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THE GOVERNMENT OF ENGLAND

BY

A. LAWRENCE LOWELL

PRESIDENT OF HARVARD UNIVERSITY

VOLUME I

New York

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1919

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The writer is indebted also to a number of his students at Harvard, who have made researches in several different subjects. While some of the more important of these contributions have been referred to in the notes, it has been impossible to do this in all cases. Finally he desires to acknowledge the help he has received in his investigations from three assistants: Mr. Emerson David Fite, now of Yale University, Mr. Robert Lee Hale, now of the Harvard Law School, and Mr. Thomas N. Hoover of the Harvard Graduate School, the last of these having also verified the citations and prepared the index.

APRIL, 1908.

PREFACE TO THE REVISED EDITION

SINCE this book was published the author has received a number of letters, both from friends and from men with whom he was not previously acquainted, pointing out mistakes of various kinds. For these letters he is very grateful, and the suggestions in them have enabled him to make many corrections in the text. In revising the plates it has been impossible to undertake the extensive changes required for a discussion of events that occurred after the book was written; but where these affect a definite statement an attempt has been made, either to refer to them in footnotes, or to modify the statement itself.

A criticism of a general nature sometimes made by the press has been that the writer underestimates the future importance of the Labour Party; and in fact the recent adhesion to its ranks of other Labour members is very significant. The strength of the party at this moment is certainly great, far greater than at any earlier period, and a considerable growth of independent power on its part would doubtless involve a decided readjustment in the present methods of working parliamentary government. But perhaps it is safer for an observer to observe than to prophesy.

November, 1908.

PREFACE TO EDITION OF 1912

ANY description of the government of a country can be accurate only for the time that it portrays. An attempt to revise it, even after a short lapse of time, like a second exposure on a photographic plate, merely blurs the image. Nevertheless the changes in England have been so great within the last few years that a new edition of a book on the government of the Kingdom cannot be issued without referring to them. By far the most important as well as the most obvious of them has been the reduction in the power of the House of Lords, and an additional chapter has therefore been inserted immediately after the former chapters dealing with that House. The discussion of the difficulties of reforming the House has been left as it stood, for while the conditions have been changed by legislation, the problem has by no means been wholly solved. The composition of the body has not yet been altered, and, even as regards its powers, the solution has been a rough and ready one, brought about by exasperation over the rejection of the Finance Act; a cutting of the Gordion knot which has left loose ends.

Other significant changes of an institutional character have been made. Most important among them from a political standpoint are probably those of the reduction of the term of Parliament to five years,[1] and the payment of members of the House of Commons. The last was brought about not by a statute but by a simple resolution adopted on August 10, 1911; "That, in the opinion of this House, provision should be made for the payment of a salary at the rate of four hundred pounds a year to every Member of this House, excluding any Member who is for the time being in receipt of a salary as an officer of the House, or

[1] 1–2 Geo. V., c. 13, § 7.

as a Minister, or as an officer of his Majesty's Household." This was followed on August 14 by the adoption in Committee of Supply of a vote for the appropriation required. The Lords passed the appropriation bill in which it was contained without amendment, and on August 18 it received the royal assent. The Conservatives objected to the payment of members on principle, to the procedure employed in adopting it, and to the fact that the members were voting salaries to themselves for the current year.

Other changes of a political character have been the adoption of a federal constitution for South Africa,[1] the provision that aldermen in boroughs shall not vote for aldermen nor out-going aldermen for the mayor,[2] and that women shall be eligible as councillors or aldermen in county and borough councils.[3] As a matter of interest it may be noted also that in 1909 the Commons dropped their resolution against the participation of peers at elections; and that at the accession of George V. a new Coronation Oath was adopted to remove the offence of the old one to the Catholics.[4]

Two great pieces of social legislation have been enacted. The first was the Old Age Pensions Act,[5] providing pensions running from one shilling to five shillings a week for persons with an income of less than thirty guineas, who are seventy years of age, and have been for twenty years British subjects resident in the United Kingdom; the expense to be defrayed wholly from the national treasury. The second was the National Insurance Act of 1911,[6] which provided for compulsory insurance of working people against sickness and unemployment. In this case the Government contributes roughly one fourth of the money needed, and the rest is furnished in about equal parts by the employer and the employed.

A. Lawrence Lowell.

Cambridge, June, 1912.

[1] 9 Edw. VII., c. 9.
[2] 10 Edw. VII. and 1 Geo. V., c. 19.
[3] 7 Edw. VII., c. 33.
[4] 10 Edw. VII. and 1 Geo. V., c. 29.
[5] 8 Edw. VII., c. 40.
[6] 1–2 Geo. V., c. 55.

PREFACE (1917)

THE Macmillan Company inform me that the present edition of this book is exhausted, and that a new one must be printed at once. But to prepare an adequate new edition in war time is impossible. These volumes describe the actual working of English political institutions under normal conditions and at a particular period, that of the opening of the twentieth century. They are not an accurate picture of any earlier time, and probably will not be accurate for any future date, because political institutions, and the traditions and ideas which give them their peculiar character, grow and change. The war will, no doubt, be found to have hastened the process, and will probably leave permanent traces on English political life. But what the changes thus brought about will be it is still too early to foretell, for the conditions during the war are, of necessity, abnormal, and cannot continue unaltered after the conflict is over. At times such conditions tend to perpetuate themselves to some extent, at others to produce a reaction.

War, when effectively conducted, naturally causes a centralization of authority, because in no other way can a nation put forth its utmost effort. But in England a concentration of power is not the only political change that has taken place. The parliamentary system there has in the past been based upon, and in its nature determined by, the play of action between two parties, the cabinet representing and leading the one that has a majority in the House of Commons while the other is His Majesty's opposition, constantly criticizing, and striving to discredit and supersede, the party in power. But when the war broke out the Conservatives were at least as generally in favor of it, and quite as determined to support the ministry in prosecuting

it vigorously, as the members on the government side of the House. Organized opposition quickly disappeared, the contest between majority and opposition vanished, a result that before long took outward form in the creation of a coalition cabinet representing both parties, and in fact all groups of political opinion in Parliament, except that of the Irish Nationalists, who declined the offer of a place in the ministry.

Under these circumstances the working of British parliamentary institutions lost its normal character. Party cohesion became unimportant, being supplanted by national solidarity, in which personal competence counted for more. The number and variety of men admitted to the coalition ministry, or employed in the vastly extended administrative service, has increased; while, on the other hand, the direction of military policy has become concentrated in the hands of the War Cabinet, composed of only five members of the government. Obviously these are arrangements for coping with the terrific strain of war, and cannot last after it is over. Political life will then return to a normal basis, although not to the precise conditions that preceded the conflict. The return will probably not be immediate, because the stress of war will leave behind it many hard problems, financial, economic and social, that may well require concentrated authority for their solution.

In two respects, it is safe to assume, great changes will appear — in the relation of Ireland to Great Britain and in the relation of the self-governing colonies to imperial affairs. To an external and disinterested observer the Irish question must be highly instructive, pregnant with lessons about popular government. The Irish Nationalists, although a small minority of the people of the United Kingdom, have succeeded, as Parnell foresaw, in wearying Great Britain into a recognition of their demands. By the land purchase acts, the Irish landlords were bought out, and thus one class of opponents was extinguished. But the hostility of the Ulstermen, a minority of the people of Ireland, was un-

abated. In spite of the desire of the Nationalists to include under the government of Ireland the whole island, and their repugnance to leaving out the wealthiest part of it, Ulster might have been cut off, and left with the United Kingdom had it not been for the minority of Irish Catholics it contained; and finally the question turned on certain border counties of Ulster where the Orangemen were in a minority. The problem rested at this stage on the treatment of a minority, of a minority, of a minority, of a minority of the people represented in the British Parliament. Democracy is by no means always arbitrary government by majorities. By maladroit proceedings the English government nearly involved Ireland in civil war just before the outbreak of the European conflict; and in fact this condition was one of the factors on which Germany calculated to keep England out of the war. It is safe to say that all English statesmen would welcome almost any solution of the Irish question which the people of both the north and south of Ireland would accept. But to every impartial observer the problem is really very difficult, and it has been rendered more so by the ardent patriotism of the Ulstermen, as compared with the pro-German tendency of the intrigues of Sir Roger Casement and of the insurrection in Dublin.

That the war will result in a closer imperial organization no one appears to doubt. The self-governing colonies have fought so gallantly by England's side that they must be given a voice in her future foreign policy; and probably also to some extent in economic affairs. What that will be, by what organs it will be administered, may well depend upon, and may even affect, the English political system that develops from the war.

But this is mere speculation, not the description of existing conditions which these volumes attempt to give, and the very fact that one is led into such a path suggests the inappropriateness of attempting to portray abnormal conditions in a state of flux.

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INTRODUCTORY NOTE ON THE CONSTITUTION

Different Meanings of the word Constitution.

DE TOCQUEVILLE declared that the English Constitution did not really exist,[1] and he said so because in his mind the word "constitution" meant a perfectly definite thing to which nothing in England conformed. An examination of modern governments shows, however, that the thing is by no means so definite as he had supposed.

A Document Embodying the Chief Institutions.

The term "constitution" is usually applied to an attempt to embody in a single authoritative document, or a small group of documents, the fundamental political institutions of a state. But such an attempt is rarely, if ever, completely successful; and even if the constitution when framed covers all the main principles on which the government is based, it often happens that they become modified in practice, or that other principles arise, so that the constitution no longer corresponds fully with the actual government of the country. In France, for example, the principle that the cabinet can stay in office only so long as it retains the confidence of the popular chamber, the principle, in short, of a ministry responsible in the parliamentary sense, was not mentioned in the charters of 1814 or 1830, and yet it was certainly firmly established in the reign of Louis Philippe; and it is noteworthy that this same principle, on which the whole political system of the English self-governing colonies is based, appears neither in the British North American Act nor in the Australian Federation Act. The first of those statutes, following the English tradition, speaks of the Privy Council for Canada,[2] but never of the cabinet or the ministers; while the Australian Act, going a step farther, refers to the Queen's Ministers of State,[3] but ignores their

[1] *La Démocratie en Amérique*, I., Ch. vi.
[2] 30–31 Vic., c. 3, § 11.
[3] 63–64 Vic., c. 12, Const., §§ 64–65.

responsibility to the parliament.[1] Again, in the United States, the provision that the electoral college shall choose the President has become so modified in practice that the electors must vote for the candidate nominated by the party to which they owe their own election. In choosing the President they have become, by the force of custom, as much a mere piece of mechanism as the Crown in England when giving its assent to acts passed by the two Houses of Parliament. Their freedom of choice is as obsolete as the royal veto. So far, therefore, as this meaning of the term is concerned, the constitution of England differs from those of other countries rather in degree than in kind. It differs in the fact that the documents, being many statutes, are very numerous, and the part played by custom is unusually large.

Not Changeable by Ordinary Legislation.

De Tocqueville had more particularly in mind another meaning which is commonly attached to the term "constitution." It is that of an instrument of special sanctity, distinct in character from all other laws; and alterable only by a peculiar process, differing to a greater or less extent from the ordinary forms of legislation. The special sanctity is, of course, a matter of sentiment incapable of exact definition, and it may be said to belong to the British Constitution quite as much as to some others. The peculiar process of amendment, on the other hand, — the separation of the so-called constituent and law-making powers, — upon which Mr. Bryce bases his division of constitutions into rigid and flexible,[2] has had a long history and been much discussed; but although the contrast between the two types is highly important, the creation of intermediate forms has made it less exact as a basis of classification. The later constitutions, and the more recent practice, have tended to obscure the distinction. A separation between

[1] The provisions about the responsibility of the ministers are almost identical in the constitutions of Belgium (Arts. 63, 64, 65, 88, 89, 90) and Prussia (Arts. 44, 45, 60, 61); but in Belgium the cabinet is politically responsible to the chamber, while in Prussia it is not.

[2] "Studies in History and Jurisprudence," Essay III.

Rigid and Flexible Constitutions.

the constituent and law-making powers does not, in fact, always exist in written constitutions. The Italian *Statuto*, for instance, which contains no provision for amendment, can be, and in fact has been, altered by the ordinary process of legislation;[1] and the same thing was true of the French Charter of 1830.[2] The last Spanish constitution omits all provision for amendment, but one may assume that if it lasts long enough to require amendment the changes will be made by ordinary legislative process.

From countries which can change their fundamental constitution by the ordinary process of legislation we pass by almost imperceptible degrees to those where the constitutional and law-making powers are in substantially different hands. Thus the procedure for changing the constitution in Prussia differs from that for the enactment of laws only by the requirement of two readings at an interval of twenty-one days. Here there is a difference legally perceptible between the methods of changing the constitution and other laws; but it may be remarked that a provision in the constitution to the effect that all laws should require two readings at an interval of twenty-one days, would not essentially change the nature of the constitution, and yet in theory it would make that constitution flexible instead of rigid. As it is, the fundamental laws are quite as much under the control of the legislature in Prussia as they are in England.[3] This is almost equally true of France; for although the changes in her constitution are made by the National Assembly, composed of the two chambers sitting together, yet the Assembly can meet only after the two chambers have passed a concurrent resolution to that

[1] *Cf.* Brusa, *Italien*, in Marquardsen's *Handbuch des Oeffentlichen Rechts*, 12–16, 181–82.

[2] Professor Dicey points out ("Law of the Constitution," 5 Ed., 116 and Note 2) that De Tocqueville considered the Charter unalterable by reason of this omission, but that it was, in fact, changed like an ordinary law.

[3] For the purpose of the argument it is unimportant that Prussia is not a sovereign state, and for sixteen years it did exist as an independent sovereign state under its present constitution.

effect; and in fact the chambers are in the habit of determining beforehand by separate votes the amendments which shall be submitted to the Assembly. So that in France, also, the constitution is virtually under the unrestricted control of the legislature.

The Distinction has Lost Practical Importance.

The separation of constituent and law-making powers has been rendered of much less practical importance in some countries not only by making the process of amending the constitution more simple, but also by making the enactment of laws more complex. In Switzerland, for example, changes in the Constitution of 1848 required a popular vote, while changes in the laws did not; but after the referendum on ordinary laws was introduced in 1874, this distinction largely disappeared, and at the present day the differences between the methods of passing constitutional amendments and ordinary laws are comparatively slight. In the case of ordinary laws a popular vote is taken only on the petition of thirty thousand citizens or eight cantons, and the popular majority is decisive; whereas constitutional amendments must be submitted to the people whether a petition is presented or not, and for their ratification a majority vote in more than half the cantons as well as a majority in the Confederation as a whole is required.[1]

In those European countries where the difference in the procedure for changing constitutional and other laws is the most marked, the special formalities for the former consist in requiring more than a majority vote in the legislature, or that a general election shall take place before the amendment is finally adopted, or both. Now the last of those conditions is practically not unknown in England. There is a growing feeling that no fundamental or far-reaching change ought to be made unless, as a result of a general election fought on that issue, Parliament has received from the nation a mandate to make the change. Such a doctrine does not affect the law, but it does affect that body

[1] Constitutional amendments can also be proposed by popular initiative, and ordinary laws cannot.

of customs which is a not less vital part of the British Constitution.

The classical distinction between constituent and law-making powers, and hence between rigid and flexible constitutions, has also been somewhat effaced by extending the requirement of a special procedure to the enactment of certain classes of ordinary law. Thus in the German Empire the only peculiar formality for amendments to the constitution is found in the provision that they are defeated by fourteen adverse votes in the Bundesrath.[1] This gives Prussia with her seventeen votes a veto upon them, but she has also a veto in the Bundesrath upon any measures affecting the army, the navy, customs-duties or excises.[2]

Growing Variety in Written Constitutions.

In the middle of the last century written constitutions in Europe were framed for the most part upon the same model and were much alike, so that a written constitution usually implied a definite type of limited monarchy, where the same class of matters were removed from the direct control of the legislature and placed, in theory at least, under special protection. But now written constitutions all over the world have come to differ a great deal, some of them being simpler, and others more comprehensive than of old. The constitutional laws of France, for example, provide only for the bare organisation of the public authorities, and can be amended virtually at will by the legislature; while the constitutions of Switzerland, Germany and the United States go into great detail, and that of the United States can be amended only with the greatest difficulty. The result is that the French constitution, although written and technically rigid, bears from the point of view of rigidity a far closer resemblance to the constitution of England than to that of the United States.

It would seem, therefore, that the distinction between constitutions which are flexible and those which are rigid, while valuable, has ceased to mark a contrast between widely separated groups; and that it might be well to

[1] Const., Art. 78. [2] *Ibid.*, Art. 5.

regard the distinction as one of degree rather than of kind. From this aspect it may be said that of late years constitutions have tended on the whole to become more flexible; and at the same time there has been a tendency toward greater variations in flexibility, the constitutions of England and of Hungary standing at one end of the scale, and that of the United States at the other.

A Constitution as a Supreme Law.

If the term "constitution" does not necessarily imply that the so-called constituent and law-making powers are in different hands, still less does it imply the existence of a law of superior obligation which controls legally the acts of the legislature. Before discussing that question, one must understand clearly what is meant by a law. In England, and in the countries that have inherited the Anglo-Norman system of jurisprudence, a law may be defined as a rule that will be enforced by the courts. This results from the fact that officers of the government, like private persons, are subject to judicial process, and liable to have the legality of their actions examined and determined by the ordinary tribunals. Hence a rule recognised as law by the courts will be enforced against both officials and private citizens; and a rule which they do not recognise cannot be enforced at all, for they will entertain suits and prosecutions against officials who try to apply it, and will afford protection to individuals who resist them.[1] Assuming this definition of law, the famous decision of Chief Justice Marshall[2] that an Act of Congress inconsistent with the Constitution of the United States must be treated as invalid was a logical necessity. The Constitution was certainly intended to be a law, and as such it could be enforced by the courts. But if that law came into conflict with another law, an Act of Congress for example, the court must consider, as in any other case of conflict of laws, which law was

Meaning of Law where the Common Law Prevails.

[1] By far the best exposition of this matter is to be found in Professor Dicey's "Law of the Constitution." It is discussed more fully in Chapter xl., *infra*.

[2] Marbury *vs.* Madison, 1 Cranch, 137.

of superior authority; and there could be no doubt that the Constitution was the superior of the two. The same principle is applied in the British colonies, when colonial acts come into collision with the Acts of Parliament establishing the colonial government;[1] and it has been incorporated into the constitutions of the Spanish American republics.

Where the Civil Law Prevails.

But, except for those Latin countries which have copied it from the United States, the doctrine is almost entirely confined to the places where the Common Law prevails,[2] for elsewhere the same definition of law does not obtain. In accordance with the French interpretation of the theory of the separation of powers, it is the general rule on the continent of Europe that the ordinary courts administer only private law between private citizens, and that questions affecting the rights and duties of public officials are withdrawn from their jurisdiction. Such questions are now usually, though not universally, submitted to special tribunals known as administrative courts. The rules administered by these tribunals are laws, but they form a distinct and separate branch of the law from that applied by the ordinary courts. On the continent, therefore, a constitution may or may not be properly regarded as a law, but even if it be so regarded it is not of necessity enforced by any court. On the contrary, if an ordinary court is not suf-

[1] The Australian Federation Act (§ 74) refers particularly to the decision of such questions, limiting the right to bring them on appeal before the Judicial Committee of the Privy Council.

[2] There are a few exceptions. Provisions giving such a power to the courts are to be found in the constitutions of the little Swiss cantons of Uri (Art. 51) and Unterwalden nid dem Wald (Art. 43). The Swiss national constitution, on the other hand (Art. 113), directs the Federal Tribunal to apply every law enacted by the national legislature. Some discussion has taken place on the question in Germany. (See Brinton Coxe, "Judicial Power and Unconstitutional Legislation," Ch. ix., and the writer's "Governments and Parties in Continental Europe," I., 282–84.) Curiously enough, a struggle over this question occurred in the Transvaal not long before the South African War (Bryce's "Studies in History and Jurisprudence," 378; Kruger's "Memoirs," 254–57). In his next inaugural address President Kruger quoted Scripture to prove that the principle of holding statutes unconstitutional had been invented by the devil. (Kruger, 354–55.)

fered to pass upon the legality of the actions of a policeman, it would be hardly rational that it should pass upon the validity of an act of the national legislature; and it would be even more irrational to intrust any such power to the administrative courts which are under the influence of the executive branch of the government.[1]

Legal Restraints on Power of Legislature are Rare.

The conception of a constitution as a law of superior obligation, which imposes legal restraints upon the action of the legislature, is really confined to a very few countries, chiefly to America and the English self-governing colonies.[2] In Europe it has no proper place, for whether a constitution in continental states be or be not regarded as a supreme law, no body of men has, as a rule, been intrusted with legal authority to enforce its provisions as against the legislature; and in England there is no law superior in obligation to an Act of Parliament. There can, indeed, be no doubt that the Acts of Union with Scotland and Ireland were intended to be, in part at least, forever binding, but as they created no authority with power either to enforce or to amend the Acts, the united Parliament assumed that, like its predecessors, it possessed unlimited sovereignty; and it has, in fact, altered material provisions in each of those statutes.[3]

The English Constitution — speaking, of course, of its form, not its content — differs, therefore, from those of most other European nations more widely in method of expression than in essential nature and legal effect. They have

[1] Esmein (*Elements de droit constitutionel*, 425–28) describes the various proposals made at different times in France for annulling unconstitutional laws. One of these, Sieyes's *jurie constitutionaire*, bears a curious resemblance to an institution for a somewhat analogous purpose in Athens: Goodwin, "Demosthenes on the Crown," Essay II., 316–27.

[2] It must be observed, also, that the English colonies are not legally independent or sovereign states, and hence their parliaments are legally subordinate legislatures. We may note in this connection that the Swiss Federal Tribunal can hold unconstitutional laws of the cantons which violate the constitution either of the confederation or of the canton.

[3] Professor Dicey argued that the first Home Rule Bill if enacted might have restricted the legal sovereignty of Parliament. "England's Case against Home Rule," 238, *et seq.* This result was denied by the other side. Bryce, "Studies in Hist. and Jur.," 176, note.

been created usually as a result of a movement to change fundamentally the political institutions of the country, and the new plan has naturally been embodied in a document; but since the Restoration England has never revised her frame of government as a whole, and hence has felt no need of codifying it. The national political institutions are to be found in statutes,[1] in customs which are enforced and developed by the courts and form a part of the Common Law, and in customs strictly so called which have no legal validity whatever and cannot be enforced at law. These last are very appropriately called by Professor Dicey the conventions of the constitution. The two chief peculiarities of the English Constitution are: first, that no laws are ear-marked as constitutional, — all laws can be changed by Parliament, and hence it is futile to attempt to draw a sharp line between those laws which do and those which do not form a part of the constitution; — second, the large part played by customary rules, which are carefully followed, but which are entirely devoid of legal sanction. Customs or conventions of this kind exist, and in the nature of things must to some extent exist, under all governments. In the United States where they might, perhaps, be least expected, they have, as already observed, transformed the presidential electors into a mere machine for registering the popular vote in the several states, and this is only the most striking of the instances that might be cited.[2] England is peculiar, not because it has such conventions, but because they are more abundant and all-pervasive than elsewhere. The most familiar of them is, of course, the rule that the King must act on the advice of his ministers, while they must resign or dissolve Parliament when they lose the confidence of the majority in the House of Commons.

Sources of the English Constitution.

It is impossible, however, to make a precise list of the

[1] Boutmy in his *Etudes de droit constitutionel* (1 Ed., 9) adds treaties or quasi-treaties (the Acts of Union), and solemn agreements such as the Bill of Rights. But all these are in legal effect simply statutes.

[2] Bryce, American Commonwealth, Ch. xxxiv.

conventions of the constitution, for they are constantly changing by a natural process of growth and decay; and while some of them are universally accepted, others are in a state of uncertainty. Hence one hears from time to time a member of the Opposition assert that some action of the government is unconstitutional, meaning that it is an unusual breach of a principle which in his opinion ought to be recognised as inviolable. It was said, for example, that the Parliament of 1900, having been elected on the issue of the South African war, was not justified in enacting measures of great importance on other subjects, but that a fresh mandate from the nation ought to be obtained by another general election. As claims of this kind are in dispute, those customs alone can safely be said to be a part of the constitution which are generally assumed to be outside the range of current political controversy.

The Relation of Law and Custom.

The relation between law and custom in the English government is characteristic. From the very fact that the law consists of those rules which are enforced by the courts, it follows that the law, — including, of course, both the statutes and the Common Law, — is perfectly distinct from the conventions of the constitution; is quite independent of them, and is rigidly enforced. The conventions do not abrogate or obliterate legal rights and privileges, but merely determine how they shall be exercised. The legal forms are scrupulously observed, and are as requisite for the validity of an act as if custom had not affected their use.[1] The power of the Crown, for example, to refuse its consent to bills passed by the two Houses of Parliament is obsolete, yet the right remains legally unimpaired. The royal assent is given to such bills with as much solemnity as if it were

[1] The habit of collecting new or increased duties or excises as soon as the resolution to impose them passes the House of Commons is an apparent exception to this principle, for the taxes are not legally payable until laid by Act of Parliament. The object of the custom is to prevent a large loss of revenue by importations made after it is known that the duty will be levied and before it goes into effect. The act when passed contains, of course, a clause authorising and thereby making legal the collection from the date of the resolution, and if it fails to pass the tax is refunded.

still discretionary, and without that formality a statute would have no validity whatever. Public law in countries where it is administered not by the ordinary courts, but solely by the executive, or with the aid of special tribunals composed of administrative officials, must of necessity contain a discretionary element, and that element is always affected by political conventions. Hence there is a likelihood that the line between law and convention will become blurred, but this is not so in England. There the law and the conventions of the constitution are each developing by processes peculiar to themselves, but the line between them remains permanently clear. The conventions are superimposed upon the law, and modify political relations without in the least affecting legal ones. In fact Freeman declared that the growth of the unwritten conventions of the constitution began after the supremacy of the law had been firmly established by the revolution of 1688, and that they could not have been evolved if that condition had not existed.[1]

The Sanction of Custom.

