

SCOTLAND.

The Lord Keeper of the Great Seal.
The Lord Keeper of the Privy Seal.
The Lord Clerk Register.
The Lord Justice Clerk.

IRELAND.

The Lord Lieutenant.
The Lord Chancellor.
The Commander of the Forces.
The Chief Secretary for Ireland.

For England the oath is tendered by the Clerk of the Council and taken in the King's presence in Council or otherwise as he may direct.

For Scotland the oath is tendered by the Lord President of the Court of Session at a sitting of the Court.

For Ireland the oath is tendered by a Clerk of the Council and taken at a meeting of the Privy Council in Ireland.

The Judicial Oath.

I do swear that I will well and truly serve our Sovereign Lord King Edward in the Office of
and I will do right to all manner of people after the laws and usages of this realm without fear or favour, affection or ill-will.

This oath is required of the Lord Chancellor and all the judges of the Supreme Court of Judicature, in England and Ireland, by the Recorders of London and Dublin. By the Lord Justice General and President of the Court of Session, the Lord Justice Clerk, the Judges of the Court of Session, and the Sheriffs in Scotland, and by Justices of the Peace for Counties and Boroughs in the three kingdoms.

In all places and for all purposes in which an oath is required by law an affirmation may now be made under the provisions of 51 & 52 Vict. c. 46.

INDEX

A.

Aberdeen, Lord :
Coalition Government of, 39, 123.
Acton, Lord, 97.
Act of State :
ministers' responsibility for, 46.
Addington, Mr., 105, 106, 117, 130.
Admiral, Lord High :
an office in commission, 190.
Admiralty, Board of :
how constituted, 191–3.
its duties, 191, 192.
how distributed, 192, 193.
secretaries to, 193.
how concerned with harbours, 198.
Admiralty, First Lord of :
his relation to Board, 191, 192.
a Cabinet Minister, 210.
First Sea Lord, 193.
Africa :
powers of High Commissioner for South Africa, 149.
Order in Council for, 149.
Agriculture, Board of :
took some duties from Privy Council, 149.
its creation and duties, 201, 202.
President of, 201.
right to representation in Cabinet, 210.
Albert, Prince, of Saxe Coburg Gotha :
his constitutional position, 255, 256.
Alien :
disabilities of, 140, 239-42.
Allegiance :
meanings of, 4, 238.
oath of, 238, 268.
duty of, 238, 239.
natural and local, 242.
Althorp, Lord, 127.
Anne, Queen :
her choice of ministers not free, 37.
her presence at Cabinet meetings, 40.
her dealings with foreign ministers, 42.
her correspondence with Bolingbroke, 94.
Anne, Queen :
action of the Council in her last illness, 96.
Anointing :
in coronation service, 237.
Archbishop of Canterbury :
was a member of Cabinet, 86, 87, 100, 101.
is a member of Board of Trade, 195.
Argyll, Duke of, 124.
Arlington, Earl of, 81, 113.
Army, Standing :
fear of, created by Commonwealth, 31.
declared unlawful, 33
how legalized, 34.
warrant for abolition of purchase in, 261.
Ashley, Lord, 81.
Attorney-General :
a Councillor of the Crown, 207.
not necessarily of Privy Council, 207.
his duties, 207.
his *fiat* for use of Great Seal, 56.

B.

Bacon, Lord :
on the duty of judges, 30.
on the Star Chamber, 73 *n.*
Bagehot, Mr. :
on the permanent Civil Service, 219.
Balfour, Mr. :
his ministry, 127, 133.
Bankruptcy :
formerly under jurisdiction of Chancellor, 152.
a department of Board of Trade, 197.
Baron :
of Exchequer, 174.
Barré, Colonel, 107.
Bath, Lord, 104.
Beaconsfield, Lord :
describes himself as 'Prime Minister of England,' 127.
Bedchamber Question, 125.
Bill for affixing Signet, 55.
Bill of Rights :
general character, 32, 33.

Bill of Rights :
limitation of succession, 232.
religious disabilities created by, 232, 233.
Board :
consists of President and Parliamentary Secretary, 78.
of Admiralty : *see* **Admiralty.**
of Agriculture : *see* **Agriculture.**
of Education : *see* **Education.**
of Trade : *see* **Trade.**
Treasury : *see* **Treasury.**
Bolingbroke :
correspondence of, 94, 163.
British Museum :
votes for, 217 *n.*
Brougham, Lord, 121.
Burke :
his criticism on Board of Trade, 195.
Burnet, Bishop, 65, 66, 67, 71, 82, 92, 113.
Bute, Earl of :
his introduction to Cabinet, 98 *n.*
his expulsion of Newcastle, 102.

C.