The question why the conventions of the constitution are so scrupulously followed, when they have no legal force, is not a simple one. Impeachment as a means of compelling the observance of traditions has, of course, long been obsolete. Professor Dicey maintains that the ultimate sanction of these conventions lies in the fact that any ministry or official violating them would be speedily brought into conflict with the law of the land as enforced by the courts.[2] He takes as illustrations the omission to summon Parliament every year, and the retention of office by a ministry against the will of the Commons without dissolving; and he shows in each case how the ministry would be brought into conflict with the law by the failure to enact the annual army bill or to pass the appropriations. He proves that in such cases the wheels of government would be stopped by the regular operation of the law; and that the House of Com-

[1] "Growth of the English Constitution," 107, 112–13, 119.
[2] "Law of the Constitution," Ch. xv.

mons can readily bring about this result if it pleases.[1] There is, however, another question, and that is why the House is determined to exert its power so as to maintain the conventions of the constitution as they stand to-day. It has long possessed the necessary authority, but the conventions were evolved slowly. The House of Representatives in Washington has the same power to stop appropriations, but it does not try to use it to force a responsible ministry upon the President; a result which has, on the other hand, been brought about in France almost as conclusively as in England, and that without the sanction arising from the risk of conflict between the government and the courts. Any parliament could use its authority if it chose to keep the ministry in office indefinitely, as well as to make it responsible. It could pass a permanent army act, grant the tea and income taxes for a term of years, charge all ordinary expenses upon the Consolidated Fund, and so make the existing ministry well-nigh independent of future parliaments. . .

The question seems to resolve itself into two parts: first, why a custom once established is so tenaciously followed in England; and, second, why the conventions have assumed their present form. In regard to the first it may be suggested that while the consequences mentioned by Professor Dicey form, no doubt, the ultimate sanction of the most important conventions of the constitution, they are not the usual, or in fact the real, motive for obedience; just as the dread of criminal punishment is not the general motive for ordinary morality. The risk of imprisonment never occurs, indeed, to people of high character, and in the same way the ultimate sanctions of the law are not usually present in the minds of men in English public life. In the main the conventions are observed because they are a code of honour. They are, as it were, the rules of the game, and the single

[1] All this is true only of conventions that give effect to the will of the majority of the House of Commons, not of those that secure fair play to the minority, which are in fact not less important.

class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind. Moreover, the very fact that one class rules, by the sufferance of the whole nation, as trustees for the public, makes that class exceedingly careful not to violate the understandings on which the trust is held.

The key to the question why the conventions have assumed their present form is to be found mainly in Professor Dicey's remark [1] that all of them exist for the sake of securing obedience to the deliberately expressed will of the House of Commons, and ultimately to the will of the nation. Their effect has been to bring the prerogatives of the Crown more and more completely under the control of the cabinet, and the cabinet itself under the control of the House of Commons; to restrain the opposition of the Lords to any policy on which the Commons backed by the nation are determined; and, finally, through the power of dissolution to make the House of Commons itself reflect as nearly as may be the views of the electorate. In England there is, in fact, only one conclusive means of expressing the popular will — that of an election to the House of Commons; and in ordinary cases there is only one body that has power to interpret that expression, the cabinet placed in office by the House so elected.

The Effects of Custom.

Professor Dicey has also pointed out a singular result of the conventions. If the growing power of the House of Commons, instead of being used to impose customary restraints on the exercise of authority by the Crown and the House of Lords, had been exerted to limit that authority by law, the Crown and the House of Lords would have been far more free to exercise at their discretion the powers still left in their hands; and hence the House of Commons could not have obtained its present omnipotence. By leaving the prerogative substantially untouched by law, and requiring that it should be wielded by ministers responsible to them,

[1] "Law of the Constitution," 360, 384.

the Commons have drawn into their own control all the powers of the sovereign that time has not rendered entirely obsolete.

The great part played by custom has had another effect upon English public life. It has tended to develop a conservative temperament. If laws are changed the new ones may have the same authority as the old; but if customs are changed rapidly they lose their force altogether. Stability is necessary for the very life of custom. The conventions of the constitution could not exist without respect for precedent, and where the institutions and liberties of a country depend not upon a written code, but upon custom, there is a natural tendency to magnify the importance of tradition and precedent in themselves. In England, therefore, there is a peculiar veneration for custom, and a disposition to make as little change in it as is compatible with changing times. The result is a constant tinkering, rather than remodelling, of outworn institutions, — a spirit which is strongly marked throughout the whole of English public life.

English System not Logical but Scientific.

Critics and apologists both assert that the English political system is not logical; and the statement is true in the sense that the system was not excogitated by an *a priori* method. But on the other hand the very fact that it has grown up by a continual series of adaptations to existing needs has made it on the whole more consistent with itself, has brought each part more into harmony with the rest, than is the case in any other government. In this it is like a living organism. There are, no doubt, many small anomalies and survivals that mar the unity for the purpose of description; but these, like survivals of structure in animals, like the splint bones in the leg of a horse for example, do not interfere seriously with the action of the whole. It may be said that in politics the Frenchman has tended in the past to draw logical conclusions from correct premises, and that his results have often been wrong, while the Englishman draws illogical conclusions from incorrect premises, and his

results are commonly right. The fact being that all abstract propositions in politics are at best approximations, and an attempt to reason from them usually magnifies the inaccuracy. But in England the institutions being empirical have resulted from experience, although men have often tried to explain them afterwards by a somewhat artificial and incongruous process of reasoning. In this sense French political principles may be said to be the more logical, the English government — not the theories about it — the more scientific. It is more important, therefore, to describe the organs of the English government and their relations to one another than to consider the traditional principles that have been supposed to underlie the system. But the very nature of the English government renders it peculiarly difficult to portray. As the laws that regulate its structure are overlaid by customs which moderate very greatly their operation without affecting their meaning or their validity, it is necessary to describe separately the legal and customary aspects of the constitution. It is almost unavoidable to pass in review first the legal organisation of each institution, and then its actual functions. Such a process is sometimes tedious, especially for a person already familiar with the subject, but an attempt has been made in the following pages to separate as far as possible the dry legal details from a discussion of the working forces, so that the former may be skipped by the judicious reader.

PART I. CENTRAL GOVERNMENT

CHAPTER I

THE CROWN

POLITICAL liberty and romance in English history are both bound up with the shifting fortunes of the throne. The strong hand of the Norman and Angevin kings welded the whole country into a nation, and on that foundation were built the solid structures of a national Common Law, a national Parliament, and a long series of national statutes. When in the fulness of time the Crown had accomplished its work of unification, it came into conflict with Parliament, and after a series of convulsions, in which one king lost his head and another his throne, political evolution resumed its normal course. The House of Commons gradually drew the royal authority under its control. But it did so without seriously curtailing the legal powers of the Crown, and thus the King legally enjoys most of the attributes that belonged to his predecessors, although the exercise of his functions has passed into other hands. If the personal authority of the monarch has become a shadow of its former massiveness, the government is still conducted in his name, and largely by means of the legal rights attached to his office. With a study of the Crown, therefore, a description of English government most fittingly begins.

The Title to the Crown.

Ever since 1688, when James II., fleeing in fear of his life, "withdrew himself out of the kingdom, and thereby abdicated," the title to the Crown has been based entirely upon parliamentary enactment. At the present day it rests upon the Act of Settlement of 1701,[1] which provided that, in default of heirs of William and of Anne, the Crown should pass to the Electress Sophia, and the heirs of her

[1] 12–13 Will. III., c. 2.

body, being Protestants. Sophia was the granddaughter of James I., through her mother, wife of the Elector Palatine; and while not his nearest heir, was the nearest who was a Protestant.

The Rules of Succession.

The rules of descent are in the main the same as those for the inheritance of land at Common Law.[1] That is, the title passes to the eldest son; or, if he is not living, through him to his issue, male or female, as if he had himself died upon the throne. If the first son has died without issue, then to, or through, the eldest son who is living, or has issue living; and in default of any sons living, or leaving issue, then to, or through, the eldest daughter. The rule is, however, subject to the qualification that any one who is, or becomes, a Catholic is excluded from, and forfeits, the right to the Crown, which then passes to the next heir. In order to insure a test that will make this last provision effective, the sovereign is obliged to take an oath, abjuring the Catholic religion, in words which have proved offensive to members of that faith. After the accession of Edward VII., therefore, but before his coronation, an effort was made to modify the form of the oath, and a bill was introduced into the House of Lords for that purpose; but it was not then found possible to arrange a phrase satisfactory to all parties, and the bill was dropped.

Incapacity of the Sovereign.

In other monarchies permanent provision has been made by law for the possible incapacity of the monarch, whether by reason of infancy or insanity. But this has never been done in England. Each case has been dealt with as it arose, and usually after it has arisen, so that, in default of any person competent to give the royal assent to bills, Parliament has been driven into the legal absurdity of first passing a regency bill to confer such a power upon a regent, and then directing the Chancellor to affix the Great Seal to a commission for giving assent to that bill. Until recent times it was also thought necessary to appoint officers, Lords Justices

[1] Except, of course, that the eldest of several sisters succeeds instead of all having equal rights as co-parceners.

or others, to exercise the royal powers when the sovereign went out of the kingdom; but with the rapidity of modern travel and communication this has become unnecessary, and it has not been done since the accession of Queen Victoria.

The Powers of the Crown.

The authority of the English monarch may be considered from different points of view, which must be taken up in succession; the first question being what power is legally vested in the Crown; the second how much of that power can practically be exercised at all; the third how far the power of the Crown actually is, or may be, used in accordance with the personal wishes of the King, and how far its exercise is really directed by his ministers; the fourth, how far their action is in turn controlled by Parliament. The first two questions, which form the subject of this chapter, cannot always be treated separately, for it is sometimes impossible to be sure whether a power that cannot practically be exercised is or is not legally vested in the Crown. An attempt to make use of any doubtful power would probably be resisted, and the legality of the act could be discussed in Parliament or determined by the law courts; but it is very rare at the present day that any such attempt is made. There are powers that have been disputed, or fallen into disuse, and that no government would ever think of reviving; and thus the question of law never having been settled, the legal right of the Crown to make use of them must remain uncertain.

The Prerogative.

The authority of the Crown may be traced to two different sources. One of them is statutory, and comprises the various powers conferred upon the Crown by Acts of Parliament. The other source gives rise to what is more properly called the prerogative. This has been described by Professor Dicey[1] as the original discretionary authority left at any moment in the hands of the King; in other words, what remains of the ancient customary or Common Law powers inherent in the Crown. The distinction is one not always

[1] "Law of the Constitution," 355.

perfectly easy to draw, for many parts of the prerogative have been regulated and modified by statute, and in such cases it is not always clear whether the authority now exercised is derived from statute or from the prerogative. Nevertheless the distinction is often important, because where the powers have been conferred by Parliament the Crown acts by virtue of a delegated authority which lies wholly within the four corners of the statute, and exists only so far as it is expressly contained therein; while the prerogative not being circumscribed by any document is more indefinite, and capable of expanding or contracting with the progress of the suns.

Legislative Power.

All legislative power is vested in the King in Parliament; that is, in the King acting in concert with the two Houses. Legally, every act requires the royal assent, and, indeed, the Houses can transact business only during the pleasure of the Crown, which summons and prorogues them, and can at any moment dissolve the House of Commons. But it is important to note that by itself, and apart from Parliament, the Crown has to-day, within the United Kingdom,[1] no inherent legislative power whatever. This was not always true, for legislation has at times been enacted by the Crown alone in the form of ordinances or proclamations; but the practice may be said to have received its death-blow from the famous opinion of Lord Coke, "that the King by his proclamation cannot create any offence which was not an offence before, for then he may alter the law of the land."[2] The English Crown has, therefore, no inherent power to make ordinances for completing the laws, such as is possessed by the chief magistrate in France and other continental states. This does not mean that it cannot make regulations for the

[1] The statement is made with this limitation because the Crown has always had inherent authority to legislate directly for Crown colonies acquired by conquest; but if the Crown once grants a representative legislature to such a colony without reserving its own legislative authority, it surrenders that authority over the colony forever. See Jenkyns, "British Rule and Jurisdiction Beyond the Seas," 4–6, 95; Campbell *vs.* Hall, Cowp., 204.

[2] Coke's Reports, XII., 76.

conduct of affairs by its own servants, by Orders in Council, for example, establishing regulations for the management of the Army, or prescribing examinations for entrance to the civil service. These are merely rules such as any private employer might make in his own business, and differ entirely in their nature from ordinances which have the force of law, and are binding quite apart from any contract of employment.

Power to make ordinances which have the force of law and are binding on the whole community is, however, frequently given to the Crown[1] by statute, notably in matters affecting public health, education, etc., and the practice is constantly becoming more and more extensive, until at present the rules made in pursuance of such powers — known as "statutory orders" — are published every year in a volume similar in form to that containing the statutes. Some of these orders must be submitted to Parliament, but go into effect unless within a certain time an address to the contrary is passed by one of the Houses, while others take effect at once, or after a fixed period, and are laid upon the tables of the Houses in order to give formal notice of their adoption. A fuller description of these orders must, however, be postponed to the chapters that deal with Parliament. It is only necessary here to point out that in making such orders the Crown acts by virtue of a purely delegated authority, and stands in the same position as a town council. The orders are a species of subordinate legislation, and can be enacted only in strict conformity with the statutes by which the power is granted; and being delegated, not inherent in the Crown, a power of this kind does not fall within the prerogative in its narrower and more appropriate sense.

Executive Power.

The Crown is at the head of the executive branch of the central government, and carries out the laws, so far as their execution requires the intervention of any national public authority. In fact all national executive power,

[1] Or more strictly to the Crown in Council.

whether regulated by statute, or forming strictly a part of the prerogative, is exercised in the name of the Crown, and by its authority, except when directly conferred by statute upon some officer of the Crown, and in this case, as we shall see, it is exercised by that officer as a servant of the Crown, and under its direction and control. Legally some of the executive powers are indeed vested in the Crown in Council — that is, in the King acting with his Privy Council — but as the Council has no independent authority, and consists, for practical purposes, of the principal ministers appointed by the Crown, even these powers may be said to reside in the Crown alone.

Appointments to Office.

All national public officers, except some of the officials of the Houses of Parliament, and a few hereditary dignitaries whose duties are purely ceremonial,[1] are appointed directly by the Crown or by the high state officials whom it has itself appointed; and the Crown has also the right to remove them, barring a small number whose tenure is during good behaviour. Of these last by far the most important are the judges, the members of the Council of India, and the Controller and Auditor General, no one of whom has any direct part in the executive government of the kingdom.[2] Now the right to appoint and remove involves the power to control; and, therefore, it may be said in general that the whole executive machinery of the central government of England is under the direction of the Crown.

Other Powers under the Prerogative.

The Crown furthermore authorises under the sign manual the expenditure of public money in accordance with the appropriations made by Parliament, and then expends the money. It can grant charters of incorporation, with powers not inconsistent with the law of the land, so far as the right to do so has not been limited by statute; but in consequence

[1] Such as the hereditary Earl Marshal and Grand Falconer.

[2] On the power of removal from an office held during good behaviour, and on the effect of the provision that the three classes of officers mentioned above may be removed upon the address of both Houses of Parliament, see Anson, "Law and Custom of the Constitution," II., 213–15. The references to Anson are to the 3 Ed. of Vol. I. (1897); the 2 Ed. of Vol. II. (1896).

of the various reform acts, municipal corporation acts, and local government acts, no charter conferring political power can now be created except in pursuance of statute, while even commercial companies usually require privileges which can be given only by the same authority.[1] The Crown grants all pardons, creates all peers, and confers all titles and honours. As head of the Established Church of England it summons Convocation with a license to transact business specified in advance. It virtually appoints the archbishops, bishops and most of the deans and canons, and has in its gift many rectorships and other livings.[2] As head of the Army and Navy it raises and controls the armed forces of the nation, and makes regulations for their government, subject, of course, to the statutes and to the passage of the Annual Army Act. It represents the empire in all external relations, and in all dealings with foreign powers. It has power to declare war, make peace, and conclude treaties, save that, without the sanction of Parliament, a treaty cannot impose a charge upon the people, or change the law of the land, and it is doubtful how far without that sanction private rights can be sacrificed or territory ceded.[3]

Executive Powers under Statutes.

Just as Parliament has often conferred legislative authority upon the Crown, so it has conferred executive power in addition to that possessed by virtue of the prerogative. I do not refer here to the cases where a statute creates new public duties to be performed directly by the Crown and confers upon it the authority needed for the purpose. Such powers, although statutory, are exercised in the same way as those derived from the prerogative. I refer to statutes that regulate the duties or privileges of local and other bodies, and give to the Crown, not a direct authority to carry out the law, but a power of supervision and control. Statutes of this kind have become very

[1] Todd, "Parl. Govt. in England," 2 Ed. (1887), Ch. xiv.

[2] See the later chapter on The Church.

[3] *Cf.* Anson, "Law and Custom," II., 297–99; Dicey, "Law of the Constitution," 393. Heligoland was ceded to Germany by treaty in 1890, subject to the assent of Parliament, which was given by 53–54 Vic., c. 32.

common during the last half century in relation to such matters as local government, public health, pauperism, housing of the working-classes, education, tramways, electric lighting and a host of other things. Even without an express grant of authority, supervisory powers have often been conferred upon the Crown by means of appropriations for local purposes which can be applied by the government at its discretion, and hence in accordance with such regulations as it chooses to prescribe. This has been true, for example, of the subsidies in aid of the local police, and of education. By such methods the local authorities, and especially the smaller ones, have been brought under the tutelage of the Crown to an extent quite unknown in the past.

Wide Extent of the Powers of the Crown.

All told, the executive authority of the Crown is, in the eye of the law, very wide, far wider than that of the chief magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government not an absolute despotism; and although the Crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute very large powers of subordinate legislation. "It would very much surprise people," as Bagehot remarked in his incisive way, "if they were only told how many things the Queen could do without consulting Parliament . . . Not to mention other things, she could disband the army (by law she cannot engage more than a certain number of men, but she is not obliged to engage any men); she could dismiss all the officers, from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a 'university'; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative

upset all the action of civil government within the government."[1] We might add that the Crown could appoint bishops, and in many places clergymen, whose doctrines were repulsive to their flocks; could cause every dog to be muzzled, every pauper to eat leeks, every child in the public elementary schools to study Welsh; and could make all local improvements, such as tramways and electric light, well-nigh impossible.

Powers that have been Lost.

Great as the prerogative is to-day, it was, in some directions, even more extensive in the past, and men are in the habit of repeating the phrases derived from that past after they have lost their meaning. This is done by writers who are not under the slightest misapprehension in regard to the actual legal authority of the Crown. It is the habit, for example, to speak of the Crown as the fountain of justice, and even an author so learned and accurate as Todd repeats Blackstone's statement that "By the fountain of justice, the law does not mean the author or original, but only the distributor. Justice is not derived from the king, as from his free gift, but he is the steward of the public, to dispense it to whom it is due. He is not the spring, but the reservoir, from whence right and equity are conducted by a thousand channels to every individual."[2] Now apart from public prosecution by the state, which is less common in England than elsewhere, and the use of the King's name in judicial process, the only legal connection of the Crown with the distribution of justice to-day lies in the appointment of the judges; and to call it on that account the reservoir of justice is merely fanciful. There was a time when the Crown was really the fountain or reservoir of justice, when it might fairly have been said to administer justice by deputy. It created the Common Law courts, and after the growth of civilisation had produced more refined and complex ideas of justice it received petitions for the redress of wrongs not recognised before,

[1] "English Constitution," 2 Ed. (Amer.), Introd., 31.
[2] Todd, "Parl. Govt. in England," I., 570.

and established new courts to deal with them. Stubbs has compared the process to that of the sun throwing off a series of nebulous envelopes, which rolled up into compact bodies, but left the old nucleus of light to assert its vitality, unimpaired by successive emanations.[1] In this way the courts of equity arose to give relief in cases where there was no remedy by the strict rules of the Common Law, while the Star Chamber performed an analogous function in criminal matters. This last tribunal came to be used as a political engine under the Stuarts, and was abolished by statute[2] early in the struggle with Charles I. With the fall of the Stuarts the power of the Crown to create new courts came to an end altogether. In 1689 the Bill of Rights declared the "Court of Commissioners for Ecclesiastical Causes, and all other Commissions and Courts of a like Nature," illegal, and since that time an Act of Parliament has been necessary to create any new court of justice in England.

The Crown has been deprived in the same way of other powers once possessed or claimed under the prerogative. The Bill of Rights, for example, declared illegal the suspending or dispensing with laws, and the maintenance of a standing army in time of peace without the consent of Parliament. Some powers have, from long disuse, become obsolete and have been lost; such as the right to confer on boroughs the privilege of electing members to the House of Commons;[3] and the power to create life peers with votes in the House of Lords.[4] Other powers again, although legally unimpaired, have become obsolete in practice, and can no longer be exerted. The illustration commonly given of this is the right of the Crown to withhold its assent to a bill passed by Parliament, — popularly called, or mis-

[1] "Cons. Hist. of England," 4 Ed., I., 647. [2] 16 Car. I., c. 10.

[3] It may be maintained that the right, if not already lost by disuse, was by implication, though not expressly, taken away by the Reform Acts of 1832, 1867 and 1885, which created new boroughs and disfranchised old ones.

[4] See the debate in the Lords on the Wensleydale case. Hans., 3 Ser., CXL., *passim*.

called, the veto. The right has not been exercised since the days of Queen Anne; but it may not be gone so completely beyond revival as is generally supposed. It could, of course, be used only on the advice of the ministry of the day, and under ordinary circumstances a ministry willing to withhold the royal assent to a bill would be bound to treat the passage of that bill by the House of Commons as a ground for resignation or dissolution. One can imagine, however, a case where after a bill has passed the Commons the ministry should resign, and the House of Lords should insist on passing the bill in spite of the opposition of the new cabinet. It would be rash to assert that in such a case the royal assent would not be withheld. Something of the kind very nearly occurred in 1858, when the ministry threatened to advise the Queen to withhold her assent to a private bill unless the Lords gave permission to the Board of Works to appear before the private bill committee and oppose the plans.[1]

Powers of the Crown exercised by Ministers.

Since the accession of the House of Hanover the new powers conferred upon the Crown by statute have probably more than made up for the loss to the prerogative of powers which have either been restricted by the same process or become obsolete by disuse. By far the greater part of the prerogative, as it existed at that time, has remained legally vested in the Crown, and can be exercised to-day; but it is no longer used in accordance with the personal wishes of the sovereign. By a gradual process his authority has come more and more under the control of his ministers, until it is now almost entirely in the hands of the cabinet, which is responsible to Parliament, and through Parliament to the nation. The cabinet is to-day the mainspring of the whole political system, and the clearest method of explaining the relations of the different branches of the government to each other is to describe in succession their relations with the cabinet.

[1] The Victoria Station and Pimlico Railway Bill, Hans., 3 Ser., CLI., 586–89, 691–93, 797–98. See Todd, II., 392.

CHAPTER II

THE CROWN AND THE CABINET

It is not within the province of this book to trace the process whereby the King became irresponsible both at law and before the nation, while the responsibility for his acts became transferred to his ministers. The story has been told by others far better than the writer could tell it, and the object here is only to note the results of that process in the existing constitution.

The King can do no Wrong at Law;

The doctrine that "the King can do no wrong" had its beginnings as far back as the infancy of Henry III., and by degrees it grew until it became a cardinal principle of the constitution. Legally it means that he cannot be adjudged guilty of wrong-doing, and hence that no proceedings can be brought against him. He cannot be prosecuted criminally, or, without his own consent, sued civilly in tort or in contract in any court in the land.[1] But clearly if the government is to be one of law, if public officers like private citizens are to be subject to the courts, if the people are to be protected from arbitrary power, the servant who acts on behalf of the Crown must be held responsible for illegal conduct from the consequences of which the King himself is free. Hence the principle arose that the King's command is no excuse for a wrongful act, and this is a firmly established maxim of the Common Law in both civil and criminal proceedings.[2] To prevent royal violations of the law,

[1] If a person has a claim against the Crown for breach of contract, or because his property is in its possession, he may bring a Petition of Right, and the Crown on the advice of the Home Secretary will order the petition indorsed "Let right be done," when the case proceeds like an ordinary suit.

[2] Anson, II., 4, 5, 42, 43, 278, 279, 476–80. But a servant of the Crown is not liable on its contracts, for he has made no contract personally, and he cannot be compelled to carry out the contracts of the Crown. Gid-

however, it is not enough to hold liable a servant who executes unlawful orders, if the master still has power to commit offences directly. A further step must be taken by restraining the Crown from acting without the mediation of a servant who can be made accountable, and for this reason Edward IV. was informed that he could not make an arrest in person.[1] But, as the kings and queens are not likely to be tempted into personal assaults and trespasses, the principle that they can act only through agents has had little importance from the point of view of their liability at law, although it is a matter of vital consequence in relation to their political responsibility.

or in Politics.

The doctrine that the King can do no wrong applies not only to legal offences, but also to political errors. The principle developed slowly, as a part of the long movement that has brought the royal authority under the control of public opinion; not that the process was altogether conscious, or the steps deliberately planned, but taking constitutional history as a whole, we can see that it tended to a result, and in speaking of this it is natural to use terms implying an intent which the actors did not really possess. To keep the Crown from actual violations of law was not always easy, but it was far more difficult to prevent it from using its undoubted prerogatives to carry out an unpopular policy. Parliament could do something in a fitful and intermittent way by refusing supplies or insisting upon the redress of particular grievances, but that alone was not

ley *vs.* Lord Palmerston, 3 B. & B., 284. The rule that the sovereign cannot be sued has been held to prevent a possessory action against a person wrongfully in the possession of land as agent of the Crown: Doe. d. Legh. *vs.* Roe., 8 M. & W., 579. It would seem that in such a case the courts might have held that as the King could do no wrong, the wrongful act, and consequently the possession, was not his; in other words, that the agency could not be set up as a defence to the wrongful act. Compare United States *vs* Lee, 106 U.S., 196, where land had been illegally seized by the government of the United States.

[1] Coke, Inst. (1 Ed), II., 186–87. "Hussey Chief Justice reported, that Sir John Markham said to King E I. that the King could not arrest any man for suspition of Treason, or Felony, as any of his Subjects might, because if the King did wrong, the party could not have his Action" E. I. is a mistake for E. IV.

enough to secure harmony between the Crown and the other political forces of the day. There could, in the nature of things, be no appropriate penalty for royal misgovernment. In the Middle Ages, indeed, a bad king or a weak king might lose his throne or even his life; but in more settled times such things could not take place without a violent convulsion of the whole realm, — a truth only too well illustrated by the events of the seventeenth century. An orderly government cannot be founded on the basis of personal rule tempered by revolution. Either the royal power must be exercised at the personal will of the monarch, or else other persons who can be made accountable must take part in his acts of state.

A Minister Responsible for Each of his Acts.

As early as the fourteenth and fifteenth centuries the King's Council had begun to encumber the affixing of the various seals with a series of formalities which involved the intervention of one or more royal officers. The process continued until custom or statute required that almost every public act which the Crown was in the habit of performing directly — except the appointment and removal of the great officers of state themselves — must either be done in the Privy Council, or by means of an instrument authenticated by seals or countersignatures affixed by one or more officers of state.[1] The object of these formalities was to protect the Crown from improvident grants, and to secure the influence of the Council over the administration,[2] rather than to create any responsibility to Parliament or the public; and yet it was easy to maintain, when the time was ripe, that the officer who sealed or signed assumed thereby responsibility for the act. Then if a wrong was committed some one could be held to account; for misconduct some one could be punished; for acts that were unpopular, or a policy that was odious, some one beneath the throne could be assailed; and if a strong expression of resentment did not deter the offender, Parliament had as a

[1] Anson, II., 27, 42–54. Dicey, "The Privy Council," 34 *et seq.*
[2] Dicey, *Ibid.*, 40–42.

last resort the weapons of impeachment and bill of attainder. These weapons were a stage in the process of evolution, a stepping-stone in the progress of parliamentary control, but they were far too rough to produce a true accord between the Crown and Parliament; and when the political experiments of William and of Anne, fostered by the timely accident of two unkingly foreigners upon the throne, evolved at last the system of a responsible ministry in its present form, even impeachment became obsolete, or rather it lingered only as a means of retribution for personal malfeasance in office.

Nature of Modern Responsibility.

The rules requiring seals or signatures to be affixed to royal acts, though somewhat simplified, remain in force today, but they have ceased to be the real source of responsibility. The effort to fasten upon a particular person the actual responsibility for each public act of the Crown by compelling some officer to put his approval of it on record, has been superseded by the general principle that the responsibility must always be imputed to a minister. Though ignorant of the matter at the time it occurred, he becomes answerable if he retains his post after it comes to his knowledge; and even though not in office when the act was done, yet if he is appointed in consequence of it, he assumes with the office the responsibility for the act. This happened to Sir Robert Peel in 1834. Believing, as every one at that time did believe, that the King had arbitrarily dismissed Lord Melbourne's cabinet, he said, "I should by my acceptance of the office of First Minister become *technically, if not morally*, responsible for the dissolution of the preceding government, although I had not the remotest concern in it." [1] The rule is so universal in its operation "that there is not a moment in the King's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct." [2] A minister is now politically responsible for everything that occurs in his

[1] Mahon and Cardwell, "Memoirs by Sir Robert Peel," II., 31.
[2] Todd, "Parl. Govt. in England," 2 Ed., I., 266.

department, whether countersignature or seal is affixed by him or not; and all the ministers are jointly responsible for every highly important political act. A minister whose policy is condemned by Parliament is no longer punished, he resigns; and if the affair involves more than his personal conduct or competence, if it is of such moment that it ought to have engaged the attention of the cabinet, his colleagues resign with him. Thus punitive responsibility has been replaced by political responsibility, and separate has been enlarged to joint responsibility.

The King must Follow the Advice of Ministers;

The ministers, being responsible to Parliament for all the acts of the Crown, are obliged to refrain from things that they cannot justify, and to insist upon actions which they regard as necessary. In short, the cabinet must carry out its own policy; and to that policy the Crown must submit. The King may, of course, be able to persuade his ministers to abandon a policy of which he does not approve, and of his opportunities for doing so we shall have more to say later; but if he cannot persuade them, and, backed by a majority in Parliament, they insist upon their views, he must yield. It is commonly said that he must give his ministers his confidence, but it would be more accurate to say that he must follow their advice. With the progress of the parliamentary system this custom has grown more and more settled, the ministers assuming greater control, and the Crown yielding more readily, not necessarily from any dread of the consequences, but from the force of habit.

or Find Others who will Accept Responsibility.

According to the older theory of parliamentary government, it was merely necessary that the King should have ministers who would accept responsibility for his acts; and, therefore, he might disregard their advice if he could find others who were willing to adopt his policy, and assume responsibility for it. Such an alternative is a very remote possibility in England to-day. It could only be brought about in one of two ways.

In the first place it might be brought about by the dismissal of the cabinet. William IV. was long supposed to

have dismissed arbitrarily Lord Melbourne's cabinet in 1834, and for many years his action in so doing was freely criticised; but on the publication of the Melbourne Papers[1] it appeared that the Prime Minister himself, meeting with great difficulty in carrying on the government, virtually suggested the dismissal to the King; and thus the incident was rather in the nature of a resignation than a dismissal. The right to dismiss a ministry, although unquestionably within the legal prerogative of the Crown, seems to be regarded as one of those powers which the close responsibility of the cabinet to the House of Commons has practically made obsolete. As in the case of some other powers, however, it is hardly safe to predict that it will never be used again, for circumstances might arise in which it was evident that the ministry and the House of Commons no longer represented the opinion of the country. Before Mr. Gladstone's last administration few people would have hesitated to say that the House of Lords would never again venture to reject a bill on which a House of Commons, fresh from a general election, was thoroughly in earnest, when the subject of the bill had been one of the chief issues in that election. Yet the Lords rejected the last Home Rule Bill of 1893, without losing popularity by so doing; and in 1906 it destroyed the Education Bill. It is conceivable that under similar conditions the Crown might, by dismissing a ministry, force a dissolution, and appeal to the electorate. Such an event, though highly improbable, cannot be said to be impossible.

The dismissal of a ministry must, of course, be carefully distinguished from the dismissal of an individual minister. This would be done, as in the case of Lord Palmerston, — the last of the kind that has occurred, — at the request of the Premier, and therefore not contrary to, but in accordance with, the advice of the person chiefly responsible for the acts of the Crown.

The other way in which a change of ministry could be

[1] Pp. 220–26.

brought about by the Crown would be by a refusal to consent to some act which the ministry deemed essential to their remaining in office. Some cases of the exercise of such a right by the representative of the Crown have taken place in the self-governing colonies, but they are not such as are likely to occur in England. A request, for example, by the ministry to be allowed to dissolve a colonial legislature has on several occasions been refused by the governor, usually on the ground that a general election had recently been held, or that there was no important issue pending between the parties which the people could properly be called upon to decide.[1] In England, on the other hand, such a request by a ministry has never been refused since William Pitt in 1784 invented the principle that a government faced by a hostile majority in the House of Commons may appeal to the electorate instead of resigning; nor is it probable that it will be refused, because the rules of political fair play are so thoroughly understood among English statesmen that the power is not likely to be misused for party purposes.

An interesting discussion on the right of a colonial governor to reject the advice of his ministers was raised in the case of Governor Darling of Victoria in 1865. The story has been often told. It grew out of a quarrel between the Assembly and the Legislative Council, which were both elective, but happened to be on opposite sides in politics. The Assembly, wishing to enact a protective tariff, to which a majority of the Council was known to be opposed, tacked it to the annual appropriation bill; and the Council, unable to amend such a bill, rejected it altogether. Thereupon the Governor, yielding to the pressure of his ministers, sanctioned the levy of the new duties, the issue of a loan, and the payment of official salaries, without the authority of any act regularly passed by both branches of the legislature. For permitting, on the advice of his ministers, such a viola-

[1] A description of these cases may be found in Todd, "Parl. Govt. in the British Colonies," 525–73.

tion of law, Governor Darling was rebuked, and finally dismissed by the Secretary of State for the Colonies.[1] It is needless to say that no such situation has ever arisen, or is likely to arise, in England.

Selection of a New Premier.

There is one matter in which the Crown cannot really be bound by the advice of ministers, and that is in the selection of a Premier. It would be obviously improper, not to say absurd, that the King in the selection of a new Prime Minister should be obliged to follow the opinion of the old one who has just resigned in consequence of a change of party in the House of Commons. That Mr. Balfour, for example, should have had the right to dictate whether Sir Henry Campbell-Bannerman or Lord Rosebery should be his successor would have been grotesque. There is usually one recognised leader of the Opposition, and when that is the case the Crown must intrust the formation of the new ministry to him. This was illustrated in 1880. Mr. Gladstone had, some years before, retired from the leadership of the Liberals in Parliament, and the Queen, after their success at the general election, sent for Lord Hartington, then leading them in the House of Commons; but she found that Mr. Gladstone, who had really led the party in the country to victory, was the only possible head of a Liberal government.[2]

If the party that has obtained a majority in Parliament has no recognised leader, the Crown may intrust the formation of a ministry to any one of its chief men who is willing to undertake the task; or if, as is sometimes the case, the parties have become more or less disintegrated, so that only a coalition ministry can be formed, the Crown can send for the head of any one of the various groups. Not to speak of earlier days, when the King had more freedom than at present in the formation of his cabinets, it happened several times in the reign of Queen Victoria that the question who should be Prime Minister was determined by her personal

[1] Todd, "Parl. Govt. in the British Colonies," 105 *et seq.*
[2] *Cf.* Morley, "Life of Gladstone," Book II., Ch. vii.

choice. In 1852, for example, Lord Aberdeen's coalition cabinet was formed by her desire.[1] In 1859 she selected Lord Palmerston rather than Lord John Russell;[2] and in 1868 and 1894, when in each case the existing cabinet lost its head, she selected the minister who was to succeed, designating in the first case Mr. Disraeli, and in the last Lord Rosebery.[3] Such opportunities, however, are likely to be less common in future, for it is altogether probable that a party will prefer to choose its own leader rather than to leave the selection to the Crown.

Selection of Other Ministers.

The choice of the other members of the cabinet is a very different matter; for although former sovereigns insisted on having a decisive voice in the composition of the ministry, it may be said that with Peel's appointment to office in 1834 the principle was definitely established that the Prime Minister chooses his colleagues, and is responsible for their selection.[4] The royal authority in this matter gave a last dying flicker in the bed-chamber question of 1839, where Peel's clumsiness and the Queen's impetuosity gave rise to a misunderstanding. Peel wished to replace some of the ladies attendant on the Queen, who were exclusively Whigs, by Conservatives; and the Queen, getting the impression that he intended to replace them all, refused.[5] When Peel came into office two years later part of the Whig ladies retired and were replaced; and it has since been settled that the Mistress of the Robes, like the Gentlemen of the Household, shall change with the administration, but that the other ladies shall remain. The Mistress of the Robes, however, must always be a duchess, and during the last years of the Queen's life it happened that there was no duchess who was a Liberal.

At the present day all persons whose offices are considered

[1] Sidney Lee, "Life of Queen Victoria," 1 Ed., 232–33.

[2] Ashley's "Life of Lord Palmerston," II., 154–57. Lee, "Life of Queen Victoria," 296.

[3] Lee, *Ibid.*, 511.

[4] Todd, "Parl. Govt. in England," 2 Ed., I., 323 *et seq.*

[5] Parker, "Sir Robert Peel," II., 391 *et seq.*, and Lee, "Life of Queen Victoria," 97–103.

political are appointed in accordance with the advice of the Prime Minister. This does not mean that the sovereign may not urge his own views, perhaps with success, and on one occasion, at least, the Queen secured, it is said, a place in the cabinet for a former minister whom the incoming Premier had either forgotten or meant to leave out. It does mean, however, that if the minister insists upon his advice it must be accepted. More than once, for example, the Queen tried in vain to exclude from the Foreign Office Lord Palmerston, who was a constant grief of mind to her. As Mr. Morley puts it in the chapter, in his "Life of Walpole," which is understood to express Mr. Gladstone's views upon the cabinet, "Constitutional respect for the Crown would inspire a natural regard for the personal wishes of the sovereign in recommendations to office, but royal predilections or prejudices will undoubtedly be less and less able to stand against the Prime Minister's strong view of the requirements of the public service." [1]

For what Acts Ministers are Responsible.

The responsibilities of the ministers may be classified as technical and complete. Thus for acts which happen before they come into office, and which they could not possibly have advised, they assume what may be called a technical, or perhaps a nominal, responsibility. A premier is technically responsible for his own selection; but as responsibility of that kind means merely the obligation to resign on an adverse vote of the House of Commons, and as he would be obliged to do this in any event, he assumes no additional responsibility by reason of his own selection; and the same thing may be said of all acts which happen before the ministers come into power, and which they do not by accepting office effectually sanction or condone. They become responsible, for example, for the condition of the public departments of which they take charge; and yet it may be for the very purpose of changing that condition that they were put in office. In other words, there is a difference between those things for which they are technically re-

[1] Morley, "Walpole," 158.

sponsible but not to blame, and those things which have been done by their advice, and for the consequence of which they may be said to be morally or completely responsible. The distinction is unimportant from the point of view of the conventions of the constitution, but its practical consequences are considerable as regards the position of the cabinet before Parliament and the public. Now the ministers are completely responsible for all political acts done by the Crown during their tenure of office, even those which appear to be most directly the work of the sovereign himself. All communications with the representatives of foreign powers, for example, pass through their hands. The creation of peers, the granting of honours, are now unquestionably subject to their advice; and although when King Edward's list of coronation honours was announced in 1901, *The Times* declared that the names were the personal choice of the monarch, it took pains to add that the constitutional responsibility must, of course, rest with the ministers.[1]

In short, the ministers direct the action of the Crown in all matters relating to the government. The King's speech on the opening of Parliament is, of course, written by them; and they prepare any answers to addresses that may have a political character. All official letters and reports to the King, and all communications from him, must pass through the hands of one of their number. A letter addressed to the sovereign as such by a subject, or other private person, passes through the office of the Home Secretary; and even peers, who have a constitutional right to approach him, must make an appointment for the interview through the same office. This does not mean that the Crown may not consult any one it pleases. That question came up in relation to Prince Albert, whom the ministers at first held at arm's length, and whose presence at their interviews with the Queen they refused for a couple of years to permit, while he, on the other hand, called himself the Queen's

[1] *The Times*, June 26, 1902.

"confidential adviser" and "permanent minister."[1] Confidential adviser he certainly was, but minister he certainly was not, because in the nature of things he could not be responsible for her acts. Mr. Gladstone in his "Gleanings of Past Years"[2] seems to have defined the true position of the Queen and Prince Consort when he said that she has a right to take secret counsel with any one, subject only to the condition that it does not disturb her relation with her ministers. She cannot, as a rule, consult the Opposition, because they are directly opposed to the ministry; but she can consult any one else, provided it does not affect the responsibility of her ministers, that is, provided that in the end she follows their advice.

Public and Private Acts of the Crown.

The ministers are responsible for the public, not the private, acts of the Crown; but it is sometimes hard to distinguish between the two. Queen Victoria, for example, had relatives on many of the thrones of Europe to whom it was absurd that she should not write private letters; while other crowned heads were constantly writing letters to her on public business which they did not intend the ministers to see. The rule was, therefore, adopted that all her correspondence with foreign sovereigns, not her relatives, should pass through the ministers' hands, — an arrangement which, though a necessary result of English responsible government, was galling to the Queen, who was often made to express in her own handwriting opinions quite different from those which she really held.[3] In domestic matters, also, it is hard to draw the line between what is public and what is private. The Queen's marriage, which was felt at the time to have a greater political importance than it would have to-day, was arranged by herself without consultation with her ministers, and merely announced to them. On the other hand, when the Princess Louise was betrothed to the Marquis of Lorne, Mr. Gladstone stated in the House of Commons that the marriage

[1] Martin, "Life of the Prince Consort," 4 Ed., I., 74. [2] I., 73.
[3] Lee, "Life of Queen Victoria," 1 Ed., 211–13.

with a subject had not been decided upon without the advice of the ministers of the Crown.[1] The risk of a strong infusion of British blood in the veins of some future occupant of the throne is, it seems, a political matter, for which the cabinet must hold itself responsible. But this is not true of purely social affairs. One of the chief functions of the Crown is that connected with its duties as the head of the social life of the capital. These duties the Queen virtually abandoned for many years after her husband's death; but although there were loud complaints on the part of the public, the question was not regarded as a political one for which the ministers could be called to account.

The King's Name not Brought into Public Controversy.

Since the King can do no wrong, he can do neither right nor wrong. He must not be praised or blamed for political acts; nor must his ministers make public the fact that any decision on a matter of state was actually made by him.[2] His name must not be brought into political controversy in any way, or his personal wishes referred to in argument, either within or without Parliament.[3] This principle was not fully recognized until after the accession of Queen Victoria. At the first election of her reign the Tories complained, apparently with reason, that the Whigs used her

[1] Todd, "Parl. Govt. in England," 2 Ed., I., 266, note *y*. Hans., 3 Ser. CCIV., 173, 370.

[2] Disraeli's opponents were right for criticising him for letting it be known that it was the Queen who had decided whether to accept his resignation or to dissolve in 1868: Hans., 3 Ser. CXCI, 1705, 1724, 1742, 1788, 1794, 1800, 1806, 1811. There was no objection to allowing her to decide if he pleased, — that is, he might accept her opinion as his own, — but he ought to have assumed in public the sole responsibility for the decision.

[3] In 1876 Mr. Lowe in a public speech expressed his belief that the Queen had urged previous ministers in vain to procure for her the title of Empress of India. The matter was brought to the attention of the House of Commons, and he was forced to make an apology, which was somewhat abject, the Queen through the Prime Minister having denied the truth of his statement: Hans., 3 Ser. CCXXVIII., 2023 *et seq.*; and CCXXIX., 52–53.

An apparent, though not a real, exception may be found in the rule which requires that before a bill affecting the prerogative can be introduced into Parliament, notice of the King's assent thereto must be given. If the bill affects only the private property of the Crown it is not a political matter. If it affects the public powers of the Crown, then the assent is given on the responsibility of the ministers.

and her name as party weapons,[1] and three years later we find Wellington referring to the Queen as the head of the party opposed to the Conservatives.[2] Almost the only public acts that can be done by the Crown before the public eye are ceremonies, public functions, speeches which have no political character and deeds of kindness that are above criticism. When the Queen, for example, made her last visit to Ireland, the public were allowed to understand that it was her own suggestion, and the same thing was true of her order allowing Irish soldiers to wear the shamrock, it being assumed that such acts could not have a political bearing, and would excite no hostile comment.

Actual Influence of the Sovereign

According to the earlier theory of the constitution the ministers were the counsellors of the King. It was for them to advise and for him to decide. Now the parts are almost reversed. The King is consulted, but the ministers decide. It is commonly said that, with the sovereign, influence has been substituted for power; or as Bagehot puts it in his own emphatic way, the Crown has "three rights—the right to be consulted, the right to encourage, the right to warn. And a king of great sense and sagacity would want no others."[3] But after the advice and warning have been given the final decision must remain with the ministers. It is for them to determine whether their opinion is of such importance that they feel obliged to insist upon it in spite of the objections of the King, and if they do he must yield. Bagehot goes on to describe how effective the right to advise may become in the hands of a sage and experienced monarch, but he admits how small the chance must be that the occupant of the throne will possess the qualities needed for making a good use of the right, and adds that the attempt of the ordinary monarch to exercise it would probably do more harm than good.

Historians have often observed that the absence of the

[1] Lee, "Life of Queen Victoria," 74–75.
[2] Parker, "Sir Robert Peel," II., 415 *et seq.*
[3] English Const., 1 Ed., 103.

sovereign from cabinet meetings, since the accession of the House of Hanover, has been a great factor in the growth of cabinet government. His absence had, indeed, three distinct effects. It helped to free the individual members of the cabinet from royal pressure; it made it easier for them to act as a unit in their relations with the monarch; and it tended to remove him from the discussion of public policy until it had been formulated. This last point is highly important, and has a bearing upon the influence of the King to-day, because it is before the ministers have formed an opinion that his advice and warning are most effective. It is while some of them are reluctant and others are hesitating that the weight of his views has the best chance of turning the scale. After the matter has been threshed out and an agreement reached the decision is far less likely to be reversed, or even seriously modified, by his personal preferences.

He is Consulted after a Decision is Reached.

Now the sovereign is not usually consulted about matters of domestic legislation and policy until the opinion of the cabinet has taken shape. For although he is informed in general terms of what is done at cabinet meetings, and sometimes discusses with a minister the proposed measures relating to his department, yet a matter is commonly talked over and agreed upon by the ministers before it is submitted to him for approval. In this way "the sovereign is brought into contact only with the net results of previous inquiry and deliberation," [1] and the views of the cabinet are "laid before" him "and before Parliament, as if they were the views of one man." [2] Queen Victoria tried, indeed, to insist upon the right of "commenting on all proposals before they are matured;" [3] but apparently without much success. This was not equally true, however, of all departments of the government. On the contrary, after a long struggle with Lord Palmerston, in which she suffered many

[1] Gladstone, "Gleanings of Past Years," I., 85.
[2] Morley, "Life of Walpole," 155.
[3] This was in 1880. Lee, "Life of Queen Victoria," 451.

exasperating rebuffs, the autocratic foreign minister by his impulsiveness and lack of perfect candour gave her at last an advantage. She succeeded in establishing, by the memorandum of August, 1850, the rule that she must be kept informed of foreign correspondence and despatches before they were sent, so that foreign matters should be intact and not already compromised when they were brought to her attention. Mr. Gladstone has criticised the principles laid down at that time because they meant that the comments of the Premier on despatches were to be made, not privately to the foreign minister, but after the draft had been submitted to the Queen.[1] In other words, he complained that the Queen was consulted before the tenor of the despatch had been finally settled between the Premier and the foreign minister. His criticism seems, therefore, to be levelled at the practice of consulting the Crown before the policy has been agreed upon by those who are responsible for it,[2] in this case the Prime Minister and the Foreign Secretary, for despatches are not ordinarily brought before the full cabinet for consideration.

The opportunity for an exertion of royal influence is much less in those matters which are settled in cabinet meeting than in others. In the former case the sovereign is not usually consulted until the question has been thoroughly discussed, and the cabinet has reached a decision which is the more difficult to change because it is often the result of a compromise, and has, therefore, something of the binding force of an agreement; whereas, in questions which are not

[1] "Gleanings of Past Years," I., 86, 87.

[2] For the same reason the President of the Board of Control objected in 1842, when Lord Ellenborough, the Governor General of India, took upon himself to write directly to the Queen. Parker, "Life of Sir Robert Peel," II., 591.

In 1885 Lord Randolph Churchill tendered his resignation as Secretary of State for India, because the Prime Minister, without consulting him, had transmitted to the Viceroy a suggestion by the Queen that one of her sons should be appointed to the command of the forces in Bombay. The appointment was not made, and Lord Randolph withdrew his resignation. Winston Churchill, "Life of Lord Randolph Churchill," I., 503–13.

brought directly before the cabinet, the Crown when consulted has to overcome only the opinion, and perhaps the hasty opinion, of one or two ministers. This is true in such matters as the less important foreign relations, ecclesiastical and other patronage, and the ordinary executive work of the various departments. But herein another difference must be observed. The executive action of the government in domestic affairs is usually brought under very close scrutiny by Parliament, and is subjected to a galling fire there. Hence the minister, with the volley of questions levelled at the Treasury Bench ever before his mind, finds it more difficult in these affairs to yield his opinion to that of the monarch than he does in the case of foreign negotiations, and of ecclesiastical, judicial and military patronage, which are not habitually discussed in Parliament.[1] It would seem, therefore, that under ordinary circumstances the personal influence of the King in political matters is not likely to be very effectively asserted outside of foreign affairs, church patronage, and some other appointments to office.

Personal Influence of Queen Victoria.

Although one can perceive the general limitations upon the personal influence of the monarch imposed by the conditions under which it is exercised, one can never know how vigorously it is being used at the moment; and, indeed, it is difficult to estimate its actual effect during any comparatively recent period. There is no use in going back beyond the reign of Queen Victoria, to times when the parliamentary system was so imperfectly developed that ministers sometimes gave individual and contrary advice to the King;[2] and since the Queen came to the throne very little has been published which throws light upon the subject. From the various memoirs and letters of her ministers almost everything has been eliminated that bears upon the actual influence she exerted. Nevertheless certain facts appear. There can be no doubt that the personal opinions of the

[1] *Cf.* Dicey, "Law of the Constitution," 5 Ed., 392.
[2] *Cf.* Parker, "Life of Sir Robert Peel," I., 334.

monarch were deemed of greater importance at the time of the Queen's accession than they are to-day. Of late years, indeed, many popular writers have tended to neglect the royal influence altogether. With the love of broad generalisation, which is at once valuable and perilous in political philosophy, publicists have been in the habit of speaking of the Queen as a figurehead; but statesmen who have seen the inner life of the cabinet know that the metaphor is inexact. Mr. Gladstone is reported to have said that every treatise on the English government which he had read failed to estimate her actual influence at its true value; and in his "Gleanings of Past Years" [1] he remarks, "there is not a doubt that the aggregate of direct influence normally exercised by the sovereign upon the counsels and proceedings of her ministers is considerable in amount, tends to permanence and solidity of action, and confers much benefit on the country." Perhaps at a later period he might have stated this less strongly; and although no final judgment can yet be formed, one may venture an estimate of the Queen's influence in the different branches of the government.

In Domestic Policy.