Cabal, the, 82.
Cabinet :
in reign of Charles I, 67, 69.
in reign of Charles II, 40.
absence of King from, its effect, 40, 41, 97, 98.
in reign of William III, 84-9.
objected to by Commons, 90, 91.
of Anne, 94-6.
of George II, 100.
the motive power in the Executive, 60, 97, 141, 142.
grew out of Privy Council, 79-83.
how designated, 98, 105.
how summoned, 99.
confused with Lords of the Council, 93.
and with Committees of Council, 94.
numbers of, 100-101, 118, 119.
composition of, 100, 101, 208-10.
efficient and non-efficient, 101-5.
the Grand Cabinet, 105.
collective responsibility of, 107-9, 131.
unanimity of, in advising Crown, 109, 110,
secrecy of, 110, 111, 124.
inner circle of, 122, 123.
committees of, 122.
entitled to royal confidence, 128, 129.
how far dependent on Parliament, 130, 133, 141.
Cabinet :
duties of, as to legislation, 132.
as to executive government, 60, 141.
ministers who are members of, 154, 156, 163, 179, 192, 208, 210.
minutes of, 102, 110, 111.
committees of, 122.
an inner Cabinet, 123.
Cachet :
secretarial seal used in Foreign Office, 168-70.
Camden, First Lord :
his disavowal of colleagues, 106.
Canning, George :
his relations with George IV, 43, 110.
Carteret, Lord, 38, 115.
Catholic, Roman :
disabilities of, 155, 232, 233.
Cawdor, Lord :
attended meetings of Cabinet before sworn as Privy Councillor, 112.
Cecil, Sir R. :
treatise on secretary of estate, 161.
Chamberlain :
antiquity of office, 142.
its former importance, 20, 142, 143.
held by Lord Sunderland, 113, 144.
present duties, 142.
King's Chamberlain, 143, 144
Lord Great Chamberlain, 142.
Chamberlain of Exchequer, 144, 173.
Chancellor :
of Edward the Confessor, 10, 144, 150.
his duties in Exchequer, 10, 179.
to be nominated in Parliament, 20.
responsible for use of Great Seal, 55, 56, 154.
protected by Statute of Treasons, 243.
his place in the Lords, 75.
his duties, 150-4.
departmental, 150.
judicial, 62, 151.
consultative, 151.
a Cabinet office, 210.
and subject to religious disability, 155.
Chancellor of Exchequer : *see* **Exchequer.**
Chancellor of the Duchy of Lancaster : *see* **Lancaster.**

Chancery: *see* **Crown Office, King.**
its separation from Exchequer, 15, 62, 158.
its staff, 151.
its dealing with charities, 216.
Charity Commission:
its duties, 213–16.
Charles I:
his exercise of prerogative, 30.
Charles II:
his corruption of Parliament, 32, 81.
his Inner Council, 40, 81, 82.
his Privy Council, 80, 82.
his Council of Trade, 194.
his ministers more closely connected with Parliament, 77, 79.
Charter:
the Great, 9, 14.
of pardon, 21.
of parliamentary boroughs, 26, 32.
limitations of prerogative as to, 34.
issued by letters patent, 53.
after Order in Council, 57.
Cholmondeley, Lord:
dismissed for opposition at Council, 96.
Churchill, Lord Randolph, 127, 130.
Civil Service:
a disqualification for Parliament, 125, 217, and *n.*
the permanent, 185, 216–20.
its relation to political leaders, 217–20.
Civil Service Commission, 186, 212.
Clarendon:
constitutions of, 13.
Assize of, 13.
Clarendon, Earl of, 81, 82, 113.
Clerk:
of the Signet, 55, 169.
of the Council, 99, 148.
of the Crown, 51, 154.
Coke, Sir E.:
definition of proclaiming power, 29.
on the rule that the King can do no wrong, 5.
on the Councils of the Crown, 61.
on the Court of Requests, 70.
Colchester, Lord, Speaker of House of Commons, 105.
Colonies:
Secretary of State for, 164–7.
— formerly also for War, 166, 167.
— his use of seals, 168–70.
Commission:
of Customs, 186, 187.
of Inland Revenue, 186, 187.
of Woods and Forests, 186, 187.
Charity, 213–16.
Ecclesiastical, 213.
Endowed Schools, 214.
of Escheat, 57.
of peace, 140, 153.
for executing royal powers, 52, 58, 249.
for executing office of Chancellor, 144, 155.
of Lord High Admiral, 144, 190.
of Lord Treasurer, 176.
as a mode of appointment to office, 221.
under sign manual, 52, 259, 265.
under sign manual and signet, 52, 169.
of colonial governor, 52.
of officer in army, 52, 59, 221, 252.
— form of, 266.
of officer in navy, 221.
Commissioners:
of Works, 200.
— form of warrant on appointment of commissioner, 261.
of Woods and Forests, 105.
of Customs, 185, 187.
of Inland Revenue, 185, 187.
Committee:
of the Privy Council, 69–71, 78, 80, 81, 98, 137.
Foreign, 80, 83, 95.
Secret, of Charles II, 81, 82.
Judicial, of the Privy Council, 137.
for trade, 83, 138, 195.
for education, 203.
for Channel Islands, 137.
for Universities, 138.
of Cabinet, 122.
for Imperial defence, 135.
Commons, House of:
in relation to supply, 19.
and to public accounts, 19.
its relation to ministers, 20, 36, 81, 82, 132, 133.
defeat in, when first a cause of ministers' retirement, 132.
Comptroller and Auditor-General:
his relation to Treasury, 185.
Concilium:
Commune:
its composition, 9, 11, 13.
its relation to Parliament, 14.
its control of choice of ministers, 16, 20.
as referred to by Hale, 61, 62.

Concilium :
Magnum :
its reappearance on demise of Crown, 235.
how far the same as House of Lords, 61, 62.
Ordinarium, 65, 66, 73, 207 *n.*
Consort : King or Queen, 256, 257.
Constable, Lord High, 143.
Controller :
of Navy, 192.
of the Household, 143.
Controller and Auditor-General, 185.
Cornwall, Duchy of :
belongs to eldest son of reigning sovereign, 257.
Coronation : *see* **Oath.**
gave religious sanction to royal title, 7, 14, 17, 227.
a compact between King and people, 227.
forms of, 235-8.
Council :
of the Crown :
its gradual formation, 15, 61.
necessary to royal action, 7, 18, 63.
Councils described by Coke and Hale, 61, 64.
judicial functions, 20, 25, 26, 68, 74.
distinct from Star-chamber, 72.
limited in 1641, 31, 74.
choice of, by Parliament, 22, 64.
powers of, under Lancastrians, 22, 23.
— under Tudors, 24.
Great, when summoned, 63, 94.
Privy : King acts with, 18.
is present at meetings of, 40.
members of, how appointed, 47, 138.
and dismissed, 47, 139.
acts through Orders in Council, 50.
first use of term, 65 *n.*
records of proceedings in, 65, 79.
divisions of, 65.
members of, in Tudor period, 66, 67.
its connexion with Parliament, 75.
dignity of its members, 75.
their presence in Commons, 75.
its united action, 77.
reconstitution, by advice of Temple, 82.
distinct from Cabinet, 98.
form of summons to, 99.
Oath of Councillor, 110, 138, 139.
Council, Privy :
its duties reduced by existence of Cabinet, 77.
— by creation of new offices, 148, 149, 170, 171, 194.
— by growth of Secretariat, 163.
disqualifications for, 140, 240, 256.
composition of, 139.
business transacted in, 148, 149.
persons summoned, 148.
its duties in advising as to charters, 57, 148.
Committees of, 67, 69, 78, 79, 80, 83, 98, 137, 138 : and *see* **Committee.**
Council of Regency : *see* **Regency.**
Counsel :
King's or Queen's, learned in the law, 65.
Court :
Common law courts, and the Council, 22, 23, 26.
— and the Crown, 21, 31.
— their severance from Curia, 62.
of Requests, 70.
Crimean War :
and army administration, 166.
Cromwell, Thomas, 157, 160.
Crown : *see* **Prerogative.**
sources of its power, 2, 3, 4.
connected with landownership, 8.
regarded as property, 17
in Council and in Parliament, 18, 19, 20.
moral irresponsibility of, 41.
legal irresponsibility of, 45.
its pleasure, how expressed, 55.
in what forms, 50-4.
in England, ratifies treaties, 53.
practical influence of, 44, 59.
demise of : *see* **Demise of Crown.**
Crown, Clerk of, in Chancery, 154.
Crown Office, 153.
Curia Regis :
its growth within the *Concilium,* 10, 11, 61, 62.
the origin of executive offices, 11, 15.
— of judicial institutions, 13, 14.
— of the King's Council, 15.
Customs :
Commissioners of, 185, 212.

D.

Danby, Earl of, 41, 92, 93.
Demise of Crown :
formerly caused *interregnum,* 227, 251.
effect on existence of Parliament, 251.

Demise of Crown:
effect on tenure of office, 252, 253.
legislation of 1901, 254.
Denizen:
how made, 242 *n.*
Departments of Government:
their growth, 142, 143.
division of, into executive and regulative, 146.
Dicey, definition of prerogative, 3.
Dispensing power:
its restriction, 32, 34.
Dissolution:
of Parliament a personal act of Sovereign, 47.
Divine Right:
theory of, 29.
ended with Bill of Rights, 33.
Docket:
form of, 51.
Dundas, Mr., 117, 126
Dunkirk:
Sale of, 81, 96.

E.

Ealdorman:
his position and duties 7, 10.
Ecclesiastical and Church Estates Commission: *see* **Commission.**
Education:
Board of, 202-6.
Scotch, 170.
Departments concerned with, 205, 206.
Committee of Privy Council on, 203.
Edward the Confessor:
his chancellor, 10, 144, 150.
his title, 225.
Edward I:
Prerogative and Parliament in his reign, 19.
reigned before he was crowned, 227.
Edward II:
magnates claim to choose his ministers, 20.
date of commencement of his reign, 227.
his deposition, 228, 250.
Edward III:
Statute of as to Treasons, 243-5.
regency during his minority, 247.
Councils employed by him, 63.
Edward IV:
reigned by hereditary right, 4, 228.
forbidden to effect arrest in person, 28.
character of his Councils, 67.
Edward V:
provision for his minority, 247.
Edward VI:
his minority, 247.
his Councils, 24, 27, 28, 66, 67, 72.
EDWARD VII:
his influence in Foreign policy, 129.
his accession and coronation, 234-7.
Eldon, Lord, 105.
Electric Lighting:
under control of Board of Trade, 198.
Elizabeth:
creation of boroughs by, 27.
her order insufficient for issue of treasure, 28.
the Star-chamber in her reign, 72.
her Secretaries, 161.
Ellenborough, Lord, 107.
Endowed Schools:
Commission, 214.
Exchequer:
its relation to Curia, 11.
its severance from the Chancery, 15, 62, 174.
— and from Treasury, 175.
of Account, 173, 174. 176, 177, 181.
of Receipt, 173, 175.
Exchequer:
Chancellor of, 175, 179 82.
varying importance of office, 179, 210.
character of his duties, 180.
in appointment of sheriffs, 181.
a cabinet office, 210.
his control of estimates, 180, 184.
Exchequer:
Treasurer of, is Lord High Treasurer, 175.
Under Treasurer of, is Chancellor of Exchequer, 179.
Executive: *see* **Cabinet, Council, Crown, Ministers.**
as distinct from legislature, 1, 2.
where it resides, 141, 142.