The effect of the Queen's personal preferences in the selection of the Prime Minister and his colleagues has already been discussed, and it may be added that on two or three occasions a cabinet, instead of resigning on a defeat in the Commons, dissolved Parliament in deference to her wishes; [2] but except for this it is hard to find definite traces of her influence upon the general domestic policy of the country. Yet in some departments, at least, of the public service she took a very lively interest. At times she was prodigal of suggestions and advice, which bore, as far as one can see, no positive fruit. She held her opinions strongly, expressed them boldly, and was frank in her criticism of measures, but did not succeed apparently in

[1] I., 42.

[2] Lee, "Life of Queen Victoria," 133, 295, 387, and see page 39, note 2, *supra*.

persuading her ministers to abandon or even to modify them. On more than one occasion she used her personal influence over the peers to prevent a disagreement between the Houses, but this was never done to give effect to her own personal views, and in the case of the Irish Church Disestablishment Bill it was done to secure the passage of a government measure with which she was not herself in sympathy.[1] In short her personal influence in domestic affairs, either in the form of initiating policy, or of effecting changes in that of her ministers, seems to have been very slight. To this statement, however, a couple of exceptions must be made, which relate to the Army and the Church. The Queen, who regarded the Army as peculiarly dependent upon the sovereign, procured the appointment of a royal duke as Commander-in-Chief, and for a time she resisted successfully all attempts to change the vague relation of that office to the Crown,[2] although in the end it was made completely subordinate to the minister responsible to Parliament.[3] In the matter of ecclesiastical appointments her opinions were expressed with still greater effect, bishops and deans having in several cases been selected by her, sometimes in preference to candidates proposed by the Prime Minister.

In Foreign Affairs.

But it was in foreign affairs that the Queen's efforts were most untiring, and on the whole most successful, in spite of many disappointments. For years she was opposed to Lord Palmerston's aggressive attitude, and while she never effected a radical change of policy, she appears at times to have softened it to some extent.[4] Throughout her reign she insisted upon the right to criticise despatches, and not infrequently she caused changes to be made in them; sometimes, as in the European crisis of 1859–1861, by appealing from the Foreign Secretary and the Prime Minister to the

[1] Morley, "Life of Gladstone," II., 267 *et seq.* Davidson and Benham, "Life of Archbishop Tait," 2 Ed., II., 20–27, 35–36, 40–42.

[2] Lee, "Life of Queen Victoria," 266, 302.

[3] 33–34 Vic., c. 17. Order in Council, June 4, 1870.

[4] *Cf.* Lee, "Life of Queen Victoria," 299, 336, 349.

cabinet as a whole.[1] The most famous case is that of the Trent Affair in 1861, where the changes made in a despatch, in accordance with the suggestions of the Prince Consort a few days before his death, avoided a danger of serious trouble with the United States. In foreign affairs, therefore, it is safe to conclude that while the Queen never initiated a policy, her influence had on several important occasions a perceptible effect in modifying the policy of her ministers.

Changes during the Queen's Reign.

In the closing chapter of his biography of the Queen, Mr. Lee says that her "personal influence was far greater at the end of her life than at her accession to the throne. Nevertheless it was a vague intangible element in the political sphere, and was far removed from the solid remnants of personal power which had adhered to the sceptre of her predecessors." [2] No doubt her long experience, and the veneration due to her age and unblemished character, caused her opinions to be treated with growing respect; but there can be no doubt, also, that the political influence of the sovereign faded slowly to a narrower and fainter ray during her reign. One sees this in Peel's remark at her accession, that the personal character of a constitutional monarch counteracts the levity of ministers and the blasts of democratic passions.[3] One sees it in the great importance attached at that time to the persons surrounding the Queen, to the Ladies of the Bedchamber, to the question of her private secretary, and to the position of the Prince Consort. The Queen herself seems to have held views about her own position that were drawn from the past rather than the present.[4] At least this is the impression one forms, and it is

[1] Morley, "Life of Walpole," 159. But see Morley, "Life of Gladstone," I., 415.

[2] Pp. 544–45.

[3] "Croker Papers," II., 317. A couple of years earlier Peel had dreaded the advent of a ministry that might appear to be dictated to the King by the House of Commons, and continue in office independently of his will and control. Parker, "Sir Robert Peel," II., 302. No statesman would repeat either of these remarks to-day.

[4] In Prince Albert's letter to his daughter, the Crown Princess of Prussia, on the advantages of a responsible ministry, he speaks of the power of the monarch to settle the principles on which political action is to be based, in terms not applicable in England. Martin, "Life of the Prince Consort," IV., 218.

fortified both by her defence of her seclusion in 1864, on the ground that she had higher duties to discharge which she could not neglect without injury to the public service; and by her complaint that some of her ministers did not allow her time enough to consider and decide public questions, when in reality the decision was not made by her at all. The Crown has been compared to a wheel turning inside the engine of state with great rapidity, but producing little effect because unconnected with the rest of the machinery. This is, no doubt, an exaggeration; but the actual influence of Queen Victoria upon the course of political events was small as compared with the great industry and activity she displayed. What the influence of the sovereign will be in the future cannot be foretold with precision. It must depend largely upon the insight, the tact, the skill, the industry and the popularity of the monarch himself; and as regards any one department, upon his interest in that department. The monarch is not likely to be inured to a life of strenuous work, and yet in addition to the political routine, which is by no means small, his duties, social and ceremonial, are great. Moreover, with the highest qualifications for the throne, his opportunities must be very limited, for there is certainly no reason to expect any growth in irresponsible political authority.

Utility of the Monarchy; as a Political Force.

Bagehot's views upon the utility of the monarchy have become classic. Recognising the small chance that an hereditary sovereign would possess the qualities necessary to exert any great influence for good upon political questions, he did not deem the Crown of great value as a part of the machinery of the state; and he explained at some length how a parliamentary system of government could be made to work perfectly well in a republic, although up to that time such an experiment had never been tried. But he thought the Crown of the highest importance in England as the dignified part of the government. Writing shortly before the Reform Bill of 1867, he dreaded the extension of democracy in Great Britain, for he had a low opinion of

the political capacity of the English masses. He felt that the good government of the country depended upon their remaining in a deferential attitude towards the classes fitted by nature to rule the state, and he regarded the Crown as one of the strongest elements in keeping up that deferential attitude. According to his conception of English polity the lower classes believed that the government was conducted by the Queen, whom they revered, while the cabinet, unseen and unknown by the ignorant multitude, was thereby enabled to carry on a system which would be in danger of collapsing if the public thoroughly understood its real nature. Whatever may have been the case when Bagehot wrote, this state of things is certainly not true to-day. The English masses have more political intelligence than he supposed, or more political education than when he wrote. A traveller in England does not meet to-day people who think that the country is governed by the King, nor does he find any ignorance about the cabinet, or any illusions about the part played by the chief leaders in Parliament. The English workingman is now bombarded from the platform, in the newspapers and in political leaflets, with electioneering appeals which do not refer to the King, but discuss unceasingly the party leaders and their doings. The political action of the Crown is, in fact, less present to men's minds than it was half a century ago. Mr. Lee tells us that he was impressed by the outspoken criticism of the Queen's actions in the early and middle years of her reign.[1] To-day the social and ceremonial functions of the Crown attract quite as much interest as ever; but as a political organ it has receded into the background, and occupies less public attention than it did formerly. The stranger can hardly fail to note how rarely he hears the name of the sovereign mentioned in connection with political matters; and when he does hear it the reference is only too apt to be made by way of complaint. If the foreign policy is unpopular, if there is delay in the formation of a cabinet, one

[1] "Life of Victoria," Pref., vii–viii.

may hear utterly unfounded rumours attributing the blame to the King. Even if a committee of inquiry is thought not to have probed some matter to the bottom, it is perhaps whispered that persons in favour at court are involved. Fortunately such reports are uncommon. In general the growth of the doctrine of royal irresponsibility has removed the Crown farther and farther out of the public sight, while the spread of democracy has made the masses more and more familiar with the actual forces in public life. One may dismiss, therefore, the idea that the Crown has any perceptible effect to-day in securing the loyalty of the English people, or their obedience to the government.

On the other hand, the government of England is inconceivable without the parliamentary system, and no one has yet devised a method of working that system without a central figure, powerless, no doubt, but beyond the reach of party strife. European countries that had no kings have felt constrained to adopt monarchs who might hold a sceptre which they could not wield; and one nation, disliking kings, has been forced to set up a president with most of the attributes of royalty except the title. If the English Crown is no longer the motive power of the ship of state, it is the spar on which the sail is bent, and as such it is not only a useful but an essential part of the vessel.

As a Social and Moral Force.

The social and ceremonial duties of the Crown are now its most conspicuous, if not its most important, functions. There can be no question that the influence of the Queen and her court was a powerful element in the movement that raised the moral tone of society during the first half of the last century. But such an influence must vary with the personal character of the monarch. It may be exerted for good or for evil; and it may not be so strong in the future as it has been in the past.

As a Pageant.

In its relation to the masses royalty may be considered in another aspect. Within a generation there has been a great growth of interest in ceremony and dress. Antiquated customs and costumes have been revived, and

matters of this kind are regarded by many people as of prime importance. A kindred result of the same social force has been a marked increase in what Bagehot called the spirit of deference, and what those who dislike it call snobbishness — a tendency by no means confined to the British Isles. All this has exalted the regard for titles and offices, and enhanced the attractiveness of those who bear them. In prestige the titled classes have profited thereby, and although their position is less and less dependent upon court favour, the royal family has also profited directly. The presence of some one of its members is sought at ceremonies of all kinds, whether it be the opening of a new building, the inauguration of a charity, or an anniversary celebration at a university. The attendance of the King on such occasions insures an extended report in all the newspapers of the country, and is, therefore, a most effective form of advertisement.

As a Symbol.

A century or more ago people who had learned nothing from the history of Greece or Rome, and above all of Venice, were wont to assert that the sentiment of loyalty requires a person for its object. No one would make such a statement now. No one pretends that the English would be less patriotic under a republic; and yet with the strengthening conception of the British Empire, the importance of the Crown as the symbol of imperial unity has been more keenly felt. To most countries the visible symbol of the state is the flag; but curiously enough there is no British national flag. Different banners are used for different purposes; the King himself uses the Royal Standard; ships of war carry at the peak the White Ensign; naval reserve vessels fly the Blue Ensign, and merchantmen the Red Ensign; while the troops march, and Parliament meets, under the Union Jack; and all of these are freely displayed on occasions of public rejoicing. There is a tendency at the moment to speak of the Union Jack as the national flag, but a recent occurrence will illustrate how far this is from being justified. A British subject residing at Panama had been in the habit

of flying the Red Ensign, until one day he hoisted in its place the Union Jack. Now, according to the regulations the Jack is displayed from the consulates, and the British consul requested his patriotic fellow-citizen not to use it on his private house. The question was finally referred to the British Foreign Office, which in deference to a law of Panama forbidding all private display of alien flags, supported the position of the consul, but refrained from expressing any opinion on the right of an English citizen to hoist the Union Jack in foreign parts.[1] Each of the self-governing colonies has, moreover, its own flag, which consists of the Union Jack with some distinctive emblem upon it. One of the first acts of the new Commonwealth of Australia was to adopt a separate flag of this kind. The government held a competition in designs, and some thirty thousand were presented. From these one was selected which showed at the same time the connection with the empire and the self-dependence of the commonwealth. It is the Union Jack with a southern cross and a six-pointed star at one end, — a design that seems to have been more shocking to heraldic than to imperialist sensibilities.

The Crown is thus the only visible symbol of the union of the empire, and this has undoubtedly had no inconsiderable effect upon the reverence felt for the throne.

Popularity of the Monarchy.

Whatever the utility of the Crown may be at the present time, there is no doubt of its universal popularity. A generation ago, when the Queen, by her seclusion after the death of Prince Albert, neglected the social functions of the court, a number of people began to have serious doubts on the subject. This was while republican ideals of the earlier type still prevailed, and before men had learned that a republic is essentially a form of government, and not necessarily either better or worse than other forms. The small republican group in England thought the monarchy useless and expensive; but people have now learned that republics are not economical, and that the real cost of

[1] *The Times*, Sept. 17, 1903.

maintaining the throne is relatively small.[1] So that while the benefits derived from the Crown may not be estimated more highly, or admitted more universally than they were at that time, the objections to the monarchy have almost entirely disappeared, and there is no republican sentiment left to-day either in Parliament or the country.

[1] Hans., 4 Ser. XCIV., 1500. The Civil List of Edward VII. was fixed at his accession at £543,000, to which must be added about £60,000 of revenues from the Duchy of Lancaster, and also the revenues from the Duchy of Cornwall which go to the heir apparent as Duke of Cornwall. Rep. Com. on Civil List, Com. Papers, 1901. V., 607.

CHAPTER III

THE CABINET AND THE MINISTERS

A GERMAN professor in a lecture on anatomy is reported to have said to his class, "Gentlemen, we now come to the spleen. About the functions of the spleen, gentlemen, we know nothing. So much for the spleen." It is with such feelings that one enters upon the task of writing a chapter upon the cabinet; although that body has become more and more, decade by decade, the motive power of all political action. The fact is that the cabinet from its very nature can hardly have fixed traditions. In the first place, it has no legal status as an organ of government, but is an informal body, unknown to the law, whose business is to bring about a coöperation among the different forces of the state without interfering with their legal independence. Its action must, therefore, be of an informal character. Then it meets in secret, and no records of its proceedings are kept, which would in itself make very difficult the establishment and preservation of a tradition. This could, indeed, happen only in case of a certain permanence among the members who could learn and transmit its practice. But a new cabinet contains under ordinary circumstances none of the members of its predecessor. A Conservative minister knows nothing of the procedure under Liberal administrations; and we find even a man of the experience of Sir Robert Peel asking Sir James Graham about the practice of a Liberal cabinet, of which that statesman — who at this time changed his party every decade — had formerly been a member.[1] No doubt the mode of transacting business varies a good deal from one cabinet to

Absence of Fixed Traditions.

[1] Parker, "Sir Robert Peel," III., 496.

another, depending to a great extent upon the personal qualities of the members. Still, the real nature of the work to be done, and hence the method of doing it, have changed during the last half century less in the case of the cabinet than of any of the other political organs of the state, and one can observe certain general characteristics that may be noted.

Nature of the Cabinet.

The conventions of the constitution have limited and regulated the exercise of all legal powers by the regular organs of the state in such a way as to vest the main authority of the central government — the driving and the steering force — in the hands of a body entirely unknown to the law. The members of the cabinet are now always the holders of public offices created by law; but their possession of those offices by no means determines their activity as members of the cabinet. They have, indeed, two functions. Individually, as officials, they do the executive work of the state and administer its departments; collectively they direct the general policy of the government, and this they do irrespective of their individual authority as officials. Their several administrative duties, and their collective functions are quite distinct; and may, in the case of a particular person, have little or no connection. The Lord Privy Seal, for example, has no administrative duties whatever; and it is conceivable that the work of other members might not come before the cabinet during the whole life of the ministry.

Functions of the Cabinet.

The essential function of the cabinet is to coördinate and guide the political action of the different branches of the government, and thus create a consistent policy. Bagehot called it a hyphen that joins, a buckle that fastens, the executive and legislative together; and in another place he speaks of it as a committee of Parliament chosen to rule the nation. More strictly, it is a committee of the party that has a majority in the House of Commons. The minority are not represented upon it; and in this it differs from every other parliamentary committee. The distinction is so obvious to us to-day, we are so accustomed to govern-

ment by party wherever popular institutions prevail, that we are apt to forget the importance of the fact. Party government as a system has developed comparatively recently; but it has now become almost universal. The only exception among democratic countries (that is, the only case where the executive body habitually contains members of opposing parties) is in Switzerland. Still the system is carried to a greater extent in some countries than in others; and the amount of power concentrated in the hands of a single party leader, or a body of party leaders, varies very much. The President of the United States, for example, is the representative of a party; but he rules the nation only in part. The legislature is neither in theory nor in practice under his control; and this is so far true that even when Congress is of the same party as himself, neither he nor any committee of the party so controls both executive and legislative that any one body can be said to rule the nation. But where the parliamentary system prevails, the cabinet, virtually combining in its own hands, as it does, the legislative and executive authorities, may fairly be said to rule the nation; although the degree in which this is true must depend upon the extent of its real control over the legislature. Now, although the legal power of the executive government is in some respects less in England than in most continental countries, the actual control of the cabinet over the legislature is greater than anywhere else.

The cabinet is selected by the party, not directly, but indirectly, yet for that very reason represents it the better. Direct election is apt to mean strife within the party, resulting in a choice that represents the views of one section as opposed to those of another, or else in a compromise on colourless persons; while the existing indirect selection results practically in taking the men, and all the men, who have forced themselves into the front rank of the party and acquired influence in Parliament. The minority of the House of Commons is not represented in the cabinet; but the whole of the majority is now habitually represented, all

the more prominent leaders from every section of the party being admitted. In its essence, therefore, the cabinet is an informal but permanent caucus of the parliamentary chiefs of the party in power — and it must be remembered that the chiefs of the party are all in Parliament. Its object is to secure the cohesion without which the party cannot retain a majority in the House of Commons and remain in power. The machinery is one of wheels within wheels; the outside ring consisting of the party that has a majority in the House of Commons; the next ring being the ministry, which contains the men who are most active within that party; and the smallest of all being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control. There have, of course, been times when the majority was not sufficiently homogeneous to unite in a cabinet; when a ministry of one party has depended for its majority upon the support of a detached group holding the balance of power. The Peelites in 1850, the Liberal Unionists in 1886, and the Irish Nationalists in 1892 formed groups of this kind; but such a condition of things is in its nature temporary and transitional, and usually gives place to a coalition ministry, followed by party amalgamation.

Formation of the Cabinet.

The statesman sent for by the Crown and intrusted with the formation of a ministry becomes himself the Prime Minister, and selects his colleagues. It may be added, also, that he has virtually power to dismiss a minister; that is, subject to his responsibility to the cabinet as a whole and to Parliament, he can request the Crown to dismiss a colleague — a request which the Crown cannot practically refuse.[1] In the selection of the cabinet his choice is, how-

[1] This is the opinion of two of the most prominent Prime Ministers of the century. Ashley, "Life of Palmerston," II., 330; Morley, "Life of Walpole," 159; the latter representing, as has already been pointed out, the views of Mr. Gladstone.

ever, decidedly limited both as to persons and offices. In the first place, all the men still in active public life who served in the last cabinet of the party have a claim, a very strong claim, to sit in the new cabinet, and hence it is unusual to discard a man who is willing to return to office.[1] This in itself fills a goodly number of the cabinet positions. Then all the prominent leaders in Parliament, and especially in the House of Commons, must be included. In fact, as Mr. Bagehot puts it, the Prime Minister's independent choice extends rather to the division of the cabinet offices than to the choice of cabinet ministers. Still, he has some latitude in regard to the men whom he will admit; especially the younger men, who are appointed to offices in the ministry but not in the cabinet, and this may be a matter of great moment. One cannot tell, for example, how different the history of Parliament in the middle of the century might have been had Peel decided to invite Disraeli to join his ministry in 1841.[2] Although the Prime Minister has by no means a free hand in the selection of his colleagues, the task is often extremely difficult and vexatious. It is like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together; for with the selection of the members of the cabinet the difficulties are by no means over. The distribution of the offices among them may raise additional problems. One man will take only a particular office, while others may object to serving if he occupies that post. Where parties are a good deal broken up, or are evenly divided, obstacles like these have sometimes prevented the formation of a cabinet altogether; and there is always some disappointment and consequent discontent on the part of

[1] For an example of the difficulties that arise on this score, *cf.* Morley, "Life of Gladstone," II., 628–29. Lord Rosebery, who, after being Prime Minister in 1895, was left out of the next Liberal cabinet in 1905, had taken himself out of the field by saying that he could not serve in a ministry whose chief held the views on Home Rule that Sir Henry Campbell-Bannerman had expressed.

[2] *Cf.* Parker, "Sir Robert Peel," II., 486–89; III., 347–48.

men who thought themselves sufficiently prominent to be admitted to the ministry, and whose chagrin may drive them into an independent attitude.

There are, indeed, two ways in which an ambitious young member of the House of Commons can render his services indispensable to the Prime Minister. He must, of course, first get the ear of the House, and make himself a power there. Then he may vote regularly with the party whips, support the leaders of his party on all occasions, and speak in their favour whenever he can be of use to them. In that case he is likely to be regarded as a promising young man of sound principles who can be relied upon by his chiefs. Or, he may follow the opposite course of the candid friend, criticising and even attacking the leader of his party, showing the weak points in his arguments, and the errors in his policy. In that case, if the young man has achieved so important a position that he cannot be disregarded, he stands a good chance of being given an office as a dangerous critic who must be conciliated and attached firmly to the government. The first of these methods is slower but safer. The second has sometimes been tried with startling success, notably in the case of Lord Randolph Churchill; but it has also been tried too obviously, and without the necessary social or parliamentary influence; and when it does not succeed it is likely to leave its victim hopelessly stranded below the gangway.

Increase in Size.

The number of members in the cabinet has varied very much at different times,[1] and of late years it has shown a marked tendency to increase. William Pitt had only six colleagues. A generation ago the cabinets contained from a dozen to sixteen members; but they have now run up to eighteen or twenty. There are several reasons for the change. In the first place, as the sphere of the state activity extends and the government grows more paternal, the range of affairs that come within the action of the cabinet is greater; and hence from time to time there is need of

[1] Todd, "Parl. Govt. in England," 2 Ed., II., 189–90.

admitting a representative of some fresh department to its consultations. Then, on the political side, the development of the parliamentary system has made it necessary for the cabinet to have an ever stronger and stronger hold upon the House of Commons; and, therefore, the different shades of feeling in the party that has a majority in that House must be more and more fully represented in the cabinet. This alone would tend to increase the number of its members; but far more important still is the fact that a seat in the cabinet has become the ambition of all the prominent men in Parliament. Consequently the desire to be included is very great, and the disappointment correspondingly acute. For these various reasons there is a constant pressure to increase the size of the cabinet. The result is not without its evils. A score of men cannot discuss and agree on a policy with the same readiness as a dozen. There is more danger of delay when action must be taken. There is a greater probability of long discussions that are inconclusive or result in a weak compromise. There is, in short, all the lack of administrative efficiency which a larger body always presents; unless, indeed, that body is virtually guided and controlled by a small number of its own members. That some recent cabinets have been actually so controlled there can be little doubt; and this must become more and more the case as the cabinet grows larger, if it is to retain its great suppleness and strength. One sometimes hears of an interior junto, or cabinet within the cabinet, that really determines the policy. This is undoubtedly an exaggeration; a giving of formal shape to informal conferences among leaders on special questions, which have always taken place; but it appears not improbable that if the growth in the size of the cabinet continues, some such interior nucleus may develop which will bear to the cabinet something of the relation that the cabinet now bears to the ministry.

Offices in the Cabinet

Certain offices always bring their holders into the cabinet. These are the positions of First Lord of the Treasury (a post almost invariably held either by the Prime Minister himself,

or by the leader of the House of Commons if the Prime Minister is a peer and takes some other office); Lord Chancellor (a great political as well as judicial office); the great English executive offices, those of the Chancellor of the Exchequer, the five Secretaries of State, and the First Lord of the Admiralty; and a couple of dignified positions without active administrative duties, those of President of the Council and the Lord Privy Seal. Certain other officers have been of late years always in the cabinet; such are the Presidents of the Board of Trade, the Local Government Board, and the Board of Education, and the Chief Secretary for Ireland, — except when his nominal superior, the Lord Lieutenant for Ireland, is himself a member. On the other hand, the Secretary for Scotland and the Chancellor of the Duchy of Lancaster are usually in the cabinet; while the President of the Board of Agriculture and the Postmaster-General are often there; the First Commissioner of Works and the Lord Chancellor for Ireland occasionally so. The tendency at the present day is certainly in the direction of including the head of every considerable branch of the administration.

The counsel of a statesman who was incapacitated for the performance of steady administrative work, or unwilling to undertake it, was occasionally secured in former times by giving him a seat in the cabinet without any office under the Crown. He then became what is known on the continent as a minister without portfolio. The last case of this kind in England was that of Lord John Russell in 1854–1856; but the same object is practically attained to-day by means of the office of Lord Privy Seal,[1] which involves no real administrative duties, and those of President of the Council,[2] and Chancellor of the Duchy of Lancaster, where the duties are very light.

[1] If the post of Lord Privy Seal is not needed for this purpose, it is given, without salary, to the holder of some other office.

[2] The President of the Council had in the past a somewhat undefined authority in connection with the Committee of the Council on Education, but this committee has now been replaced by a Board.

As the continental practice whereby ministers are allowed to address the legislature, whether they have seats in it or not, is unknown in England, every member of the cabinet, and indeed of the ministry, must have a seat in one or other House of Parliament;[1] the last exception being that of Mr. Gladstone, who held the office of Secretary of State for the Colonies during the last few months of Sir Robert Peel's administration in 1846, although he had failed of reëlection to the House of Commons.[2] The reason commonly given for such a limitation in the selection of ministers is that otherwise they could not be made responsible to Parliament, where they must be present in order to answer questions, and give information relating to their departments. From the standpoint of Parliament this is perfectly true, but the converse is also true. The head of a department sits in the House of Commons quite as much in order to control the House, as in order that the House may control him. In his chapter on "Changes of Ministry," Bagehot has shown how defenceless against attack any department is sure to be without a spokesman in Parliament, and he cites as a forcible illustration the fate of the first Poor Law Commission.[3] All this applies, of course, only to the House of Commons, for although the presence of ministers in the House of Lords is a convenience in debate, and an appropriate recognition of the legal equality of the two chambers, there is no responsibility to be secured thereby, and it is not the essential means of controlling the action of the peers.

The Ministers must have Seats in Parliament.

The men who win places in the ministry have usually, although by no means invariably, made their mark in debate. It is a strange assumption that a good talker must be a good administrator, and that a strong government can be formed by parcelling out the offices among the leading

The Cabinet System and Administrative Efficiency.

[1] The Law Officers present occasional exceptions.

[2] As in the case of Mr. Birrell in the present ministry, a man who is not in Parliament may, of course, be included in a new cabinet in the expectation that he will win a seat at the impending dissolution.