F.

Fealty:
nature of, 239.
Feudalism:
and theory of prerogative, 4, 8.
strengthened the Crown, 16.
Fiat:
of Chancellor, 56.
of Attorney-General, 56.

Foreign affairs:
sovereign takes no independent action in, 43.
Secretary of State for, 43, 118, 121, 126, 129, 164, 165, 167, 169.
his duties to Crown, 43. 129.
Foreign Committee:
of the Privy Council, 79, 80, 83, 94.
Foreign Office:
when made a separate department, 165.
seals used in, 169.
Fortescue, Sir John:
Governance of England, 22, 24.
Fox, C. J.:
on Regency question, 249.
on ministerial responsibility, 107, 108.
his coalition with North, 117.
the first Foreign Secretary, 165.

G.

Gas:
and water companies controlled by Board of Trade, 197.
George I:
his acceptance of Whig ministry, 37, 97.
his non-attendance at Cabinet, 40, 97.
his commissions to Lords Justices, 59.
his quarrels with his son, 257.
George II:
tried to choose his own ministers, 38.
his martial instincts, 42.
his Cabinets, 42, 100.
his relations with Walpole, 126.
restraint on marriage of his descendants, 257.
George III:
his influence in choice of ministers, 38, 43, 131.
his insanity, provision for, 78, 79.
and the Royal Marriage Act, 257.
size of his first Cabinets, 101, 102.
disloyal to his ministers, 104, 118, 131.
resisted party combinations, 116, 117.
George IV:
his influence in choice of ministers, 38.
his independent action restrained, 43.
substitute for his sign manual, 59.
George, of Denmark, 256, 257.
Gladstone, Mr.:
not consulted as to his successor in 1894, 39.
his opinion on the Palmerston-Russell controversy, 121.
offices held in combination, 177.
his Cabinet of 1886, 210.
Secretary of State without seat, 211.
Godolphin:
his war policy, 36.
as first minister, 114.
Governor:
how appointed, 52.
Grafton, Duke of:
his ministry, 103, 110.
his disavowal of its action, 106.
divulged what passed at Cabinet meetings, 110.
Privy Seal without a seat in Cabinet, 103, 104.
his idea of Prime Minister's office, 117.
Graham, Sir James:
at the Admiralty, 190.
Grand Remonstrance, 75, 76.
Granville, Lord, 39, 111.
Grenville, George:
composition of his Cabinet, 102, 107.
Grenville, Lord:
Minutes of his Cabinet, 110.
Grey, Earl:
and William IV, 109, 110, 124, 128.
his retirement, 127.
Guardian of the Kingdom, 246.
Guilford, Lord, 83, 93.

H.

Habeas Corpus:
writ of, 74, 140.
issued by Chancellor, 152.
Hale:
Councils described by, 61, 65, 66.
Hale's Case, 33.
Hallam, Mr.:
views on Cabinet responsibility, 108.
Hampden's Case, 33.
Hanover:
citizens of, 239.
Harbours:
control of, 198.
Hardwicke, Lord:
his description of Cabinets, 100, 101, 106.
Hardwicke, Second Lord:
and Rockingham Cabinet, 103.

Harley:
reluctantly dismissed by Anne, 37, 114.
attempted murder of, 94 *n.*
first Prime Minister so called, 114.
Heinsius, Pensionary:
correspondence of William III with, 84.
Henry II:
his administration, 13.
Henry III:
effect of his minority, 5, 15, 62, 63.
the magnates claim to choose his ministers, 15, 20.
his title, 226.
provision for his absence from kingdom, 246.
Henry IV:
nomination of his ministers, 22.
his title, 228.
Henry VI:
character of his reign, 22, 23.
provision for his minority, 247.
— for his insanity, 248.
Henry VII:
his title, 229.
Henry VIII:
his Council, 24, 66.
powers given him by Parliament, 24, 25.
used stamp in lieu of sign manual, 58, 59.
his will, 229.
his Council of Regency, 247.
ordinance for his household, 69.
his secretaries, 159, 160, 161.
Herbert, Dr. J.
on duties of Secretaries of State, 162.
Hervey, Lord:
his account of Cabinets, 101.
Homage:
of peers at coronation, 237, 238.
nature of, 239.
Home Office:
its origin, 164-7.
Household:
offices in, how far political, 125, 143.
character of, 142, 144.

I.

Impeachment, 20, 22, 42, 75, 76, 88, 107.
Imperial Defence Committee, 136.
India:
Secretary of State for, 167.
Governor-General of, 52, 221.
Infancy:
of sovereign, 247.
Inland Revenue:
Commissioners of, 185, 212.
Insanity:
of sovereign, 241, 249.
Instructions:
to Colonial Governor, 169.
Investiture:
part of Coronation ceremony, 237.
Ireland:
union with, 171, 233.
Chancellor of, 155, 210.
Treasury of, 176.
Post Office of, 188.
Lord Lieutenant of, 171, 172, 209.
Chief Secretary for, 171, 172.
Parliament of, 171.
Privy Council of, 172.

J.

James I:
forbidden to sit as judge, 28.
his title to the throne, 229.
James II:
legal results of his flight, 4, 230, 231.
his dealing with the Bench, 32.
his supersession, 230, 231, 250.
Judges:
tenure of office, 30, 32, 33, 222.
action under the Stuarts, 31.
how appointed, 153.
Junto, Lords of the, 60, 79.
Committee for Foreign Affairs referred to as, 79.
Jury:
early uses of, 14.
Justice of the Peace.
how appointed, 153.
Justiciar:
his duties, 10, 144.
disuse of office, 174, 246.

K.

Keeper of the Great Seal, 155.
King: *see* **Crown, Prerogative:**
early notions respecting, 3, 4.
his legal irresponsibility, its effect, 5, 41, 45, 46.
his command cannot excuse a wrong, 41, 46.
protected by Statute of Treasons, 243.
provision for incapacity of, 245-50.
control over family, 257.
practical influence of, 49.
King Consort, 256, 257.

King's Counsel: *see* **Counsel.**
King's Peace: *see* **Peace.**

L.

Ladies of Household, 125.
Lancaster, Duchy of:
its Chancellor, 119, 206, 210.
— Courts, 206.
Land Commissioners, 202.
Lansdowne, Lord, 112.
Law Officers:
of United Kingdom, 55, 207.
Leader of the House, 77, 120, 135. 177, 182, 208, 209.
Legislation:
duty of ministers as to, 134.
Letters Patent:
under Great Seal, 50, 52, 176, 187. 190, 221, 247, 248.
uses of, 52, 53.
how granted, 55 *n.*
how revocable, 223.
of Secretary of State, 159, 168 *n.*
form of, 259.
Licence, Royal:
to elect a bishop, 53.
Local Government Act, 201.
Local Government Board:
creation of, 201.
President of, 201, 210.
Secretary to, 201.
duties of, 149, 201.
Lord Advocate:
for Scotland, 170, 207.
Lord Lieutenant:
of Ireland: *see* **Ireland.**
of county, his duties as to Commission of Peace, 153.
form of warrant on appointment of, 264.
Lords, House of:
its part in proclaiming a new Sovereign, 235.
a Council of the Crown, 62, 136.
Lords Justices:
for the Kingdom, 58, 246.
Lords of the Council, 94, 99, 147, 149.
Loughborough, Lord:
his attendance at Cabinet, 105, 118.
Lunacy:
Chancellor's jurisdiction in, 152.

M.

Macaulay, Lord, 132, 233.
McKenna, Mr., 112 *n.*
Magna Charta, 11, 14.
Mansfield, Lord:
as a Cabinet Minister, 103, 104.
Marlborough, Duke of, 30, 37, 100
Marriages, Royal, 255.
Mary I:
used a stamp for sign manual, 58, 59.
Mary II:
offer to her of the throne, 232.
her powers in absence of King, 256.
Master of the Ordnance:
a member of the Cabinet, 85, 86, 94, 119.
Master of Posts:
office of, 187.
Melbourne, Lord:
his treatment by William IV, 38, 39.
on disclosures of Cabinet secrets, 111.
his relations with his colleagues, 121, 124, 127.
his ministry and legislation, 132.
Merchant shipping:
and Board of Trade, 198, 199
Mercy, prerogative of:
used on advice of ministers, 44.
Ministers of the Crown:
appointment of by *Commune Concilium*, 16, 20.
in Parliament, 20, 22.
how controlled by Parliament, 35–8.
their control of policy, 39–43.
relations of, to Crown, 48, 49, 128–30.
their responsibility for policy, 41, 42.
— and for acts of administration, 44–59.
cannot plead royal orders, 46.
mode of appointment, 47, 168. 221.
proposed exclusion from Commons, 91.
closer relations with Parliament, 75, 77.
presence in the Commons, 75.
responsibility, collective, 107–9.
relations with Prime Minister, 119–27.
with one another, 126, 127.
causes of retirement, 132, 133.
Minutes:
Cabinet, 102, 110.
Treasury, 178.
Misprision of Treason, 242 *n.*
Molesworth, Sir William:
took notes of what passed in the Cabinet, 111.

N.

Nationality:
how acquired and lost, 239, 240.