[3] Eng. Const., 1 Ed., 228–30.

debaters in the legislative body. At first sight it appears as irrational as the other corollary of the parliamentary system, that the public service is promoted by dismissing an excellent foreign minister, because the House of Commons does not like an unpopular clause in an education bill. Any one with a sense of humour can point out the incongruities in any human organisation, whether it works in practice well or ill. But there is, in fact, reason to expect that a leading debater will make a good head of a department. Influence is rarely acquired over a body so permanent as the House of Commons by mere showy eloquence. Real weight there must be based upon a knowledge of men, and a power to master facts and grasp the essential points in a situation. It must be based, in other words, upon the qualities most essential to a good head of a department in a government where, as in England, the technical knowledge, the traditions, and the orderly conduct of affairs, are secured by a corps of highly efficient permanent officials. No doubt all leading debaters do not make good administrators. Sometimes a minister is negligent or ineffective, and occasionally he is rash. There are men, also, who have outlived their usefulness, or who were once thought very promising, and have not fulfilled their promise, but who cannot be discarded and must be given a post of more or less importance. The system works, however, on the whole very well, and supplies to the government offices a few extraordinary, and many fairly efficient, chiefs, although it puts some departments under the control of poor administrators.

The power of creating peers would make it possible to select for the head of a department a tried administrator altogether outside of the parliamentary field. Something like this was attempted in the recent case of Lord Milner, who was offered, on Mr. Chamberlain's resignation, the post of Secretary of State for the Colonies. Lord Milner was, indeed, a peer at the time the place was tendered to him, but he had attended in the House of Lords only to take his

seat. He had never spoken or voted there, and in fact had had no parliamentary career, his nearest approach to St. Stephens having consisted in standing on one occasion as a candidate for the House of Commons without success.

Formerly a statesman regularly began his official life as a parliamentary under-secretary; and he did not become the head of a department, or win a seat in the cabinet, until he had in this way served his apprenticeship in public administration — a practice which furnished both a guarantee of experience and a test of executive capacity. Of late years there have been a number of exceptions to this rule. Mr. Chamberlain, Lord Randolph Churchill, Mr. Morley and Mr. Birrell, for example, were admitted to the cabinet, and put at the head of great departments without any previous training in the service of the government. As a rule, however, the old system is likely to prevail, because it is difficult for a man to make his mark in Parliament unless he begins his work there very young; and the exceptions occur only in cases of men of great ability.

The Need of Unity in the Cabinet.

In the earlier part of the last century, before the party system had developed as fully as it has to-day, complete unity in the cabinet was much less necessary than it is now. At that time it was not uncommon to have matters, sometimes very important ones, treated as open questions in the cabinet, and a good deal of discussion has taken place upon the advantages and the evils of such a practice.[1] Members of the cabinet occasionally spoke and voted against government measures, although a difference carried to that length was always rare. One even finds colleagues in the ministry standing as opposing candidates at an election.[2] Such occurrences would be impossible to-day, because, as will appear more fully when we come to treat of the political parties parliamentary government in its present highly

[1] *Cf.* Todd, "Parl. Govt. in England," II., 405, note *w*.

[2] This happened, for example, in 1825, when Palmerston, Goulburn and Copley (all three in the ministry) were three out of the six candidates for the two seats for Cambridge University. Bulwer, "Life of Palmerston." I., 153 *et seq.*

developed form requires a very strong cohesion among the members of the majority in the House of Commons, and, therefore, absolute harmony, or the appearance of harmony, among their leaders. It is necessary to present a united front to the Opposition, but if the trumpet give an uncertain sound, who shall prepare himself for the battle? Any one watching the course of events during the early summer of 1903 must have observed how rapidly the process of disintegration went on in the Conservative party while it was known that the ministers were at odds over the tariff. Party cohesion, both in the House and in the cabinet, is, indeed, an essential feature of the parliamentary system; but since men, however united on general principles, do not by nature think alike in all things, differences of opinion must constantly arise within the cabinet itself.[1] Sometimes they are pushed so far that they can be settled only by a division or vote, but this is exceptional, for the object of the members is, if possible, to agree, not to obtain a majority of voices and override the rest.[2] The work of every cabinet must, therefore, involve a series of compromises and concessions, the more so because the members represent the varying shades of opinion comprised in the party in power. A minister who belongs to one wing of the party may, in fact, be more nearly in accord with a member of the front Opposition Bench than with some colleague who stands at the other political pole of opinion, and yet he will stay in the cabinet unless the measures proposed are such that he feels conscientiously obliged to resign. So long as he remains in the government he will attempt to agree with his colleagues, but when he has finally left them his personal opinions will take full course, and

[1] One cannot read Mr. Morley's "Life of Gladstone" without being struck by the frequency of such differences. One feels that in his twenty-five years of life in the cabinet Gladstone must have expended almost as much effort in making his views prevail with his colleagues as in forcing them through Parliament.

[2] In Gladstone's cabinet of 1880–1885 the practice of counting votes was complained of, as an innovation. Morley, "Life of Gladstone," III., 5.

he may go off at a tangent. In this way the behaviour of an ex-minister towards his former colleagues, which is sometimes attributed to rancour, may very well be due to a natural expansion of opinions which were held in check while he clung to the cabinet.

Need of Secrecy.

Men engaged in a common cause who come together for the purpose of reaching an agreement usually succeed, provided their differences of opinion are not made public. But without secrecy harmony of views is well-nigh unattainable; for if the contradictory opinions held by members of the cabinet were once made public it would be impossible afterwards to make the concessions necessary to a compromise, without the loss of public reputation for consistency and force of character. Moreover a knowledge of the initial divergence of views among the ministers would vastly increase the difficulty of rallying the whole party in support of the policy finally adopted, and would offer vulnerable points to the attacks of the Opposition. Secrecy is, therefore, an essential part of the parliamentary system, and hence it is the habit, while making public the fact that a meeting of the cabinet has taken place, and the names of the members present, to give no statement of the business transacted. Not only is no official notice of the proceedings published, but it is no less important that they should not be in any way divulged. In fact, by a well-recognised custom, it is highly improper to refer in Parliament, or elsewhere, to what has been said or done at meetings of the cabinet, although reticence must at times place certain members in a very uncomfortable position.[1] Occasionally

[1] This obligation has been said to rest upon the cabinet minister's oath of secrecy as a privy councillor (Todd, 2 Ed., II., 83–84, 240). But this would seem to be another case of confusion between the law and the conventions of the constitution. Although the permission of the sovereign must be obtained before proceedings in the cabinet can be made public (*cf.* Hans., 3 Ser. CCCIV., 1182, 1186, 1189), yet in fact the duty of secrecy is not merely a legal obligation towards the sovereign which he can waive under the advice, for example, of a ministry of the other party. It is a moral duty towards one's colleagues, which ceases when by lapse of time, or otherwise, the reason for it has been removed; and the secrets must be

it becomes well-nigh intolerable. This is true where a cabinet breaks up owing to dissensions over an issue that excites keen public interest, and in such cases the story of what happened may be told in a way that would be thought inexcusable under other circumstances.[1]

When we consider the great public interest that attaches to the decisions of the cabinet, and the great value that premature information would have for journalists and speculators, it is astonishing how little cabinet secrets have leaked out. In curious contrast with this are the reports of select committees of Parliament, the contents of which are often known before the report is made,[2] probably in most cases not from any deliberate disclosure, but as a result of the piecing together of small bits of information, no one of which alone would seem to be a betrayal of confidence. The reason this does not happen in the case of cabinets is no doubt to be sought in the complete reliance of the members upon one another, and their disbelief in the statements of any one who pretends to have obtained information from a colleague. The best proof of the real silence of ministers is found in the fact that although on two or three occasions the press has been remarkably shrewd in guessing at probable decisions, members of the cabinet have seldom been guilty of talking indiscreetly. The one or two instances where it is alleged to have occurred have, indeed, acquired the sort of notoriety of exceptions that prove the rule.[3]

At one time, it seems, before the reign of Queen Victoria, minutes of cabinet meetings were kept, showing the opin-

kept from other privy councillors, the leaders of the Opposition for example, as well as from the rest of the world. Sometimes sharp discussions have occurred on the limits of the permission given to reveal what has taken place at cabinet meetings. This occurred after Mr. Chamberlain's resignation in 1886. Churchill, "Life of Lord Randolph Churchill," II., 85–86.

[1] *E.g.* Hans. (1886), 3 Ser. CCCIV., 1181 *et seq.*, 1811 *et seq.*, and (1904), 4 Ser. CXXIX., 878, 880; CXXX., 349 *et seq.*; CXXXI., 403 *et seq.*, 709 *et seq.*

[2] *E.g.* Rep. Com. on Civil List, Com. Papers, 1901, V., 607.

[3] There is some interesting gossip about instances of this kind in MacDonagh, "Book of Parliament," 337–49.

ions held, with the reasons given therefor, and these were transmitted to the King.[1] Even as late as 1855 regular cabinet dinners took place, marked by the possible convenience that no reports of the topics of discussion were sent to the sovereign, as in the case of more formal meetings.[2] At the present day he receives only a general statement of the matters discussed, with formal minutes of decisions that require his approval; and it would be considered improper to inform him of the conflicting opinions held by the different ministers.[3] In fact no records of the cabinet are kept. This results in occasional differences of recollection on the question whether a definite conclusion was reached on certain matters or not; but possible difficulties of that kind are probably of far less consequence than the facility in compromising differences of opinion and reaching a harmonious conclusion that comes from the entire informality of the proceedings. So little formal, indeed, are the meetings that a person not a member of the cabinet is occasionally brought in for consultation. This occurred in 1848, for example, when the Duke of Wellington attended a Liberal cabinet to give advice upon measures to be taken in view of the danger of the Chartist riots.

Times of Meeting.

It is an old practice, and obviously a necessary one, to hold one or more meetings of the cabinet in the autumn to consider the measures to be presented to Parliament during the coming session; to arrange, as it were, the government's parliamentary programme. Other meetings are held from time to time whenever necessary; sometimes as often as once a week during the session; occasionally even more frequently when urgent and difficult matters are to be de-

[1] Parker, "Sir Robert Peel," III., 496–99.

[2] Morley, "Life of Walpole," 151. Cabinet dinners have occasionally taken place of late years, but it is safe to say that they have not been held with that object.

[3] Mr. Gladstone "was emphatic and decided in his opinion that if the Premier mentioned to the Queen any of his colleagues who had opposed him in the cabinet, he was guilty of great baseness and perfidy." Morley, "Life of Gladstone," II., 575. But this seems to have applied only to giving their names. *Ibid.*, III., 132.

cided. After the session of Parliament comes to an end in August, the ministers usually take their vacation in travel, sport, or public speaking; and cabinet meetings are suspended unless political questions of a pressing nature arise.

In the rare cases where the cabinet is obliged to settle its policy by the crude method of a division or vote, the voices of its members count alike; but questions are usually decided by preponderance of opinion, not by votes; and the weight of the opinions of the ministers is naturally very unequal. Such a difference must be particularly marked in the large cabinets of the present day; and some of the members must be perfectly well aware that they are expected to follow rather than to lead. The relative influence of the different ministers over their colleagues, both at the cabinet meetings and elsewhere, depends, of course, primarily upon their personal qualities; although the post occupied is, in some cases, not without importance. This is particularly true in the case of the Prime Minister.

The Prime Minister.

Until 1906 the Prime Minister, like the cabinet itself, was unknown to the law,[1] but the position has long been one of large though somewhat ill-defined authority. It has grown with the growth of the cabinet itself; and, indeed, the administrations of the great Prime Ministers, such as Walpole, Pitt and Peel, are landmarks in the evolution of the system.[2] We have, fortunately, from two of the chief Prime Ministers in the latter half of the nineteenth century, descriptions both of the cabinet and the premiership, which are authoritative;[3] and although they do not add a great deal to what is popularly known, they enable us to state it with greater confidence.

At the meetings of the cabinet the Prime Minister as

[1] In 1906 the position was recognized by being accorded a place in the order of precedence. *Cf.* Hans., 4 Ser. CLVI., 742.

[2] Walpole repudiated the title of First or Prime Minister, although he was, in fact, the first man to occupy such a position.

[3] See Ashley, "Life of Palmerston," II., 329–30; Gladstone, "Gleanings of Past Years," I., 242. See also the description in Morley, "Life of Walpole," 150–65, which, as already pointed out, represents Mr. Gladstone's views.

chairman is no doubt merely *primus inter pares*. His opinion carries peculiar weight with his colleagues mainly by the force it derives from his character, ability, experience and reputation; but apart from cabinet meetings he has an authority that is real, though not always the same or easy to define.

In the first place the Prime Minister has a considerable patronage at his disposal. Subject to the limitations imposed by political exigencies, he virtually appoints all the members of the ministry. The ecclesiastical offices also, from the bishoprics to the larger livings in the gift of the Crown, are bestowed on his recommendation; and so as a rule are peerages and other honours; and he has a general presumptive right to nominate to any new office that is established under the Crown.[1]

His Supervision.

He is both an official channel of communication and an informal mediator. The duties of the Prime Minister, if one may use the expression, surround the cabinet. He stands in a sense between it and all the other forces in the state with which it may come into contact, and he even stands between it and its own members. Matters of exceptional importance ought to be brought to his attention before they are discussed in the cabinet; and any differences that may arise between any two ministers, or the departments over which they preside, should be submitted to him for decision, subject, of course, to a possible appeal to the cabinet. He is supposed to exercise a general supervision over all the departments. Nothing of moment that relates to the general policy of the government, or that may affect seriously the efficiency of the service, ought to be transacted without his advice. He has a right to expect, for example, to be consulted about the filling of the highest posts in the permanent civil service.[2] All this is true of every branch of the government, but the foreign relations of the country are subject to his oversight in a peculiar

[1] Morley, "Life of Gladstone," II., 383.
[2] Morley, "Life of Walpole," 159–60.

degree, for he is supposed to see all the important despatches before they are sent, and be kept constantly informed by the Foreign Secretary of the state of relations with other powers.

The extent to which a Prime Minister actually supervises and controls the several departments must, of course, vary in different cabinets. One cannot read the memoirs of Sir Robert Peel without seeing how closely he watched, and how much he guided, every department of the government.[1] A score of years later we find Lord Palmerston lamenting that when able men fill every post it is impossible for the Prime Minister to exercise the same decisive influence on public policy;[2] and recently Lord Rosebery has told us that owing to the widening of the activity of the government no Premier could, at the present day, exert the control that Peel had over the various branches of the public service.[3] It is certain that a Prime Minister cannot maintain such a control if his time is taken up by the conduct of a special department; and this, combined with some natural recklessness in speech, accounts for the strange ignorance that Lord Salisbury displayed at times about the details of administration, as in the case when he excused the lack of military preparation for the South African War on the ground that the Boers had misled the British War Office by smuggling guns into the country in locomotives and munitions of war in pianos.[4] It has been usual, therefore, for the Prime Minister to take the office of First Lord of the Treasury, which involves very little administrative work, and leaves its occupant free for his more general duties.[5]

[1] "Sir Robert Peel, from his Private Correspondence"; *cf.* Parker, "Sir Robert Peel"; Morley, "Life of Gladstone," I., 248, 298.

[2] Ashley, "Life of Palmerston," II., 257; *cf.* Morley, "Life of Gladstone," II, 35.

[3] In his review of Parker's "Sir Robert Peel," in the first number of the *Anglo-Saxon Review*

[4] Hans, 4 Ser. LXXVIII., 27.

[5] At the end of his first ministry, and at the beginning of his second, Mr. Gladstone held the office of Chancellor of the Exchequer. With this exception, and with that of Lord Salisbury, no Prime Minister has been at the head of a department since 1835.

He Represents the Cabinet.

The Prime Minister stands between the Crown and the cabinet; for although the King may, and sometimes does, communicate with a minister about the affairs relating to his own department, it is the Premier who acts as the connecting link with the cabinet as a whole, and communicates to him their collective opinion. To such an extent is he the representative of the cabinet in its relations to the Crown that whereas the resignation of any other minister creates only a vacancy, the resignation of a Premier dissolves the cabinet altogether; and even when his successor is selected from among his former colleagues, and not another change is made, yet the loss of the Premier involves technically the formation of a new cabinet.

Unless the Prime Minister is a peer he represents the cabinet as a whole in the House of Commons, making there any statements of a general nature, such as relate, for example, to the amount of time the government will need for its measures, or to the question of what bills it will proceed with, and how far the lack of time will compel it to abandon the rest. The other ministers usually speak only about matters in which they are directly concerned. They defend the appropriations, explain the measures, and answer the questions relating to their own departments; but they do not ordinarily take any active part in the discussion of other subjects, unless a debate lasts for two or three days, when one or more of them may be needed. They are, indeed, often so busy in their own rooms at the House that it is not uncommon, when a government measure of second-rate importance is in progress, to see the Treasury Bench entirely deserted except for the minister in charge of the bill. But the Prime Minister must keep a careful watch on the progress of all government measures; and he is expected to speak not only on all general questions, but on all the most important government bills. He can do this, of course, only in the House of which he happens to be a member; and the strength of his all-pervading influence upon the government depends to no slight extent

upon the question whether he sits in the Lords or the Commons.

As the House of Commons is the place where the great battles of the parties are fought, a Prime Minister who is a peer is in something of the position of a commander-in-chief who is not present with the forces in the field. He must send his directions from afar, and trust a lieutenant to carry them out. In such a case the leader of the House of Commons stands in something of the position of a deputy premier. He is, of necessity, constantly consulted by his colleagues in the House, and he can, if so disposed, draw into his own hands a part of the authority belonging to the head of the cabinet. As Mr. Gladstone remarked, "The overweight, again, of the House of Commons is apt, other things being equal, to bring its Leader inconveniently near in power to a Prime Minister who is a peer. He can play off the House of Commons against his chief; and instances might be cited, though they are happily most rare, when he has served him very ugly tricks." [1] It is certainly true that the Prime Ministers who have most dominated their cabinets, and have had their administrations most fully under their control, have all been in the Commons. It may be added that a high authority has declared that "no administrations are so successful as those where the distance in parliamentary authority, party influence, and popular position, between the Prime Minister and his colleagues in the cabinet, is wide, recognised and decisive." [2]

Relation of the Ministers to One Another.

Not only does the Prime Minister stand above and apart from his colleagues, but they do not all stand upon one plane. The influence of a minister depends upon his personal force, but it may be affected by the office that he holds, and perhaps by his nearness to the Prime Minister himself; for although there is no formal interior junta, or cabinet within the cabinet, yet the Premier is apt to take counsel informally

[1] "Gleanings of Past Years," I., 242.

[2] Morley, "Life of Walpole," 164–65. This would hardly be stated in such broad terms to-day.

with other leading ministers, and if he is a masterful man those who can command or win his confidence have the better chance of shaping the policy of the government while it is still formless and malleable. The cabinet, moreover, does not always act as a whole. It sometimes appoints committees to consider special subjects, and indeed it has an old and well-established practice of appointing committees to prepare important government bills.[1]

Joint and Several Responsibility

It is commonly said that the ministers are severally responsible to Parliament for the conduct of their own departments, and jointly responsible for the general policy of the government. Like many other maxims of the British Constitution, this has the advantage of being sufficiently vague to be capable of different interpretations at different times. With the growth of the parliamentary system, and the more clearly marked opposition between the parties, the joint responsibility has in fact become greater and the several responsibility less. The last instances where a single minister resigned on an adverse vote of the House of Commons were those of Mr. Lowe, who retired from the vice-presidency of the Committee on Education in 1864 in consequence of a vote charging him with improper mutilation of the reports of inspectors, and Lord Chancellor Westbury, who resigned in 1866 on account of a vote censuring his grant of a pension to a registrar in bankruptcy charged with misconduct.[2] If at the present day the cause of complaint were a personal error on the part of the minister, he would probably be brought to resign voluntarily before there was a chance of his resignation being forced by a hostile vote in the House; and if the question were one of

[1] During the late war in South Africa, there was a special Cabinet Committee on National Defence, which was afterwards enlarged and made permanent, as explained in the following chapter.

[2] See a collection of instances in Todd, "Parl. Govt. in England," 2 Ed., II., 471 *et seq.*, and I., 444–49, 668–87. The vote in 1887 to adjourn in order to draw attention to the conduct of the police in the case of Miss Cass might very well have been regarded as a censure upon the Home Secretary, Mr. Matthews; but he did not think it necessary to resign. Hans., 3 Ser. CCCXVI., 1796–1830.

policy, the government would, save in very exceptional cases, assume the responsibility for that policy, treating a hostile vote as showing a want of confidence in itself. The majority in the House of Commons, on the other hand, while it may question, criticise and blame a minister in debate, is reluctant to permit a vote of censure upon him which is liable to involve the fall of the ministry.[1]

Each minister is responsible to the cabinet for the conduct of his department. He is constantly meeting with problems which may involve criticism in Parliament, and where a mistake might entail serious consequences for the whole government. In such cases he must decide how far he can assume to settle the question in accordance with his own opinion, and what matters he ought to bring before the cabinet. He must not, on the one hand, take up its time in discussing trivialities, and he must not, on the other, commit his colleagues to a course of action which really involves general policy. If in doubt he can, of course, consult the Prime Minister; but in spite of this privilege annoying blunders must inevitably occur.

A minister naturally has charge in the cabinet of the business relating to his own department, but how far he takes an active part in other things will depend upon the interest that he feels in them. Lord Palmerston, for example, when Secretary for Foreign Affairs, took, as his letters show, little interest in anything else; but when he became Home Secretary he took not only an active but a leading part in directing the foreign relations of the country. This he was fully entitled to do, because the cabinet is both an assemblage of ministers at the head of the separate branches of the administration, and a council of state which must form a collective judgment upon the questions submitted to it. A minister is, therefore, justified in pressing his views on any subject, whether connected with his own department or not; and on no other basis could collective responsibility be

[1] The vote to reduce the salary of the Secretary of State for War in 1895 was anomalous. It was a trick which will be explained in a later chapter.

maintained. The practice is particularly marked in the case of foreign affairs, which usually form a large part of the business at the meetings.

The Treasury and Other Departments.

It is not only on questions of general policy, brought before the cabinet, that differences of opinion between ministers may arise, for there are many matters of current administration that affect more than one department. In such cases the ministers concerned confer together, and if they cannot agree their differences must be submitted to the Prime Minister, and ultimately to the cabinet. There is, indeed, one department which is continually brought into contact — one might almost say conflict — with all the others; that is the Treasury. Any vigorous branch of the public service always sees excellent reasons for increasing its expenditure, and proposes to do so without much regard for the needs of the other branches; while the Chancellor of the Exchequer, who is obliged to find the money, must strive to restrict the aggregate outlay. If he did not, the expenditure of the government would certainly be extravagant. As a preliminary step to the preparation of the budget the Treasury issues in the autumn a circular to the other departments asking for estimates of their expenses during the coming fiscal year. These are made up in the first instance by the permanent officials, and then laid before the parliamentary head of the department, who revises and perhaps reduces them. When they reach the Treasury they are scrutinised by the permanent officials there, and if anything is not clear, an explanation is sought from the department concerned. The estimates are then submitted by the Treasury officials to their parliamentary chiefs, and if there is an objection to any item it is the duty of the Financial Secretary to the Treasury to confer with the head of the department whose estimates are in question.[1] If the parliamentary head of the department does not agree with the Financial Secretary he may go to the Chancellor of the Exchequer, and if they cannot settle the matter they

[1] Com on Nat. Expenditure, Com. Papers, 1902, VII., 15, App. 1 and 3.

must appeal to the Prime Minister and as a last resort to the cabinet. Being placed in such a relation to his colleagues, it is not unnatural that the Chancellor of the Exchequer should often differ with them. As Gladstone notes in his diary in 1865, "Estimates always settled at the dagger's point." [1] Like other differences in the cabinet, these occasionally come to light, especially when they have been so sharp as to cause the Chancellor's resignation. Lord Randolph Churchill resigned in 1886 because the cabinet insisted upon appropriations for the Army which he opposed; and Sir Michael Hicks-Beach has told us recently that had it not been for the fact that his protests against the growth of expenditure were received with indifference he might not have quitted the office.[2] One cause, moreover, of the final resignation of Mr. Gladstone — who although not then Chancellor of the Exchequer, always looked upon matters from the Treasury standpoint — was a difference of opinion between him and his colleagues on the question of the cost of national defence.[3]

Whatever the policy of the cabinet at any moment may be, the scale of expenditure is ultimately determined by the feeling in the House of Commons, and this in turn depends upon the state of public opinion. Except for a few short periods of extravagance, the seventy years that followed the close of the Napoleonic wars were marked by a decided tendency in favour of economy. People felt the pressure of taxation, worried little about the condition of the Army or the Navy, and had no strong desire to increase the expenses of the government in any direction. Latterly the tendency has been reversed. The country has felt rich; there have been a series of alarms about national defence, and at the same time the general growth of paternalism has brought in a desire for improvement and expenditure in many ways.

[1] Morley, "Life of Gladstone," II., 140.
[2] Hans., 4 Ser. CXXIII., 348–49.
[3] Morley, "Life of Gladstone," III., 506–09.

The Cabinet and the Ministry.

The ministry is composed, as has already been pointed out, of an inner part that formulates the policy of the government, and an outer part that follows the lines laid down; the inner part, or cabinet, containing the more prominent party leaders, who are also holders of the principal offices of state, while the outer part consists of the heads of the less important departments, the parliamentary under-secretaries, the whips and the officers of the royal household. All of these persons are strictly in the ministry, and resign with the cabinet; but the officers of the household have, as such, no political functions, and do not concern us here. The heads of departments without seats in the cabinet have become, with the increase in size of that body, very few. By far the greater part of the ministers outside of the cabinet are the parliamentary under-secretaries, who have two distinct sets of duties, one administrative and the other parliamentary. Their administrative duties vary very largely, mainly in accordance with personal considerations. Some of them are really active in their departments, doing work which might fall upon the parliamentary chief, or upon the permanent under-secretary, while others have little or no administrative business; but in any case the real object of their existence is to be found on the parliamentary side. Whatever duties, parliamentary or administrative, may be assigned to an under-secretary, he is strictly subordinate to his chief, who retains both the authority and the responsibility for the decision of all questions that arise in the department;[1] although an active under-secretary in the Commons may sometimes attract more public notice than his real chief in the Lords.