Naturalization, 238, 239, 240, 241.
Navy Board, 190.
Newcastle, Duke of, 101, 102, 131.
Norman Kings:
their administration, 8-12.
their title, 226.
their exchequer, 173.
Normanby, Lord, 85, 86, 126.
Normandy, Duke of:
an absolute monarch, 8 *n.*
North, Lord, 38.
North, Roger, his Life of Guilford. 83.
Nottingham, Lord Chancellor, 93.

O.

Oath:
at Coronation, 227, 233.
form of, 236.
for security of Scotch Church, 235.
of Privy Councillor, 99, 110.
form of, 138, 139.
of office, 254.
of allegiance, form of, 268.
official form of, 268.
— by whom taken. 269
judicial form of, 270.
Office:
executive and regulative, 144.
how conferred, 47, 53, 221.
tenure of, at pleasure or during good behaviour, 220, 221, 222.
removal from, on address of Parliament, 222.
a disqualification for a seat in Commons, 35.
subject to re-election, 253.
Order:
royal, for expenditure on supply services, 51, 267.
Order in Council:
a mode of expressing royal pleasure, 50.
an authority for use of Great Seal, 56, 57, 58.
forms of, 50.
uses of, 98, 147-9.
a mode of conferring office, 221.
for non-disclosure of matters treated in Council, 110.
for distribution of business in War Office, 149.
for assignment of powers in Africa, 149.
Oxford, Provisions of, 16.

P.

Palmerston, Lord:
his relations with Lord J. Russell, 121, 126.
Palmerston, Lord:
consults his Cabinet as to appointments, 124.
his dismissal in 1851, 43, 126, 129.
censured by William IV, 129.
royal memorandum addressed to, 129.
and Chancellorship of Exchequer, 179.
Pardon:
not pleadable to impeachment, 34, 42, 46, 92.
— nor to civil wrong, 46.
form of, 51, 268.
Parliament:
defines prerogative, 16-19.
controls choice of ministers, 36-9
prorogation and dissolution of, 44, 47.
confers title to throne, 228-32.
treason to intimidate, 244.
in appointment of Regent, 247, 249.
on Demise of Crown, 251.
office-holders removable on address of, 222.
Irish, 249.
Long, 74.
Model, 19.
Parliamentary:
counsel, 186.
secretaries, 209, 210.
— to Treasury, 182.
— to Admiralty, 191.
— to Board of Trade, 195.
— to Local Government Board, 201.
— to Board of Education, 204, 209.
Partition Treaty, 42, 84, 89.
Party:
Government by, 36, 37, 38, 39, 90, 97, 112, 133-5.
Patent: *see* **Letters Patent.**
for inventions, 197.
Paymaster-General, 186, 191.
Peace, the King's:
ceased with his life, 145, 227.
proclaimed by new King, 227, 228.
commission of, 140, 153.
Peel, Sir Robert:
views as to ministerial responsibility, 44.
and George IV. 44.
and William IV, 44, 110.
Peer:
form of summons, 57, 136.
a councillor of the Crown, 137.
homage of, at coronation, 237.

Pelham, Henry, 101, 104, 116, 177.
Petition of Right:
formerly preferred in Chancery, 152.
Petty Bag Office, 223.
Philip of Spain:
as King Consort, 255.
Pitt, William:
Earl of Chatham, 38, 102, 157, 177.
Pitt, William:
as to Regency, 249.
and position of Prime Minister, 117.
and George III, 126, 130.
Poor Law Board, 201.
Portland, Earl of, 85, 89.
Portland, Duke of, 177.
Post Office:
as a department of government, 187–90.
Prerogative, Royal:
definition of, 2, 16.
sources of, 3.
strength of, under Edward I, 17.
— Henry VIII, 27.
in relation to Parliament, 12, 13, 16.
how far extended by Henry VIII, 27.
and Bill of Rights, 33.
and choice of ministers, 35–8.
and choice of policy, 39–47.
in administration, 44–54.
of mercy, 44, 93.
Prime Minister:
definition of, 97, 112, 113.
title when first used, 114.
chief ministers of Charles II, 113.
— of William III, and Anne, 113, 114.
— of George II, 115.
a term of reproach, 116.
need of not recognized, 117.
his colleagues, 119.
mode of appointment, 120.
his powers and duties in respect of them, 121, 122, 123, 124.
usually first Lord of Treasury, 120, 176.
precedence of, 127, 262.
variety of his duties, 120, 136.
controls size of Cabinets, 210.
Prince Consort, 43, 44, 257.
Privy Council: *see* **Council**.
President of, 75, 148, 204, 210.
Clerk of, 99, 148, 181.
Committee of, for Education, 203, 204, 216.
Vice-President of, 203.
Privy Council:
Judicial Committee of:
— hears appeals as to Endowed Schools, 216.
Irish, 172.
Privy Councillor, 137–40.
Privy Seal: *see* **Seal**.
Privy Seal, Lord, 156, 157.
a minister to be nominated in Parliament, 20.
in Courts of Requests and Star-chamber, 68–71.
his place in the Lords, 75.
usually a Cabinet office, 156, 210.
but not necessarily, 103, 104.
Procedure:
effect of rules, 135.
Proclamation:
under Henry VIII, 25.
power to issue, 29.
mode of making, 52, 57.
its uses, 50, 147.
form of, 66.
Protector of the Realm:
office of, 246, 247, 248.

Q.

Queen: *see* **Victoria**.
dowager, 255.
regnant, 255.
consort, 255.
Quo Warranto:
proceedings in nature of, 223.

R.

Railways:
controlled by the Board of Trade, 197.
Recognition, The:
at coronation, 236, 237.
Recognitors, Jury of, 14.
Reform Bill (1832), 38, 129, 132, 134.
Regency:
cases of, 246, 247, 248.
Council of, 15, 22, 74.
Regency bill, 247.
Remonstrance:
the Grand, 75, 76, 80.
Requests, Court of, 69, 70.
Masters of, 70.
Responsibility of Ministers:
individual, 87–91.
collective, 92, 106–9.
Richard II:
his minority, 20, 64.
his refusal to name his minister to Commons, 20.
his Councils, 22, 247.
his deposition, 228, 250.

Richmond, Duke of, 109.
Riot Act:
its effect on law of treason, 244.
Rochester, Earl of:
on ministerial responsibility, 42, 44, 95.
Rockingham, Marquis of:
his party, 38.
his ministries, 103, 105, 107, 118, 125.
Rome, Church of:
communion with, a disqualification for Crown, 232, 233.
and for Chancellorship, 155
Rosebery, Lord, 39.
Russell, Lord John, 39, 44, 121, 124, 127.

S.

Salisbury, Marquis of:
Prime Minister and Foreign Secretary, 120, 177.
his cabinets, 123, 127, 133, 210.
Saxon:
king, 6–8, 16; administration, 10.
Scire Facias:
writ of, 223.
Scotland:
Union with, 170, 239, 251.
succession to throne of, 233.
security of Church in, 235.
Treasury of, 176.
Secretary for, 170, 209.
Great Seal of, 170.
Seal:
Great: *see* **Letters Patent**.
of United Kingdom, 154.
authority for using, 28, 56, 57.
uses of, 50, 51, 52, 53, 55, 155.
number of, 55 *n*.
pardon under, 42.
Chancellor responsible for, 55, 154.
treason to counterfeit, 243.
of Scotland, 170.
of Ireland, 155.
Privy:
writs issued under, 20.
a warrant for use of Great Seal, 55, 156.
for issue of public money, 156.
disuse of, 56 *n*., 156.
Secretarial: *see* **Signet**.
Statute concerning, 28, 55, 159.
three in number, 168.
office conferred by receipt of, 47, 168, 213.
Seal, Secretarial:
their respective uses, 51, 52, 168–70.
of Duchy of Lancaster, 206.
of Exchequer, 174.
Secretary:
an officer of the Household, 159, 160.
becomes Principal Secretary, 159.
and Secretary of Estate, 161.
his duties, 159, 161, 162.
his place in Parliament, 75, 160.
and in Privy Council, 159.
his precedence, 75, 160.
growth of his powers, 163.
Northern and Southern, 164.
Home and Foreign, 165, 166.
for War, Colonies, and India, 166, 167.
mode of appointment, 168, 221.
of State: the King's clerk, 158.
for Scotland: *see* **Scotland**.
to Lord Lieutenant: *see* **Ireland**.
to the Treasury, 182, 183.
Financial, to Admiralty, 192, 193, 209.
— to War Office, 209.
Under Secretaries, 209.
Parliamentary, 195, 201, 202.
Settlement, Act of, 89, 90, 91, 92, 93.
as to judges' tenure, 33.
— office and the House of Commons, 35, 90, 91.
duties of Council, 90, 92.
plea of pardon, 42, 92, 93.
Seymour, Sir E., 84, 86.
Shelburne, Lord, 103, 117, 132.
Sheriff:
mode of appointment, 147, 181.
in collection of revenue, 169 *n*.
Shrewsbury, Duke of:
Secretary of State, 85, 86, 163.
Lord Chamberlain, 144.
constituted Lord Treasurer at death of Anne, 96.
his notes of Cabinet meetings, 86, 110.
Sign manual:
documents under, a mode of expressing royal will, 50, 51, 52, 53.
when it has been dispensed with, 58, 59.
Warrant under:
as an executive act, 50, 261.
as authority for affixing the Great Seal, 51, 56, 263, 264.
by whom countersigned, 57.

Sign Manual:
when preceded by Order in Council, 57.
to give power to make and ratify treaties, 53.
commissions under, 52, 265, 266.
instructions under, to Colonial Governors, 54.
order under, for issue of public money, 51, 267.
— for a free pardon, 268.
conferring precedence on Prime Minister, 262.
Signet:
its former use, 55 *n.*
its present use, 52, 56 *n*, 169.
ordinance and statute as to its use, 159.
office, abolished 1851, 169.
Somers, Lord, 41, 42, 87, 89, 90, 113.
Sophia of Hanover:
and the settlement of the throne, 232, 233, 234.
Southampton, Earl of, 81.
Standard:
kept at Board of Trade, 197.
Standing Army: *see* **Army.**
Star-chamber:
its powers under Tudors, 26; and Stuarts, 28, 29.
its origin, 71; its jurisdiction, 72; its abolition, 74.
Steward, Lord High, 142, 143.
of Household, 143.
Stormont, Lord:
Secretary of State, 165.
Subpoena:
writ of, 21.
Sunderland:
introduced party government, 36.
his views about Cabinets, 41, 42, 86, 87, 94.
his retirement, 113, 114.
held office of Chamberlain, 113, 114, 144.
Swift:
first uses the term Prime Minister, 114.