It is commonly said that as a minister can speak only in the House of which he is a member, there must be two parliamentary representatives for every department, one in

[1] It may be noted that the Chief Secretary of the Lord Lieutenant of Ireland is not a parliamentary under-secretary, but the real head of the Irish Office, unless the Viceroy is in the cabinet; also that until the creation of the recent Board of Education the relations between the President and Vice-President of the Committee of Council on Education were not clearly defined.

each House. This, however, is not strictly true. Going back, for example, over the period of a generation, we find that the Foreign, Colonial and Indian Offices have practically always been represented in both Houses.[1] The other great departments have, of course, always been represented in the Commons;[2] but the War Office and the Admiralty have not always been represented in the Lords. The Board of Trade has often, and the Local Government Board and Home Office have usually, had no spokesman of their own there;[3] while all the parliamentary officers of the Treasury invariably sit in the Commons. The system of under-secretaries, therefore, is by no means always used in order to give a representative to the department in both Houses. It not infrequently happens that both, or in the case of the War Office and the Admiralty all three, representatives sit in the House of Commons. An under-secretary, even when he sits with his chief in the Commons, is, however, a convenience for those departments which have a great deal of business to attend to, and many questions to answer. Moreover, the large number of under-secretaryships has the advantage already noticed of including within the ministry a considerable number of lesser party lights who have not achieved sufficient prominence to be included in the cabinet, and yet whose interest in the fortunes of the ministry it is wise to secure.

The Cabinet and the Privy Council.

One of the great changes in administrative machinery that has taken place in the civilised world within the last two hundred years is the substitution of an informal cabinet composed of the heads of departments, for a formal governing council of members who had themselves no direct administrative duties. The form of the old council has survived in England under the name of the Privy Council, but

[1] In the Liberal cabinet of 1905, however, both representatives of India are in the Commons.

[2] The Board of Works and the Post-Office have at times been represented in the Commons by the Treasury.

[3] Some member of the government is always ready to answer questions for them, and if need be to defend a department not directly represented.

its functions have become a shadow. The Privy Council never meets as a whole now except for ceremonial purposes. Its action is, indeed, still legally necessary for the performance of many acts of state, such as the adoption of Orders in Council, and the like; but this is a formal matter, requiring the presence of only three persons, who follow the directions of a minister, for all cabinet ministers are members of the Privy Council. The Council does real work to-day only through its committees. Of these the most notable is the Judicial Committee, which sits as a court of appeal in ecclesiastical and colonial cases, and will be more fully described in a later chapter. Other committees, such as those on trade and on education, have at times rendered great service to the state, but the more important administrative committees have now been transformed into regular departments of the government. It is by no means certain, however, that the Privy Council may not, through its committees, become in the future an organ by means of which important political functions, especially in connection with the growth of the empire, will be evolved. At present it is mainly an honorary body. Its members are appointed for life, and bear the title of Right Honourable; and, indeed, of late years membership in the Council has been conferred as a sort of decoration for services in politics, literature, science, war, or administration.

Future of the Cabinet

Mr. Gladstone was of opinion that the cabinet had "found its final shape, attributes, functions, and permanent ordering," [1] and so far as its relation to Parliament alone is concerned, this may very well be true; but Parliament is gradually ceasing to be the one final arbiter in public life. The cabinet is daily coming into closer contact with the nation, and what modifications that may entail we cannot foresee. It may be observed, however, that while the members of the cabinet present a united front, and say the same thing in Parliament, they do not always say the same thing to the country. The ministers agree on a policy before an-

[1] Morley, "Life of Walpole," 165.

nouncing it in Parliament, but they are not always in the habit of taking counsel together about the speeches that they make upon the platform. Mr. Chamberlain's sudden declaration of a policy of preferential tariffs in his speech at Birmingham in 1903 is only an extreme example of what sometimes occurs. Absolute unanimity may not, indeed, prove to be so necessary to the ministers in order to maintain their authority before the people as it is to hold their position in the House of Commons.[1] But no serious changes in the structure of the cabinet are probable so long as parliamentary government continues in its present form; and it is too early to speculate on the changes that may occur if the parliamentary system itself becomes modified under the pressure of political parties acting in a democratic country.

[1] The Duke of Argyle found fault with this practice as early as the cabinet of 1880–1885. Morley, "Life of Gladstone," III., 4. Mr. Gladstone thought that liberty of speech should be used by a cabinet minister "sparingly, reluctantly, and with much modesty and reserve" (*Ibid.*, 113), although his own incautious remark about the American Civil War had at an earlier time caused the cabinet of which he was a member no little embarrassment. *Ibid.*, II., 75–86.

CHAPTER IV

THE EXECUTIVE DEPARTMENTS

THE departments of state are very different from one another, both in historical origin and in legal organisation; and they have gone through transformations of all kinds, until the nomenclature has in some cases almost ceased to bear any relation to the facts. The title of an officer often gives no clear idea of his functions. The most striking case is that of the Treasury, whose regular chief, from the time of Henry VIII. to the death of Anne, was the Lord High Treasurer. Since 1714 the office has always been in commission; that is, its duties have been intrusted to a board composed of a number of Lords of the Treasury. But while the board is still regularly constituted by Letters Patent whenever a new ministry is formed, and still retains its legal authority, all political power has, in fact, passed from its hands. The board never meets, most of its members have little or no connection with the Treasury, and its functions are really performed by the Chancellor of the Exchequer, who is not now a chancellor, and does not control the work of what is more properly called the Exchequer. Thus, by a strange process of evolution the powers of the Lord High Treasurer have, by law, become vested in a board; and by a still later custom they are actually wielded by quite a different officer, whose title indicates neither his succession to the Treasurer nor the nature of his present duties.

Although in origin and legal organisation the departments of state are very unlike, yet the growth of custom, and the exigencies of parliamentary life, have, for practical purposes, forced almost all of them into something very near one

common type. Whatever the legal form of the authority at their head, the actual control is now in nearly every case in the hands of a single responsible minister, usually assisted by one or more parliamentary subordinates, and supported by a corps of permanent non-political officials, who carry on the work of the office.

Origin of the Departments.

The historical origin of most of the departments may be traced to one of three sources: the great offices of an earlier time; the secretariat of state; and the more recent boards and commissions. Many of the former offices of state survive as honorary posts, or with duties connected solely with the royal household.[1] The only ones that are still in touch with public administration are those of the Lord High Chancellor, who has retained the greater part of his ancient authority; of the Lord High Treasurer, the transformations of whose office have already been mentioned; and of the Lord High Admiral, whose powers have also gone into commission, and are vested in the Admiralty Board.

The Former Great Offices.

The Secretariat of State.

The secretariat is an old institution, although the standing of its members has varied much at different times. There are now five secretaries of state, but their position is peculiar in this, that they all share, from a legal point of view, the same office; and except so far as statutes have conferred special authority upon one or another, each of them can perform the duties of all the rest. During the greater part of the eighteenth century there were two secretaries, one for the northern and the other for the southern department, the former having charge of the relations with the northern powers, the latter of those with the southern powers together with home and colonial affairs. A series of changes made at the end of the century resulted in an increase of the number of secretaries to three, and a redistribution of their work, so that one had charge of foreign re-

[1] Such are the offices of the Lord Steward and the Lord Chamberlain, the latter having in his charge also the censorship of plays and theatrical performances.

lations, another of home affairs, and the third of war and the colonies. The Crimean War brought about in 1854 the separation of the colonial and war departments, with the creation of a fourth secretary of state; and, finally, the mutiny in India, and the consequent transfer of the direct government of that country to the Crown, caused the appointment of a fifth secretary of state to take charge of Indian affairs.

The Recent Boards and Commissions.

The third great source of public departments has been the creation in comparatively recent times of a number of administrative boards or commissions, whose duties (except in the case of the Board of Works) are not primarily executive; that is, they are not concerned mainly with direct administration, but rather with the supervision and control of local authorities and of bodies exercising functions of a public or a quasi-public nature. There are now five boards of this kind, the Board of Trade, the Local Government Board, the Board of Works, the Board of Agriculture, and the Board of Education. Some of them, the first and last named, for example, have developed from committees of the Privy Council; while others have grown out of administrative commissions which were not originally regarded as political, and had no representatives of their own in Parliament. Except in the case of the Board of Trade,[1] both their organisation and their functions now rest upon statutes,[2] and in general character they are all very much alike. Each of them consists of a president,[3] of the five secretaries of state, and of other high dignitaries, such as the Lord President of the Privy Council, the First Lord of the Treas-

[1] The name of the Board of Trade is now statutory (25–26 Vic., c. 69, § 2; 52–53 Vic., c. 63, § 12, cl. 8). Its composition, however, is fixed not by statute but by Order in Council at the beginning of each reign, save that an act of 1867 (30–31 Vic., c. 72) abolished the office of Vice-President, and provided instead that one of the secretaries to the board might sit in Parliament.

[2] For the organisation of the Board of Works, see 14–15 Vic., c. 42; 37–38 Vic., c. 84; for the Local Government Board, 34–35 Vic., c. 70; Board of Agriculture, 52–53 Vic., c. 30; Board of Education, 62–63 Vic., c. 33.

[3] In the case of the Board of Works he is styled First Commissioner.

ury, or the Chancellor of the Exchequer, and sometimes, in the case of the older boards, even of the Archbishop of Canterbury and the Speaker of the House of Commons. But the board never meets; the president alone constitutes a quorum, and he conducts the business of the department, with the assistance, in the case of the Board of Trade, of the Local Government Board and the Board of Education, of a secretary who is not himself a member of the board, but is, like the president, capable of sitting in the House of Commons, and occupies, in short, the position of a parliamentary under-secretary. In practice, therefore, these boards are legal phantoms that provide imaginary colleagues for a single responsible minister; and, indeed, the only department in the English government conducted by a board that really meets for the transaction of business is the Admiralty.[1]

Sham Boards.

A satirical observer has remarked that the English Constitution is a bundle of shams; and this is inevitable where law fails to keep pace with custom — where the legal organisation has ceased to express the real working of the system. But it is difficult to penetrate the motive for deliberately constructing a sham; and yet that was done in the creation of the Board of Agriculture in 1889, and the Board of Education ten years later. In the last case the measure was criticised upon this ground;[2] and Sir John Gorst in reply said that, as there were other boards, the general desire of the House was thought to be in favour of a Board of Education, and that, although these boards did not often meet, they were potential.[3] He denied that the Committee of Council on Education had never met, and referred to an occasion, about twenty years earlier, when it had been called together, and actually transacted business.[4] A better

[1] The Council of India, described hereafter, has some of the characteristics of a board.

[2] Hans., 4 Ser. LXVIII., 678–9; LXX., 338, 351; LXXIII., 632, 666.

[3] *Ibid.*, LXXIII., 676.

[4] In the course of the debate Lord Norton declared (Hans., 4 Ser. LXVIII, 676) that he had served on two different boards, and could remember only one instance where a board had been called together or consulted in any way.

statement of the reason, or rather the absence of any reason, for the creation of a sham board, was made with characteristic frankness by the Duke of Devonshire, who said, "as far as I remember, the point was mooted when the bill was first prepared, but I quite admit that I am unable, at the present moment, to recollect the reasons which weighed in favour of a board rather than a secretariat. It has the advantage, at all events, of numerous precedents, and it is perfectly well understood that there will be no board at all."[1]

In giving in this chapter a sketch of the executive departments nothing will be said of those offices to which no substantial administrative duties, or none outside of the royal household, are attached. There are about a dozen such posts, which are regarded as so far political that their holders retire upon a change of ministry; but they are omitted here, because the object is to describe not the offices of state, but the different branches of the public service and the distribution of business among them. Most of the departments require for our purpose only a few words, to point out the general nature of their duties and anything unusual in their structure or method of working. The functions of some others, such as the Colonial Office, the Local Government Board and the Board of Education, can be passed over rapidly, because they will be treated more fully in the chapters devoted to the subjects under their control; while the Army, the Navy and the Treasury are described at greater length on account of the peculiarities in their organisation, and the fact that their work is not dealt with in any other part of the book.

The Foreign Office has at its head a secretary of state, who, like the chief of every normal department, is supported by a

The Foreign Office.

[1] Hans., 4 Ser. LXX., 353. There may have been good reasons for not creating a sixth secretary of state, and among them the fact that a secretary of state receives a salary of £5000, while the president of the board receives £2000. But, as Mr. Bryce pointed out (Hans., 4 Ser. LXXIII., 632), a secretary might have been appointed who, like the Secretary for Scotland, should not be a secretary of state. The salary of the Secretary for Scotland is, in fact, £2000.

parliamentary under-secretary and also by a permanent staff consisting of an under-secretary, several assistant under-secretaries — in this instance three — besides clerks and other permanent officials. For convenience of administration there are in the Foreign Office a number of departments, the business being distributed among them partly on a geographical basis, and partly according to the nature of the subject.[1] The office has, of course, charge of foreign relations, controlling for that purpose the diplomatic representatives and the consuls. The only odd thing about its duties is the fact that in addition to the ordinary functions of a foreign office it governs certain dependencies of the Crown. The expansion of European influence over the less favoured portions of the globe has produced among other new things the "protectorate," which involves, by a political fiction, an international as well as a philanthropic relation between the ruler and the ruled. The result is that protectorates not closely connected with existing colonies are administered by the Foreign Office. This has been true of a number of protectorates in Africa, and notably of Egypt, which is still nominally ruled by the Khedive under the suzerainty of the Turkish Sultan, but is practically governed by a British agent.

Position of the Foreign Secretary.

The conduct of the relations with foreign powers requires from its very nature a peculiar method of procedure. Much of the work of the Foreign Office consists, no doubt, in examining and pushing the private legal claims of British subjects, and to some extent work of that kind has a routine character. But apart from this there is comparatively little

[1] Until a few years ago the departments were: (1) the Eastern (Eastern Europe and Central Asia); (2) Western (Western Europe, Northwest Africa and the Pacific Islands); (3) American and Asiatic (which includes China, Japan and Siam); (4) Consular (including East and West Africa); (5) Commercial; (6) The Chief Clerk's (which has charge of financial business); (7) The Library (with the papers of the office); (8) The Treaty Department. (Fourth Rep. of the Comn. on Civil Establishments, Com. Papers, 1890, XXVII., 1.) Within a few years four new departments have been created: an African, an African Protectorates, a Far Eastern and a Parliamentary. (See the Foreign Office List.)

of the detailed administration — so common in other departments — which, involving merely the application of settled principles to particular cases, can be conducted by subordinates without consulting the political chief. Much of the correspondence with foreign powers may entail serious consequences, and hence must ordinarily be laid before the Secretary of State. The permanent officials play, therefore, a smaller part in the management of affairs than in most branches of the public service, a matter that will be discussed more fully in a subsequent chapter.[1] Moreover, the representatives at foreign courts are kept, by means of the telegraph, under more constant instructions than formerly, and it has become the habit in all countries to retain diplomatic negotiations very closely in the hands of the home government. Even the functions of foreign envoys as the eyes and ears of the state have declined in importance; and it has been observed that as gatherers of political information they have been largely superseded by the correspondents of the press.

All this has the effect of concentrating the direction of foreign relations in the hands of the Secretary of State. At the same time he is singularly free from immediate parliamentary control. Diplomatic correspondence is ordinarily confidential, and it is usually a sufficient answer to any question in Parliament, touching foreign relations, to say that the information sought cannot be given without detriment to the public service. It follows that the presence of the minister in the House of Commons is less necessary than in the case of other departments; while his arduous duties make it hard for him to find the time required for attendance at the long sittings. These facts, coupled with the strange provision of law which permits only four of the five secretaries of state to sit there, resulted in placing peers at the head of the Foreign Office continuously from 1868 to 1905, the under-secretary alone representing the department in the

[1] Ch. viii. The permanent under-secretary at the head of the staff holds, however, an important place.

popular chamber. But if the Secretary of State for Foreign Affairs is less under the direct control of Parliament than other ministers, he is more under the control of his colleagues. We have already seen that every important despatch ought to be submitted, before it is sent off, both to the Prime Minister and to the sovereign; and, as a rule, the telegrams, together with correspondence of peculiar interest, are also circulated among all the members of the cabinet.[1] In fact there is probably no department where the executive action of the minister is so constantly brought to the notice of his colleagues.

The Colonial Office.

Ever since England began to extend her dominion beyond the seas her foreign relations have been complicated by her distant possessions, and it is therefore natural to pass from the offices of the Secretary of State for Foreign Affairs on one side of the doorway in Downing Street to those of the Secretary of State for the Colonies on the other. But it is needless to speak of the Colonial Office at length here, because the government of the dependencies will form the subject of later chapters. The Secretary of State for the Colonies is assisted by his parliamentary and permanent under-secretaries, and by a staff of subordinate officials. There are in this office four permanent assistant under-secretaries; one of whom has charge of questions of law, and also at present of business connected with Canada, Australasia and a number of islands; another of South Africa; a third of the East and West Indies, emigration, prisons and hospitals, with a mass of miscellaneous matters; and the fourth of East and West Africa.[2] But the division of the colonies among these officers is not fixed, and varies to some extent with their personal experience. There are, in close connection with the office, agents for each of the dependencies, those for the self-governing colonies being real representatives appointed by the colonial governments,

[1] See Hammond, "The Adventures of a Paper in the Foreign Office." Rep. of Sel. Com. on Trade, Com. Papers, 1864, VII., 279, Q. 1384.

[2] Colonial Office List. 1907, XIII. (N. B. Since that time another change has been made.)

while the three who act on behalf of the crown colonies are selected by the Colonial Office itself.

It may be observed that the Colonial Office has by no means charge of all the outlying dependencies of the British Crown. Besides the protectorates governed by the Foreign Office, there are a number of smaller places under the care of other departments. The Isle of Man and the Channel Islands, for example, are under the Home Secretary; some small islets are used only for lighthouses by the Board of Trade; while by an official fiction the Island of Ascension is considered a vessel of war, and as such is commanded by the Admiralty. But larger by far than any of these, more populous than all the other parts of the British Empire put together, is India. It is not classed among the colonies, for that term is confined to the places under the Colonial Office, and does not extend to a country ruled by a distinct administrative system of its own.

The India Office.

The Secretary of State for India has the usual parliamentary and permanent staff; but he has in addition a Council of India, composed of not less than ten or more than fourteen members, appointed for a term of seven years. In order to insure a familiarity with Indian conditions, it is provided that nine of the members must have lived in India within five years of their appointment.[1] The Council is a consultative body. It has no power of initiative, but except for matters requiring secrecy or urgency (such as war and peace, or the relations of India with foreign powers or with the native states), all questions must be brought before it for consideration. The Secretary of State is not, however, bound by its decision, save in a few cases, of which the most important are the expenditure of the Indian revenues, and the issue of Indian loans.[2]

Legally, the government of India is directed by the

[1] Three of the members may, however, be appointed for life, and any other member may be reappointed for five years. Ilbert, "Government of India," 112. 7 Edw. VII., c. 35.

[2] *Ibid.*, 152–55.

Secretary of State and his Council. Even the laws made in India can be disallowed by the Crown on their advice; but in spite of the ease of communication furnished by the telegraph, the internal affairs of the country are still in the main managed by the authorities in India, happily without much interference from England. Parliament, moreover, exercises little control over Indian administration. Some matters — the use of the Indian revenues, for example, to pay for expeditions beyond the frontier — require its consent; and in other cases notice of action taken must be laid before it within a certain time. But the ordinary opportunities for bringing pressure to bear do not exist, because the salary of the Secretary of State for India, being paid out of the Indian revenues, does not furnish an occasion for a debate in Parliament; and although the Indian budget is regularly submitted, it does not need to be approved. On one of the last days of the session, when the work of the year is almost done, and the members are weary of attending, this budget, which is merely a financial statement, is introduced, and in order to give an opportunity for debate a formal motion is made that the Indian accounts show such and such totals of receipts and expenses. A discussion follows on the part of members who deem themselves qualified to express opinions on the government of India, and then the vote is passed. An illustration of the small authority of Parliament in Indian matters may be found in the fact that in 1891 (April 10) the House of Commons carried against the ministers a motion condemning the opium revenue; and in 1893 (June 2) a resolution that the examinations for the Indian Civil Service ought to be held in India, as well as in England, was carried in the same way; yet, on each occasion, the government after studying the subject came to the conclusion that the opinion of the House had been wrong, and did not carry it into effect. Such a condition of things is highly fortunate, for there is probably no body of men less fitted to rule a people than a representative assembly elected in another land by a different race.

If the vast colonial empire has complicated foreign relations it has also caused England to become the greatest of maritime powers, with an enormous navy to protect her dependencies, her merchant ships, and not least important, the routes of her food supply. The effective organisation of a naval force is, therefore, of more importance in her case than in that of any other nation.

The Admiralty.

It has already been observed that the Admiralty is the only department of state conducted by a board that really meets for the transaction of business, yet even in this case the statement may convey a false impression of the character of the body. The board as created by Letters Patent under the Great Seal consists of a First Lord, four Naval Lords and a Civil Lord; but by a series of Orders in Council, and by the practice of the department, the parliamentary and permanent secretaries also sit as members of the board.[1] The First Lord, the Civil Lord and the parliamentary secretary are capable of sitting in the House of Commons, and are, in fact, always members of one or other House of Parliament. The permanent secretary is, as his name implies, a permanent official, and hence excluded from the House of Commons altogether. The Naval Lords, on the other hand, although eligible to Parliament,[2] are very rarely members,[3] and yet they are not permanent officials. They occupy the anomalous position of non-political officials, who nevertheless retire upon the fall of the ministry. This does not mean that they belong necessarily to the party in power, or that they may not be reappointed under the commission issued when a new ministry comes into office. In order to preserve a continuity of administration, and a knowledge of the work, the new patent usually includes one, and sometimes more, of the Naval Lords who served under the preceding cabinet, and commonly another who held the

[1] Report of Comrs. on Admn. of Naval and Mil. Depts., Com. Papers, 1890, XIX., 1, pp. viii–ix.

[2] 2–3 Will. IV, c. 40, § 1.

[3] Lord Charles Beresford was a Naval Lord and a member of the House of Commons from 1886 to 1888.

place under some earlier ministry of the party that has taken office.

Position of the First Lord.

According to the language of the patent all of the members of the Board of Admiralty are equal in authority; but in fact the First Lord, who is always in the cabinet, is held by Parliament responsible for the conduct of the department, and as the other members of the board can be changed if necessary on his recommendation, they must adopt the course which he can justify in Parliament. With the evolution of the cabinet system, therefore, the power of the First Lord has increased until he has become practically a minister of marine assisted by an advisory council. The relation was sanctioned, not created, by Orders in Council of Jan. 14, 1869, and March 19, 1872, which declared the First Lord responsible for all business of the Admiralty,[1] and thus "the department now possesses more the character of a council with a supreme responsible head than that of an administrative board." [2]

The Other Lords.

The Civil Lord and the financial or parliamentary secretary are subordinate ministers, who occupy substantially the position of parliamentary under-secretaries. They are civilians, as is the permanent secretary also; while the four Naval Lords are naval officers, usually of high rank, who bring an expert knowledge to bear upon the administration of the department. But the members of the board, like the cabinet ministers, have individual as well as collective duties. By the Orders in Council of March 19, 1872, and March 10, 1882, and the regulations made in pursuance thereof, the work of the office is distributed among the members of the board, each of whom is at the head of a branch of the service, and responsible for it to the First Lord. By virtue of this arrangement the First Lord retains in his own hands the general direction of political questions, and the appointment of flag officers and the commanders of ships. The First

[1] Rep. of Comrs. on Admn. of Naval and Mil. Depts., Com. Papers, 1890, XIX., 1, p. viii.

[2] *Ibid.*, p. x.

Naval Lord, who is also the principal adviser of his chief, has charge of strategical questions, the distribution of the fleet, discipline, and the selection of the higher officers not commanding ships. The Second Naval Lord has charge of the recruiting and education of officers and men, and the selection of the lower officers. The Third Naval Lord, who is the "Controller," attends to the dockyards, and to construction, repairs and ordnance; while the Junior Naval Lord has charge of the transport and medical service, and the victualling and coaling of the fleet. The Civil Lord attends to the civil establishments, and the contracts relating to stores and to land. The parliamentary secretary is responsible for finance; and the permanent secretary for the personnel in the Admiralty Office, for routine papers and correspondence and for the continuity of business on the advent of a new board.[1]

Thus the actual administration of the Navy devolves upon the members of the board charged with the superintendence of the different branches of the service, while the full board meets frequently for the consideration of such questions as the First Lord wishes to refer to it.[2] There have been at times complaints about the working of the board, and the existing organisation is the result of gradual adaptations,[3] but at the present day the system appears to be highly satisfactory, and in fact it is constantly held up as a model to the less fortunate chiefs of the Army.

The War Office.

The organisation of the War Office has undergone far more changes than that of the Admiralty, and has been the subject of a great deal more criticism both in and out of Parliament.[4] Like other countries with a popular form of

[1] Return on the Distribution of Business between the Members of the Admiralty Board, Com. Papers, 1890, XLIV., 605.

[2] Rep. of Comrs. on Admn. of Naval and Mil. Depts., Com. Papers, 1890, XIX., 1, p. ix.