T.

Tait, Archbishop:
correspondence with Queen Victoria on Irish Disestablishment, 49 *n.*
Temple, Lord, 108.
Temple, Sir William, 82, 92.
Test Act, 33.
Thurlow, Lord Chancellor:
his dismissal, 126.
Title:
to Crown, 225-34.
Trade, Board of:
history of, 194.
duties of, 149, 195-9.
President of, 195, 209, 210.
Secretary to, 195.
Transubstantiation:
declaration against, 233, 235.
Treason:
how connected with allegiance, 242.
meaning of, 242-5.
constructive, 243, 244.
treason felony, 244.
misprision of, 242 *n.*
Treasurer:
his duties, 11, 174.
a minister to be nominated in Parliament, 20.
his place in the Lords, 75.
becomes Lord Treasurer, 175.
his office in commission, 175, 176.
judicial duties taken away, 181.
Treasurer of Household, 143.
Treasurer of the Navy, 190.
Treasury:
Lords Commissioners of, 51, 176, 177, 178, 182, 183.
— countersign royal order for issue of money, 51.
history of, 174-6.
its transaction of business, 178.
its duties, how changed, 179, 180.
Secretaries to, 182, 183.
permanent staff of, 183, 184.
how concerned with harbours, 198.
its control, nature of, 180, 184.
Departments connected with, 185, 186, 202.
First Lord of:
usually Prime Minister, 176-8.
his subordinates in Parliament, 182, 183, 208.
forms relating to, 259, 267.
Treaty:
how made and ratified, 53, 54, 57.
form of warrant on ratification of, 263.

U.

Union:
with Ireland, 171.
United Kingdom:
Great Seal of, 155.
Utrecht:
Treaty of, 94.

V.

Vernon, Mr. Secretary, 42, 89, 114.

Viceroy of India:
how appointed, 52, 221.
Victoria:
her loyalty to ministers, 39.
her attention to foreign affairs, 43, 44, 121, 126, 129.
her attitude in Disestablishment of Irish Church, 129.
her marriage with Prince Albert of Saxe-Coburg and Gotha, 256.
Victualling Board:
for Navy, 190.

W.

Wales, Prince of:
created by letters patent, 257.
Walpole, Sir Robert:
his management of Parliament, 37.
his cabinets, 100 *n.*, 101.
his position as Prime Minister, 114, 115.
sources of his power, 115, 116.
his defeat in the Commons, 132.
offices held by, 176.
War:
Secretary at, 166, 167.
Secretary of State for, 119, 166, 167.
War Office:
growth of, 145.
distribution of duties in, 149.
Warrant: *see* **Sign manual.**
of Speaker, 57.
forms of, 261-4
Wellington, Duke of, 109, 110, 128.
Whitehall:
Court of Requests at, 69, 70.
Treasury at, 175.
Wilkes, John, 106, 110.
William I:
his policy in administration, 8, 9.
his title, 8, 226.
William III:
constitutional legislation of his reign, 33.
his ministries, 36.
his presence at Cabinets, 140.
declined to be a King Consort, 256.
assumption of responsibility, 42, 84, 89.
used a stamp for sign manual, 58, 59.
provision for his absence, 246, 256.
his inner Cabinet, 85, 86.
William IV:
and his ministers, 38, 39, 110, 111, 128.
Witan, 6, 7, 9, 235.
Works, Board of, 199 200.
Writ:
nature of, 52
of *subpoena*, 21.
under Great Seal, 50.
of dedimus, 57.
for bye-election, 57; for general election, 52.
of summons to peer, 52, 57, 136, 137.
of Quo Warranto, 223.
of Scire Facias, 223.

OXFORD
PRINTED AT THE CLARENDON PRESS
BY HORACE HART, M.A.
PRINTER TO THE UNIVERSITY

OS
UNIVE
COLLEGE LI

(1) Books drawn
Library by Fellows, Me
the Faculties, Members o
sity College Staff may b
not longer than one month.

(2) Students of Intermediate,
M.A. (or LL.B.) classes cannot dr
more than two, three and five volumes
respectively. They may be retained
not longer than two weeks.

(3) Books may be renewed at the
discretion of the Librarian if they are
not demanded by any other borrower
or needed in the library building.

(4) No book will be reissued unless
actually brought to the library.

(5) A fine of one anna will be
charged each day for each volume
that is ever due. The borrower
card will be withheld till the pay
of the fine.

(6) Borrowers will be h
responsible for the loss
any volume while in th

(7) No mark
in ink should be
part of the bo

(8) N
will be