[3] Todd, II., 767 *et seq.*

[4] The military forces consist of the regular army (with the reserves, that is, the men who have served their time but are liable to be recalled in case of war); and of the militia, yeomanry and volunteers. The militia are a little more like regular troops than the volunteers. They are formally

government, England has found it hard to reconcile military command and civil control. In the War Office, as in the Admiralty, there has been a tendency to transfer supreme power gradually to the hands of the parliamentary chief; but owing to a number of causes — one of which was the tenacity with which the Queen clung to the idea of a peculiar personal connection between the Crown and the Army — the process of change in the War Office has been slow and halting. Up to the time of the Crimean War the Army was controlled by several different authorities, whose relations to one another were not very clearly defined, and who were subordinate to no single administrative head. This naturally produced friction and lack of efficiency, which was forcibly brought to public attention by the sufferings of the troops during the war. The result was the creation of a distinct Secretary of State for War, and the concentration in his hands of most of the business relating to the Army; but the change was made without a thorough reorganisation of the War Office, and without defining the relative authority of the Secretary of State and the Commander-in-Chief.[1] This last office was held at that time by the Queen's cousin, the Duke of Cambridge; and the fact that he was a royal duke, coupled with the Queen's feelings about the Army, threw an obstacle in the way of bringing the office fully under the control of the Secretary. In 1870, however, the

Effect of the Crimean War.

enlisted and their period of training is longer. None of the auxiliary forces can be ordered out of the United Kingdom; but while the volunteers are intended solely to support the regular army in defending the country in case of invasion, the militia have always offered their services in time of war, and have often been used for garrison duty both at home and abroad, and even for field service abroad. The yeomanry are a body of cavalry forming part of the militia. A royal commission on the militia and volunteers reported in 1904 that both of these forces were unfit to take the field against a regular army; that the period of training ought to be increased in each case; and that a home defence army, capable of protecting the United Kingdom in the absence of the greater part of the regular army could be raised only by universal compulsory military service. (Com. Papers, 1904, XXX., 175, pp. 6, 9, 11, 15–16.) This last suggestion was received with general disfavour. In 1907 provision was made for strengthening the auxiliaries by means of a Territorial Force to be raised by County Associations. 7 Edw. VII., c. 9.

[1] For the History of the War Office up to this time, see Clode, "Military Forces of the Crown."

Queen was prevailed upon to issue an Order in Council providing that the Commander-in-Chief should be completely subordinate to the Secretary of State.[1] Unfortunately, this order by no means settled either the organisation of the War Office, or the relation between the Secretary and the Commander-in-Chief.

A number of commissions have examined the subject, one of the most important of late years being Lord Hartington's Commission, which reported in 1890.[2] At that time[3] the Adjutant General, who was charged with the general supervision of the military department, was the first staff officer of the Commander-in-Chief, and as such was responsible to him for the efficiency of the forces; while the other principal military officers — the Quartermaster General, Military Secretary, Director of Artillery, Inspector of Fortifications, and Director of Military Intelligence — were also immediately responsible not to the Secretary of State, but to the Commander-in-Chief, and approached the latter through the Adjutant General. Thus, while all the officers in the department were nominally subordinate to the Secretary of State, practically between him and them stood the Commander-in-Chief, who had the privilege of approaching the Crown directly and without the intervention of the Secretary. The commission thought that such a system failed to make the heads of the different branches of the service effectively responsible to the Secretary, or to provide any satisfactory system for giving him expert advice. They recommended, therefore, the virtual abolition of the office of Commander-in-Chief, and a division of the duties among a number of officers, who should be individually responsible for their administrative work to the Secretary, and should collectively advise him as a War Office Council. They recommended, in short, a system not unlike that of the Admiralty.

Lord Hartington's Commission.

[1] Order in Council, June 4, 1870, Com. Papers, XLII., 683.

[2] Com. Papers, 1890, XIX., 1.

[3] By virtue of Orders in Council of Dec. 29, 1887, and Feb. 21, 1888. *Ibid.*, App. viii.

The Changes of 1895.

As a preliminary to bringing about a change of this kind Sir Henry Campbell-Bannerman, the Liberal Secretary of State for War, procured the resignation of the Duke of Cambridge in 1895, and Lord Wolseley was appointed Commander-in-Chief for five years. The Secretary then announced a plan in accordance with the main principles suggested by the Hartington Commission. But just at that time the Liberal administration fell,[1] and Lord Lansdowne, the new Secretary of State, made a change in the plan, which left more power in the hands of the Commander-in-Chief. The policy thus adopted was embodied in an Order in Council of Nov. 21, 1895, followed by a memorandum setting out in greater detail the duties of the heads of the different branches of the service thereunder.[2] According to the new system the Commander-in-Chief exercised the general command, issued army orders, inspected troops, took charge of the distribution of the Army, and prepared strategical plans, having under him for that purpose the Director of Military Intelligence. He was also to have the general supervision of all the military departments, and to be the principal military adviser of the Secretary of State, all important questions going to him before submission to the Secretary. The Adjutant General was to have charge of the discipline and training of officers and men, and the patterns of their uniforms, — a matter which seems to involve as many changes in fashion as a dressmaking establishment. The Quartermaster General had charge of food, forage, transports and remounts. The Inspector of Fortifications constructed and maintained forts, barracks, etc., and supervised the engineer corps. The Inspector General of Ordnance looked after the supply of warlike stores and equipments, and each of these officers advised the Secretary of State on questions connected with his department. The Financial Secretary had charge of all

[1] On account of a vote at the close of the same debate in which this change was announced.

[2] Com. Papers, 1896, LI., 483.

questions of expenditure, and of the audit of accounts. Until 1899 he was also at the head of the manufacturing departments, but by an order of that year they were transferred to the Inspector General of Ordnance, whose title was changed to Director. By the memorandum which followed the order a War Office Council was created, consisting of the heads of the military departments, the under-secretaries of state, and the Financial Secretary, together with any other officers who might be summoned; its function being to discuss subjects referred to it by the Secretary of State. An Army Board, composed of the heads of the principal military departments, was also established, which was to report upon promotions to the higher grades in the Army, upon estimates, and upon other questions submitted to it by the Secretary of State.

Their Results.

The two great changes made at this time were the modification in the powers of the Commander-in-Chief, and the creation of consultative boards in the War Office. Neither of them can be said to have attained the object aimed at. The attempt to create advisory councils of that kind has been tried more than once, but after working usefully for a time they have ceased to meet regularly and have fallen into disuse. This appears to have been the case with the War Office Council and Army Board created in 1895 and reorganized in 1899 and 1900.[1]

The position of Commander-in-Chief under the Order in Council of 1895 has been the subject of severe criticism. At the expiration of his term of five years, Lord Wolseley recorded in a memorandum his opinion that the attempt to give the Commander-in-Chief a supervision over the departments of the War Office, and yet make their heads responsible to the Secretary of State, involved a contradiction, and had resulted in depriving the Commander-in-Chief of all effective control, and in making his office a high-sounding

[1] Rep. of Com. on War Office Organisation, Com. Papers, 1901, XL., 179, p. 21; Rep. of Com. on the War in South Africa, Com. Papers, 1904, XL., 1, pp. 138–42.

title with no real responsibility. He insisted that no army could be efficient unless the command, discipline and training of the troops were in the hands of one man, and that man a soldier; and he urged that the Commander-in-Chief should either be made the real head of the forces, or that the office should be abolished, and the Secretary of State for War should be himself a military man.[1] The only direct result that the memorandum had on the organisation of the War Office was the reëstablishment of the control of the Commander-in-Chief over the department of the Adjutant General by an Order in Council on Nov. 4, 1901.[2] But a statement by Lord Wolseley of his views, in a speech in the House of Lords in March, 1901, led to an unseemly altercation with Lord Lansdowne, the late Secretary of State for War, in which each sought to cast upon the other the blame for the lack of preparation for the war in South Africa.[3] The occurrence would appear to show that the relations between the military and civil authorities at the War Office are not yet upon a well-recognised or satisfactory basis; and it shows also that this relation is very different from that which ordinarily prevails between ministers and their expert officials. For reasons that will be explained in a later chapter, such a dispute in any other department would be well-nigh inconceivable. From a political point of view the Army and Navy officers are, in fact, in an exceptional situation. They are not subject to the general rule which excludes from the House of Commons all office-holders who are not ministers.[4] And just as military officers are allowed to play a part in politics forbidden to other public servants, so those among them who hold high administrative posts stand in a position peculiar to themselves, a position which in the case of the Admiralty is definite and satisfactory, although anomalous,

[1] Com. Papers, 1901, XXXIX., 243.
[2] *Ibid.*, 1902, LVIII., 717.
[3] Hans., 4 Ser. XC., 327 *et seq.*; XCI., 6 *et seq.*
[4] 6 Anne, c. 7, § 28. (In the Rev. Sts. it is c. 41, § 27.)

but in the case of the Army is not altogether definite or satisfactory.

Effect of the South African War.

The efficiency of the War Office was put to a rude test by the South African War, and some branches of the service did not stand the test very well. The results recalled, although in different respects, the experiences of the Crimean War. The commission on the war found that, both as regards plans and stores, there had been a grave lack of preparation which was not wholly due to the suddenness of the emergency.[1] There was not merely a deficiency in warlike stores, such as guns[2] and ammunition for them,[3] cavalry-swords[4] and clothing;[5] but some of the stores were unfit for use. Such clothing, for example, as there was on hand six months before the war broke out was all red and blue cloth, quite unsuitable for the campaign; and even after the manufacture of khaki suits had begun, changes were ordered first in the material and then in the pattern.[6] More than one third of the small arms ammunition on hand was found to be unserviceable and was discarded;[7] and all the reserve rifles were wrongly sighted, so that at a distance of five hundred yards they shot eighteen inches to the right — an occurrence the more extraordinary because the government had been manufacturing those weapons for some years, and never discovered the defect until after the war broke out.[8]

It would be a mistake to suppose that all the shortcomings in the South African War arose from defects in the War Office. Some of them were of a kind certain to occur where a military organisation is suddenly expanded beyond its normal size. Still, the errors already described certainly showed a lack of efficiency, and they have led to a remodelling of the office. In November, 1903, another commission was appointed for this purpose, and its principal recommen-

[1] Rep. in Com. Papers, 1904, XL., 1, pp. 28, 30.
[2] *Ibid.*, p. 89.
[3] *Ibid.*, p. 87.
[4] *Ibid.*, p. 94.
[5] *Ibid.*, pp. 94–96.
[6] *Ibid.*, pp. 94–95.
[7] *Ibid.*, pp. 86–87.
[8] *Ibid.*, pp. 93–94.

dations [1] were put into effect in the course of the following year.[2]

The Changes of 1904.

According to this last system, for which the Admiralty served as a pattern, an Army Council has been formed, consisting of the Secretary of State for War, the parliamentary under-secretary, the Financial Secretary to the War Office, and of four military members. The post of Commander-in-Chief having been abolished, and that of Chief of Staff created instead, the four military members of the council are the Chief of Staff, the Adjutant General, the Quartermaster General, and the Master General of Ordnance. By the terms of the Order in Council the military members are responsible to the Secretary of State for so much of the business relating to the organisation, disposition, personnel, armament and maintenance of the Army as he assigns to them or each of them, while the Financial Secretary is responsible for finance, and the parliamentary under-secretary for the other matters that are not strictly military. The permanent under-secretary acts as secretary of the council, which has also under its orders a new officer, the Inspector General of the Forces, charged with the duty of reporting to it upon the results of its policy, and of inspecting and reporting upon the training and efficiency of the troops, and the condition of the equipment and fortifications. But the Army Council has in the last resort only advisory powers, for the Secretary of State is expressly declared responsible to the Crown and to Parliament for all its business.

Lack of Initiative among Officers.

An army, and especially a standing army, is liable during a long period of peace to fall into habits that impair its efficiency in war. One of the chief criticisms made after the South African War related to the lack of initiative, and of capacity to assume responsibility, on the part of the officers both in the War Office and in the field.[3] Now, this

[1] Com. Papers, 1904, VIII., 101.

[2] *Cf.* Orders in Council of Aug. 10, 1904, Com. Papers, 1905, XLVI., 291, 295, 299.

[3] Rep. of Com. on War in South Africa, Com. Papers, 1904, XL., 1, pp. 52–56.

is precisely the defect that one would expect to find under the circumstances. With the traditions of strict discipline ingrained in military men, there is a natural tendency in time of peace to regulate everything with precision, leaving to subordinate officers little independence of action. And in fact the Committee on War Office Organisation in 1901 reported that the Army was administered by means of a vast system of minute regulations, which tended on the one hand to suppress individuality and initiative, while on the other their interpretation led to protracted references, and to absorbing the time of high officials by matters of routine.[1] The evidence presented to the Committee on the war in South Africa pointed to the same evil, for it showed that the deficiencies of the officers arose from their being too much controlled and supervised during their training.[2]

Their Training

The excessive tendency to routine, and the consequent lack of initiative, might be counteracted in some measure by a keen intellectual interest in the profession on the part of the younger officers; but the military education they receive is hardly of a character to stimulate such an interest. As a rule the candidates for commissions, after leaving the great public schools, such as Eton, Harrow and Rugby, where the sons of the upper classes are educated, obtain admission to the military academies by means of competitive examinations based upon the curriculum of those schools. The ordinary time then spent in studying at Woolwich, where the engineer and artillery officers are taught, is two years; that at Sandhurst, the school for the infantry and cavalry, was eighteen months before the South African War, and later only a year. Periods of this length are obviously too short to give a thorough training, or even a strong interest, in military science; and, in fact, the object is rather to produce

[1] Rep. of Com. on War Office Organisation, Com. Papers, 1901, XL., 179, p. 2.

[2] Rep. of Com. on War in South Africa, Com. Papers, 1904, XL., 1, pp. 52–56.

a good subaltern than a highly educated officer.[1] If a man is ambitious for promotion he is expected to pursue his studies by himself, or to attend the staff college, later in life. Now, with the modern application of science to warfare, a military officer has become a member of a learned profession. But in England the preliminary teaching is insufficient for this purpose; and what is more, the conditions of the service are very unlike those of learned professions, and hardly such as to stimulate intellectual activity. Moreover, the private contributions to the mess, and the other expenses of an officer, are often so great that it is difficult for a man without private means to follow the Army as a career. In short, after the abolition of the purchase of commissions in 1871, the Army ceased to be a caste without becoming a profession.[2]

Advantages of the Navy.

The fact that the Navy escapes some of the difficulties that beset the Army is not due altogether to better organisation. The Navy has in many ways great natural advantages as compared with the Army. Most civilians feel that after a short experience they could lead a regiment, but few landsmen have the hardihood to believe that they could ever command a ship. The Navy is a mystery which ordinary men do not pretend to understand, and with which they do not attempt to interfere; and this is a security for expert management. Again the Navy is less exposed to the dangers of peace. Warships are constantly in service. If they do not fight, at least they go to sea; and hence the Navy is far less likely than the Army to suffer from

[1] The recent Committee on Military Education evidently approved of that object. Com. Papers, 1902, X., 193, p. 24.

[2] The Committee on Military Education were impressed by the widespread dissatisfaction with the education of army officers, and in Sandhurst, especially, much was found to criticise. The education of the junior officers after leaving the military academies was reported to be in a most unsatisfactory state. They were said to be lamentably wanting in military knowledge, and in the desire to study the science and master the art of their profession; while the examinations for promotion encouraged "the customs of idleness with a brief period of cram." Com Papers, 1902, X., 193. There may well be some exaggeration in the criticism of the moment, due to a natural revulsion from the military self-complacency that preceded the war.

the demoralising influence of minute and antiquated regulations.

The Training of Naval Officers.

This has an effect also upon the training of naval officers. Under the old plan which is now being superseded, the theoretical education given them was by no means high. The cadets destined for executive naval officers entered "The Britannia" at the age of about fifteen, and spent there a little less than a year and a half. They then had a service of about three years at sea, where besides learning the practical side of their profession, they were expected to study elementary mathematics, mechanics, physics, navigation, surveying, etc. Then followed a couple of months at Greenwich preparing for the final examination in those subjects; and, lastly, before receiving their commissions as sub-lieutenants, five or six months at Portsmouth studying pilotage, gunnery, and torpedo practice. Thus the average age for obtaining the commission was not far from twenty years. The theoretical study pursued was certainly not of an advanced character. In mathematics, for example, it did not include the calculus, or even conic sections. In fact, according to the syllabus as revised in 1899, one of the optional subjects which men who desired to go farther than the rest might pursue, if they desired, was projectiles, "treated so as not to require a knowledge of conic sections."[1]

The principal changes made by the new plan, which began to go into effect in 1903, were, first, making the executive, engineer and marine, officers more nearly into a single corps, and therefore giving them a common training until they reach the grade of sub-lieutenant; and, second, reducing the age for entering "The Britannia" to between twelve and thirteen. This last change enables the cadets to remain at the school four years, and will, it is hoped, insure a sounder education. They are then to get a training at sea for three years, followed by three months at Greenwich and six at Portsmouth. At that point they are to receive their com-

[1] Rep. of Com. on Training and Examination of Junior Naval Officers, Com. Papers, 1901, XLII., 621, p. 15.

missions as sub-lieutenants, and those who join the executive branch of the service will go to sea again, while the engineer and marine officers attend their respective colleges for some time longer.[1] Whatever good effects the new plan may have in other directions, it can hardly increase materially the scientific education of the cadet.

But if the education in the theory of naval science has not been carried far, the junior naval officer has much greater opportunities for learning the practice of his profession than the officer in the army. In fact, if not a master of naval science he becomes an excellent seaman, and this, in the opinion of many officers, is much the more important of the two.

The Defence Committee.

One of the chief criticisms of Lord Hartington's Commission on the administration of the naval and military departments, bore upon the lack of combined plans of operation for the defence of the empire. They suggested the formation of a naval and military council, to be presided over by the Prime Minister, and to consist of the parliamentary heads of the two services, and their principal professional advisers.[2] In partial fulfilment of this recommendation a committee of the cabinet was formed, consisting of the Prime Minister, the parliamentary heads of the Army and the Navy, the First Lord of the Treasury, with the addition, if need be, of the Colonial Secretary. The committee was intended to deal with questions unsettled between the two departments, matters in which a joint policy was advisable, and questions relating to the relative importance of expenditures; and it differed from other committees in that minutes were to be kept of its proceedings, and formally recorded by the departments. The committee seems, however, not to have fulfilled the intentions of the Hartington Commission, for it has been openly

[1] Memorandum, Com. Papers, 1902, LXI., 675. Since this was written another change has been made dividing naval officers into a sea-faring and fighting branch and an engineer branch.

[2] Com. Papers, 1890, XIX., 1, pp. vi–viii.

stated in Parliament that it never met;[1] and even the Secretary of State for War admitted that it acted mainly with regard to estimates, and to questions within the War Office and the Admiralty, while, in his opinion, it ought to act on larger questions of policy. A new Defence Committee was, therefore, created in 1903, to consist, besides members of the cabinet, of the most influential experts of the two services, and when necessary of representatives of the Indian and Colonial Offices. The committee is intended to deal not only with estimates, but with larger questions of military policy.[2] But whether this result will be permanently attained, or whether the committee will meet with the usual fate, and find itself absorbed by details of administration and of expenditure, is yet to be seen.

The departments of state that remain to be considered in this chapter need not detain us long. They are all concerned with the internal government of the kingdom, and so far as their work is of general interest it will be touched upon again.

The Home Office.

The Home Office is a kind of residuary legatee. It is intrusted with all the work of the secretariat that has not been especially assigned to the remaining secretaries of state, or to the other administrative departments. Its duties are, therefore, of a somewhat miscellaneous character. As the heir to the residue of the secretariat, the Home Secretary is the principal channel of communication between the King and his subjects, and countersigns the greater number of the King's acts. He receives addresses and petitions addressed to the sovereign, and presents them if he thinks best. Among others he receives petitions of right — that is, claims to be allowed to sue the Crown — and consults the Attorney General about the answer to be given. Outlying places, such as the Channel Islands and the Isle of Man, which are not from an administrative point of view a part

[1] Lord Charles Beresford, Hans., 4 Ser. CXII., 1146, 1147.

[2] Rep. of Com. on War in South Africa, Com. Papers, 1904, XL., 1, pp. 135–36. Hans., 4 Ser. CXVIII., 291.

of the United Kingdom and yet are not colonies, fall under his jurisdiction. He has charge of questions of naturalisation and extradition. But more important still, the central control over the police, not having been transferred to the Local Government Board, remains in his hands, and this gives him wide powers of supervision. The metropolitan police of London is, indeed, administered directly by the national government under his immediate control;[1] and although the police elsewhere is not under his orders, yet the fact that the central government pays one half of the cost on condition his regulations are observed, enables him to prescribe the organisation, equipment and discipline of the local police all over England. Moreover, all by-laws of counties and boroughs, except those relating to nuisances, must be submitted to him for approval, and may on his advice be disallowed by the Crown.[2] As a part of his authority in matters of police he manages the prisons, both the national prisons for convicts and the county and borough gaols. He is responsible for the appointment and removal of recorders and stipendiary magistrates. He appoints the Director of Public Prosecutions, and makes regulations about costs in criminal proceedings. By virtue of special statutes he sees to the enforcement of the acts relating to factories, mines, burial-grounds, inebriates, anatomy, vivisection, explosives, and other kindred matters.

He is assisted by a parliamentary under-secretary, and by a large staff of permanent officials, beginning with a permanent under-secretary, and including a prison commissioner, a metropolitan police commission, and a host of inspectors for factories, mines, police, and so forth.

It will be observed that although primarily responsible for public order, the Home Secretary is by no means a minister of the interior in the continental sense, for apart from the police he has very little to do with local government. The supervision of matters of that kind, although

[1] The "City" of London is an oasis with its own police force.
[2] Glen on Public Health, 12 Ed., 443, 1169, 1341.

in part scattered among different departments, is mainly concentrated in the hands of the Local Government Board. The Home Secretary has, on the other hand, some of the functions of a minister of justice; and this will be referred to again when we come to speak of the Law Officers of the Crown. Pardons are granted on his recommendation.

The Board of Works.

The Board of Works is not regarded as a department of great political importance, and for this reason it presents one of the two or three cases where the minister has no parliamentary under-secretary. For a score of years the public lands and buildings were under the care of a body called the Commissioners of Woods and Forests; but in order to keep the revenue from land separate from the expenditure upon buildings, and so bring the latter more completely under the control of Parliament, the duties were divided in 1852. The Commissioners of Woods, Forests and Land Revenues were made a permanent non-political body under the Treasury, while the Board of Works was established to take charge of the construction and maintenance of parks, palaces and other buildings. At that time many of the public buildings were, in fact, committed to the care of the departments that occupied them; but by a series of statutes these have now been transferred almost wholly to the Board of Works. Now, although the amount of money that passes through its hands is very large, the board is by no means entirely free, for without the sanction of the Treasury it can undertake no work not directly ordered by Parliament, and it can make no contracts for the erection of large public buildings without submitting them to the same authority,[1] which also appoints the ordinary permanent staff of the office.[2]

The Board of Trade.

The Board of Trade occupies, on the contrary, a position of great and growing importance. It has had a long and chequered history, and although in the course of its career it has lost duties enough to keep an active department busy,

[1] Rep. Com. on Nat. Expend., Com. Papers, 1902, VII., 15, Q. 1425.
[2] 14–15 Vic., c. 42, §§ 16, 17.

these have been more than replaced under that modern tendency toward state regulation of industry which is constantly adding to its burdens. It deals not only with trade, but with many of the chief agencies of trade, and especially with transportation. As in the case of the three other boards to be described hereafter, the Board of Trade is engaged not in direct administration, but in supervising and regulating the action of private bodies and local authorities, and in keeping a watch upon the enforcement of the law. Speaking broadly, its powers have grown by the process of making it responsible for the application of a great many statutes.

Its functions may be classified roughly under the heads of collecting information, registration, inspection, and authorising acts or undertakings of a public nature; although any such classification is sadly confused by the fact that duties of more than one kind have been conferred upon the board in regard to the same subject-matter, and even by the same statute. To the first of these classes belong its functions in collecting and publishing statistics relating to domestic and foreign trade, and giving advice on commercial matters to other departments of the government. To that class belong also its functions as a labour bureau in preparing statistics about labour, wages and other matters touching the interests of workingmen. In this connection it has power also to act as a board of conciliation in labour disputes, and to name arbitrators or conciliators. Under the head of registration may be mentioned its duties in maintaining the standards of weights and measures; registering joint-stock companies; examining and recording patents and trade-marks; and keeping a register of ships and seamen. Under the head of inspection come its functions in ascertaining that merchant vessels are in a seaworthy condition, and properly laden, officered, manned and equipped; with the power to detain unseaworthy craft. Under the same head may be classed its control over harbours, its duty to see to the enforcement of the

laws relating to railways[1] and to inquire into the causes of railway accidents and disasters at sea. As an example of the final class of powers may be cited the fact that the by-laws of a railway company require for their validity the approval of the board; but a far more important instance is to be found in its control over the building of new lines of railway, over new undertakings for the supply of water, gas and electric light, and over the construction of tramways and light railways, the last being a recent invention legally very different, but physically indistinguishable, from tramways. This control is exercised by means of provisional orders, prepared by the board after an investigation and a hearing of all the persons interested, and then confirmed by Parliament.[2] The petitioner is not, indeed, compelled to resort to a provisional order, but may avoid the direct control of the Board of Trade by means of a private bill in Parliament. But a provisional order is far less expensive; and even when the procedure is by private bill the board endeavours to exert its influence by scrutinising the bill, and bringing to the notice of the officers of the House any departures from the general policy of legislation.[3] The result is that the board has an effective, although by no means an absolute, control over these matters.

The subject of bankruptcy has also been placed in the hands of the Board of Trade, and except for legal questions which come before the courts, it has the entire charge of the cases, maintaining for that purpose a staff of inspectors, examiners and official receivers.

The nearest approach to actual administrative work intrusted to the board is in the case of lighthouses, buoys

[1] In 1873 the settlement of railway controversies was transferred to a judicial body, the Railway and Canal Commission.

[2] In the case of light railways the orders are made by the Light Railway Commission and confirmed by the Board of Trade, the members of the Commission being appointed by the President of the Board. 59–60 Vic., c. 48; 1 Edw. VII., c. 36.

[3] Rep. of Com. on Municipal Trading, Com. Papers, 1900, VII., 183.

and beacons, which are maintained by Trinity House, an ancient corporation composed of self-elected brethren but financially under the control of the Board of Trade.

The Local Government Board.

Until the era of the Reform Bill local affairs in England were managed in the main by justices of the peace and town councillors, whose powers were derived from a host of statutes covering many subjects in great detail. These officers were kept rigorously within the limits of their authority because the legality of their acts could be tested in the courts of law; but they were almost entirely free from administrative control. The first wide breach in the system was made by the Poor Law Amendment Act of 1834, which aimed at a reform in the method of giving poor relief, and set up for the purpose a commission to supervise the local bodies. The new commissioners, being vigorous and efficient, aroused hostility, and as they were not permitted to sit in Parliament, they found it hard to defend their policy. In fact the experience they went through is used by Bagehot as an illustration of the impotence of an executive department without a representative in the House of Commons.[1] In 1847 the body was reorganised under the title of the Poor Law Board, with a responsible minister at its head, and thenceforth received from time to time additions to its duties. Various functions relating to public health and local government had in the meanwhile been intrusted to the Home Secretary and the Privy Council; and, finally, in 1871 the greater part of them were transferred to the Poor Law Board, which was given the name of Local Government Board.

Legislation of this kind has entirely transformed the nature of English local government. Partly by bringing the exercise of existing powers under the supervision of the central government, partly by subjecting to systematic control the new powers called into life by the wants of the time, the old system of local self-government — limited by law, but independent of any administrative superior — has been

[1] "English Const.," 1 Ed., 228–30.

replaced by a system where the local bodies, and especially those outside of the great towns, are to a considerable extent under the tutelage of the state. The subjection is not the same as that which prevails in other European countries, and it is not so great, but it is in some respects more nearly akin to the continental system than to that of England in the eighteenth century.

Except for such matters as police, education, and the supply of transportation, light and water, the control over the local authorities is almost entirely vested in the Local Government Board; but as the subject of local government, and therefore the powers of the board, will be considered at some length in another part of this book, we do not need to enumerate its functions here. We need only point out that it has the unusual number of five assistant under-secretaries, and a large staff of clerks, auditors and inspectors. But although the amount of head work to be done, and therefore the number of permanent officials of high grade, is large, yet from a political point of view the department is not regarded as of the first class.

The Board of Agriculture.

The creation in 1889 of a new department of state to attend to the matters that have been transferred from various commissions to the Board of Agriculture hardly seems to have been necessary; and, indeed, the board is not important enough to require a parliamentary under-secretary. It has inherited the duty of shaking the dry bones of ancient tenures by dealing with such subjects as the commutation of tithes, the enfranchisement of copyhold, the enclosure of commons, allotments to labourers, and the improvement of land by limited owners. The control of fisheries, the promotion of agriculture and the prevention of contagious diseases among animals are also placed under its care, and it has been given power, or rather authority, to muzzle dogs and destroy the Colorado beetle.

The Board of Education.

The Board of Education is the youngest of all the boards, but in reality it is only a committee of the Privy Council reorganised with some additional powers. The most remark-

able thing about the act creating it — apart from the erection of a sham board — is the extent of the authority delegated to the executive. Instead of prescribing minutely the organisation and functions of the department of education, the act empowered the government, in its discretion, to set up such a consultative committee as it saw fit, and to transfer to the board any educational duties of the Charity Commissioners or the Board of Agriculture that it thought best.[1] Both of these powers have been exercised by Orders in Council of Aug. 7, 1900, and the Consultative Committee has been made to consist of representatives selected by the universities and by other bodies interested in education. But the subject of public education will be treated in subsequent chapters, and it is enough here to note that by means of elaborate regulations, commonly known as the Education Code, the board prescribes the instruction to be given in all schools aided by public money;[2] that it inspects endowed or private secondary schools at their request;[3] and that it has charge of the museums at South Kensington and Bethnal Green, and of the Geological Museum and Survey.

The Post Office.

From the point of view of the national government the Post Office has two functions. It is a great administrative department which conducts a huge business, with a minister at its head; and it is a source of income, its gross receipts forming about one seventh of the total revenues of the United Kingdom, its disbursements only about one tenth of the total expenditure. For that reason it is under a financial control by the Treasury so strict as to leave very little chance for independent action, and this renders the position of Postmaster General far less important

[1] 62–63 Vic., c. 33, §§ 1–4.

[2] This does not, of course, apply to special establishments, like the naval and military schools, which are managed by other departments.

[3] Throughout this chapter statements relating to local government must be understood not to apply to Scotland or Ireland; but in this case Wales, with Monmouthshire, is also excluded because, by the Welsh Intermediate Education Act of 1889, a special board chosen by the local authorities inspects the secondary schools there.

than it would otherwise be. The office has been regarded as political since 1837; but until 1866 the holder could not sit in the House of Commons, and since that time he has occasionally been a peer, the Post Office in such a case being usually represented in the Commons by the Financial Secretary of the Treasury. The duties of the Postmaster General are minutely prescribed by statute, and while he has power to make regulations for the management of the postal service, it is not easy to make substantial changes or improvements without affecting the receipts or the expenses, and when that is done he comes at once under the control of the Treasury. The rates of postage, for example, and the compensation for carrying the mails, when not fixed by Act of Parliament, are subject to the approval of the Treasury; and so are the purchase or sale of land, and any lease of the right to carry on a telegraph or telephone business. The same approval is also required for his regulations touching money-orders, post office savings-banks, and the telegraph, although in these cases the revenue would not appear to be necessarily involved. In short, as Sir William Anson puts it,[1] "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." [2]

The business of the department is certainly enormous, the number of persons employed being little short of two hundred thousand. In addition to the usual work of transmitting letters, books, parcels and money-orders, the Post Office in England maintains savings-banks, with deposits of about £150,000,000; and it has been given exclusive control of the telegraph by provisions which have been held to include the telephone also. But while the administration of the telegraph has been retained by the government in its own

[1] "Law and Custom of the Constitution," II., 184.

[2] It may be observed that for many years after 1868 the Postmaster General was rarely in the cabinet, and hence he has not acquired the authority possessed by a regular cabinet minister. He has, however, now been in the cabinet continuously since 1892.

hands, the right to conduct the telephone business was granted, by means of temporary licenses, to private companies, and to some extent to local authorities also; and the government has only recently decided to take over the management as soon as the licenses expire.

CHAPTER V

THE TREASURY

THE most important of all the departments, and the one that exhibits in the highest degree the merits of the English government, is the Treasury. It is the central department of the administration, which keeps in touch with all the others, and maintains a constant financial control over them. But before considering how that is done it may be well to explain the process by which money flows in and out of the national purse. The part played by Parliament in the imposition of taxes, and the authorisation of expenditure by means of appropriations, will be described in chapter XIV, and we are concerned here only with the machinery for collecting those taxes, and giving effect to the appropriations.[1]

The Consolidated Fund and the Bank of England.

Until the Commonwealth, taxes were, as a rule, granted to the King, who used the proceeds to carry on the government as he saw fit; but under Charles II. Parliament began to appropriate parts of the revenue for specific purposes, and after the revolution of 1688 this developed into a comprehensive system, so that the whole revenue was appropriated, to be used only for the objects, and in the sums, designated by Parliament.[2] It was the custom, however, to appropriate for specific objects the proceeds of particular taxes, a practice that made the public accounts needlessly complex. In 1787 William Pitt, following earlier partial experiments, simplified matters by creating a single Con-

[1] An excellent description of the existing financial procedure may be found in Sir Courtney Ilbert's "Legislative Methods and Forms," 284–99.

[2] This did not apply to the hereditary revenues of the Crown until, with the exception of the revenues belonging to the Duchies of Lancaster and Cornwall, they were surrendered by George III., in return for a fixed Civil List.

solidated Fund into which all revenues from every source were turned, and from which all payments were made.[1] The Consolidated Fund is deposited in the Bank of England and the Bank of Ireland, which have a right to use it like any other deposit, and perform, in fact, for the government much the same service that an ordinary bank does for a merchant. This method of dealing with the national finances continued substantially intact until a few years ago,[2] when it was complicated by two innovations, one of which allows a department to use incidental revenues, under the name of "appropriations in aid," to defray expenses, and the other set aside certain parts of the national income to supplement local taxation, in each case without passing through the Consolidated Fund.[3] The second of these exceptions was due to the great increase of local expenditure, and the narrow range of local taxation, which have caused a demand for national subventions, and have resulted in setting apart for the purpose the proceeds of specific sources of revenue. In this way the income from the local taxation licenses, and a portion of the income from the death duties and the duties on spirits and beer, were collected by the central government and paid directly into the Local Taxation Account.[4] But saving these cases, all the national receipts

[1] 27 Geo. III., c. 13.

[2] The rule had not been absolutely without exceptions, for the Mercantile Marine Fund, derived from port charges on vessels, was used to defray part of the expenses of the Board of Trade without going through the Consolidated Fund. *Cf.* 2d Rep. Com. on Civil Estab., Com. Papers, 1888, XXVII., 1, Qs. 18211–26. In 1898 this process was restricted to the maintenance of lighthouses, buoys and beacons. It may be observed, also, that the Act of 1891 concerning "appropriations in aid" (54–55 Vic., c. 24, § 2) declares that it merely gives statutory authority to an existing practice. Such appropriations are now regularly granted by Parliament in aid of the votes for the services in which they occur. The amount in aid of each vote is fixed, and listed in a separate column in the schedule to the Appropriation Act, only the excess above that amount being paid into the Consolidated Fund.

[3] Ilbert, "Legislative Methods and Forms," 294–95; Glen, "Law of Public Health," 1343, 1344.

[4] This innovation has been vigorously criticised as tending to confuse the national accounts. See a memorandum by Sir E. W. Hamilton, Com. Papers, 1902, VII., 15, App. 12. It was abolished in 1907. 7 Edw. VII., c. 13, § 17.

are paid into, and all the disbursements are made from, the Consolidated Fund.

Method of Getting Money into the Consolidated Fund.

The financial procedure of the Treasury is now regulated by the Exchequer and Audit Departments Act of 1866,[1] and the Public Accounts and Charges Act of 1891.[2] By these acts the gross revenue — after making the deductions already mentioned — is paid into the "account of His Majesty's Exchequer," at the Banks of England and Ireland, to be used as a single fund. The three chief collectors of revenue are the Commissioners of Customs, the Commissioners of Inland Revenue and the Post Office. With the growth of the principles of free trade the customs duties became confined to coffee, chicory, cocoa, dried fruit, tea, tobacco, wine, and a number of articles, such as spirits, on which duties are laid to countervail the excise upon similar articles produced at home. To these were added at the time of the South African War an export duty on coal, and import duties on sugar and grain, the last being again dropped in 1903, while the coal duty was repealed in 1906. Under normal fiscal conditions in times of peace, the customs duties yield about one fifth of the total revenue, the receipts being mainly from tobacco, tea and spirits. The gross receipts from the Post Office (including the telegraphs) form about one seventh of the revenue, but this is really misleading, because three quarters of those receipts are paid out again for the expenses of the department. All but a very small fraction of the remaining receipts come through the Commissioners of Inland Revenue, and their sources of income are of a miscellaneous character. The largest item is the excise, mainly on beer and spirits, which yields more than a quarter of the total national revenue.[3] The next largest is the income tax, which varies very much from time to time, and has produced during the last score of years from one seventh to one quarter of the total revenue. Then there are the death duties, a

The Sources of Revenue.

[1] 29–30 Vic., c. 39. [2] 54–55 Vic., c. 24.

[3] The sums paid to the Local Taxation Account not being included.

progressive tax on property passing at death, which yield one tenth of the revenue. The ancient land-tax, and the inhabited-house duty produce comparatively small sums; and, finally, there are the stamp duties on all kinds of transactions, articles and licenses which yield all together about one twelfth of the revenue. Some of the license fees collected under the head of excise are so small as to appear rather vexatious than productive, such as one guinea for the display of armorial bearings not used upon a carriage, fifteen shillings for a license to have a man-servant, or keep a carriage with less than four wheels, and fourpence a day for the privilege of occasionally selling tobacco.[1]

Permanent and Annual Taxes.

Neither the expenditure nor the proceeds of taxes being absolutely constant, it is necessary, in order to maintain a close balance between them, to adjust the sources of revenue to some extent from year to year, and this is done by means of a small number of variable charges. Most of the taxes are imposed by permanent statutes, changed only at long intervals, but the rates of assessment under the tea duty and the income tax are fixed each year in the annual Finance Act; and since 1894 certain additional duties on beer and spirits have also been laid for a year at a time.

Accuracy of the Budget.

It has been the aim of English statesmen to make the revenue and expenditure of each year balance one another as closely as possible, and their skill in doing so has been extraordinary. While the South African War was raging such a result was naturally impossible, but during the preceding twenty-five years the difference between receipts and expenditures (including payments on account of the debt) was never more than about four per cent, and in fifteen of those years it did not exceed one and a half per cent. The taxes are, indeed, of such a character that it is possible to forecast their proceeds with great accuracy. The Chancellor of the Exchequer intends to make his calculations so as to

[1] These license fees go into the Local Taxation Account, not into the National Exchequer.

leave a margin of safety, and yet during the period under consideration the difference between the estimated and actual receipts was never more than about three and a half per cent.[1]

Accurate fiscal administration is very much promoted by the rule that any part of an appropriation unexpended at the end of the financial year in which it is voted shall lapse, and cannot afterwards be used unless it is granted afresh by Parliament.[2] The rule has been thought to lead to wastefulness by provoking improvident haste in spending the whole appropriation before March 31.[3] But such an evil is surely far smaller than that of allowing the appropriations to run on, with the result, well known in France, for example, that the annual accounts cannot be finally made up, and the extent of the deficit determined, until several years have passed.

Like all other excellent things devised by men, the English system of finance is not without its drawbacks. If it promotes careful administration, and rivets attention upon any increase in the budget, it also makes the revenue inelastic in emergencies. A great deal has been said in Parliament of late about broadening the basis of taxation, but that is a very difficult thing to do suddenly, without dislocating the commercial as well as the fiscal system; and while the existing taxes are elastic up to a certain point, an attempt to raise them too much would diminish rather than increase their productiveness.

[1] It is noteworthy that from 1858 to 1895 the amount of money raised by taxation for national purposes was never less than £2 4*s*. 5*d*. and never more than £2 9*s*. 11*d*. per head of population. Of late years it has shown a steady tendency to increase. In 1899, the year before the war, it was £2 13*s*. 6*d*.; and in 1902 it was £3 8*s*. 8*d*., the expenditure being £4 13*s*. 11*d*. Between 1857 and 1900 the national debt was reduced by gradual payments from £837,144,597 to £628,978,783. In 1902 it had increased in consequence of the South African War to £747,911,107.

[2] For the history of this rule see Todd, "Parl. Govt. in England," II., 44–46.

[3] Rep. of the Com. on War Office Organisation, Com. Papers, 1901, XL., 179, p. 6. But see 3d Rep. Com. Pub. Accounts, Com. Papers, 1901, V., 47, p. iv.

Method of Getting Money out of the Consolidated Fund.

Just as there are two kinds of taxes, one permanent and the other annual, so there are two classes of expenditure, one regulated by standing laws, and the other by annual appropriations. All the ordinary expenses of the government require parliamentary sanction every year, both on the theory that the money collected from the nation ought not to be spent without the consent of its representatives, and also in order that Parliament may be able to oversee the administration and criticise it in every session. But there are certain matters that ought to be kept aloof from current politics, and ought not to be brought in question in the heat of party conflict. The principal charges that have been regarded in this light are the interest on the national debt, the Civil List or personal provision for the King, annuities for the royal family, certain pensions, and the salaries of the judges, of the Comptroller and Auditor General, of the Speaker, and of a few officers of lesser importance. These charges amount to nearly one quarter of the total expenditures; and they are called Consolidated Fund charges, because by statute they are paid directly out of the Consolidated Fund without the need of any further action by Parliament. The other expenditures are for what are known as the supply services, because the appropriations for them are voted by the House of Commons in Committee of Supply.

The administrative procedure for getting money out of the Consolidated Fund to pay the Consolidated Fund charges and the supply services is not precisely the same. In the case of the supply services a royal order for the amounts appropriated by Parliament is made under the King's sign manual, countersigned by two of the Commissioners of the Treasury. The Treasury then requires the Comptroller and Auditor General to grant credits at the Banks of England and Ireland for those amounts, and if satisfied that the authority from Parliament is complete, he makes an order on the banks granting the credits. From time to time the Treasury requests the banks to transfer to the

various supply accounts, for disbursement, sums of money not exceeding the credits so granted.[1] The procedure in the case of Consolidated Fund charges differs from this only in the fact that a royal order is not needed, and the Comptroller and Auditor General, on the requisition of the Treasury, grants quarterly credits for the amounts prescribed by statute.[2] By this process a highly effective security is provided that no money shall be spent without the authority of Parliament. The Consolidated Fund is deposited in the banks of England and Ireland, which are liable if any of it is withdrawn without an order from the Comptroller and Auditor General, while that officer is given the same independence as the judges. Like them he is appointed during good behaviour, with a salary charged upon the Consolidated Fund. The security is not absolutely perfect, for there are some moneys, such as the appropriations in aid, that do not pass through the Consolidated Fund; and as no foresight can be unfailing, the government is given a limited power to meet unforeseen contingencies, and to cover expenses that have inevitably proved larger than was anticipated.[3] But all matters of this kind are fully reported to Parliament by the Comptroller and Auditor General.

Audit of the Accounts.

The Treasury lays before Parliament annually the Finance Accounts of the preceding year, while the Comptroller and Auditor General submits at a later date a separate report. Therein he examines the Consolidated Fund charges, and makes for the supply services more elaborate statements, called the Appropriation Accounts, in three volumes, relating to the Army, the Navy and the civil service. The accounts are rendered to him by the several departments, and after auditing them he transmits them to the House of Commons with his comments.[4]

[1] 29–30 Vic., c. 39, §§ 13, 15. [2] *Ibid.*, § 13.

[3] For the provision made for such cases, see page 126, *infra*.

[4] The Finance Accounts give only the issues to the departments from the Exchequer, not the actual expenditures. These last are contained only in the Appropriation Accounts of the Auditor General. Except for cer-

The money granted by Parliament is divided into votes, of which there are in all about one hundred and forty.[1] In the estimates these votes are subdivided into subheads and items; but the votes would appear to be the only limitation expressly placed by Parliament upon expenditure; for the Annual Appropriation Act provides that the sums granted shall be deemed to be appropriated "for the services and purposes expressed in Schedule (B) annexed" thereto, and that schedule gives a list of the votes, but not of the subheads or items. Nevertheless, the Comptroller and Auditor General is enjoined by the Exchequer and Audit Departments Act of 1866 to ascertain whether the money expended has been applied to the purpose or purposes for which each grant was intended to provide,[2] and hence the reports that he submits note the excess or saving with the reasons therefor, under each subhead, and sometimes, as in the case of votes for the construction of new buildings, under each item. He adds, also, his own comments wherever it seems to him necessary to do so. All this is done, even where the saving under one subhead more than counterbalances the excess under another in the same vote. When that happens, however, no action by Parliament is required; but if the total amount of a vote has been overspent, the excess is entirely unauthorised, and must be covered by a deficiency appropriation, which Parliament grants upon the reports of the Comptroller and Auditor General and the Committee on Accounts of the House of Commons. To the last rule there is one exception. In order to facili-

tain departments, like the Navy, where Sir James Graham began the practice of submitting them as early as 1832, the actual expenditures were not submitted as a whole to Parliament until the Act of 1866. Memorandum by Lord Welby, Com. Papers, 1902, VII., 15, App. 13. Hatschek, *Englisches Staatsrecht*, I., 495–502, gives an interesting description of the influence of French methods upon the English system of keeping public accounts, including the introduction of double-entry bookkeeping.

[1] Fifteen or sixteen relate to the Navy; as many more to the Army; something over one hundred to the various branches of the civil service, grouped into seven classes; and five to the revenue departments.

[2] 29–30 Vic., c. 39, § 27, and see Todd, II., 53–67.

tate the administration of the Army and Navy, the Annual Appropriation Act declares that the Treasury may authorise expenditure, not provided for, to be defrayed temporarily out of any surplus effected upon other votes in each of those departments; and the Act goes on to recite and sanction the transfers of surplus so authorised by the Treasury in the last year for which the accounts are complete.[1] This brings us to another important question, that of the financial control of the Treasury over the other branches of the administration.

Treasury Control over Other Departments.

There has been a great deal of discussion about Treasury control over the receipt and expenditure of public money. In the case of the receipts it is a simple matter, for the financial control over the Post Office has already been described, and the other great revenue departments are, as will shortly be explained, virtually subordinate to the Treasury. The question of control over expenditure is far more complicated. Committees of the House of Commons have, at different times, collected evidence on the subject,[2] but the statements made have often been vague, and tend to confuse the control of the Treasury over the estimates, with its control over expenditure after the appropriations have been voted by Parliament. The control over the estimates has been discussed in the preceding chapter. It is only necessary here to repeat that such a control is by no means absolute, because any important question of expenditure becomes a question of policy to be decided, in case of disagreement, by the Prime Minister or the cabinet; and to point out that the departments supported by their political chiefs are usually too strong for the Treasury to resist.[3]

Control over Estimates.

[1] For the history of this matter, see Todd, II., 31–42.

[2] See, for a history of the question, Todd, II., 27–43, 543–45, and for recent collections of evidence the 2d and 3d Reps. of Com. on Civil Serv. Exp., Com. Papers, 1873, VII., 391, 415; 2d Rep. of Com. on Civil Estabs., Com. Papers, 1888, XXVII., 1; Rep. of Com. on War Office Organisation, Com. Papers, 1901, XL., 179; Reps. of Com. on Nat. Expenditure, Com. Papers, 1902, VII., 15; 1903, VII., 483.

[3] Rep. of Com. on Civil Estab., Com. Papers, 1888, XXVII., 1, Evid. of Sir R. E. Welby, Perm. Sec. of Treas., Qs. 10704–9, 10713, 10721–26, 10766.

Control over Expenditure.

It might be supposed that after the appropriations had been voted the departments would be free in expending them, subject only to their responsibility to Parliament; but this is not altogether true. In the first place a statute sometimes requires that the expenses of a department shall be sanctioned by the Treasury.[1] Then it is not infrequently provided that the salaries shall be fixed by the Treasury, or that alterations in the establishment shall require its consent. Moreover, the salaries of certain grades of clerks are regulated by Orders in Council,[2] which are changed only on the advice of the Treasury. Apart, however, from statutes and Orders in Council there is a general customary principle forbidding any increase in the civil establishment of a department, — that is, any increase in the number or salary of permanent officials, — without the approval of the Treasury; and this although the appropriations would not be exceeded.[3]

Over certain departments the control is even more extensive, for not only do the contracts made by the Post Office require its approval, but contracts entered into by the Board of Works are also the subject of discussion between the Treasury and the First Commissioner.[4] In the case of the Army and Navy the fact that the Treasury can authorise a

[1] This was true, for example, of the Act creating the Board of Agriculture (52–53, Vic., c. 30, § 5).

[2] For clerks of the second division by Order in Council, March 21, 1890, §§ 3–6, Com. Papers, 1890, LVIII., 167. Positions of higher grade are regulated "by the heads of the departments to which they belong, subject to approval by the Commissioners of the Treasury;" Order in Council, Feb. 12, 1876, § 3, Com. Papers, 1888, XXVII , 1, p. 571; but no vacancies in these positions can be filled or new appointments made until the Treasury is satisfied that the number of officers in the department with salaries higher than those of the second division will not be excessive; Order in Council, Nov. 29, 1898, § 4, following Order of Feb. 12, 1876, § 4. The evidence before the Committees of 1873 and 1888 was, however, conclusive on the impotence of the Treasury in forcing reductions, whatever its actual power might be in preventing an increase of establishment.

[3] *Cf.* 3d Rep. Com. on Civil Serv. Exp., Com. Papers, 1873, VII., 415, Qs. 474, 4902–03; 2d Rep., Com. on Civil Estabs., Com. Papers, 1888, XXVII., 1, pp. xi, xii, and Qs. 10957, 14090–91, 14918–20, 18088; Rep. Com. on Nat. Exp., Com. Papers, 1902, VII., 15, Q. 1429.

[4] Rep. Com. on Nat. Exp., Com. Papers, 1902, VII., 15, Q. 1425.

transfer of the surplus under one vote to cover a deficiency under another gives it a certain authority; and, indeed, its sanction is to some extent sought even for transfers between subheads of the same vote. This last is, of course, a matter of custom rather than of law, and practice differs in the two services. The Admiralty, which always plays the part of the good boy, comes very frequently to the Treasury for permission to make transfers between subheads before it acts; while the Army, save in exceptional cases, comes only at the end of the year for a formal approval.[1] The exceptional cases are, however, numerous. They sometimes extend even to separate items, and are regulated by a code of rules made by the Treasury and the department.[2] Every excess, for example, of a certain size in an item for a new building, the payment of any excess to a contractor, the discharge of a loss, or the insertion of a new item, require the sanction of the Treasury; and in fact the Appropriation Accounts of the Army and Navy are followed by many pages of correspondence on matters of this kind between the Treasury and the department. In the case of the civil services, where the Treasury has no authority to sanction transfers between votes, the system is less elaborate and the correspondence is not printed in full. Still there are frequent references in the accounts to Treasury letters sanctioning expenditures under subheads or items, especially in relation to such matters as salaries, the purchase of land, large excesses over estimates for construction, the abandonment of claims, and unforeseen expenditures.[3]

Transfer of a Surplus.

[1] Rep. of Com. on War Office Org., Com. Papers, 1901, XL., 179, Qs. 3038–41. An excess on the subheads for food and forage, for example, would be met as a matter of course by a saving on fuel or rents. *Ibid.*, p. 425.

[2] Memoranda on Treasury control by F. T. Marzials, Accountant General of the Army, *Ibid.*, pp. 424–26; and by Robert Chalmers, Rep. Com. on Nat. Exp., Com. Papers, 1902, VII., 15, App. 3.

[3] The control of the Treasury over expenditure connected with the courts is less than it is in the case of other branches of the civil service; but the salaries of the clerks are fixed as a rule by an understanding between the judges and the Treasury. 2d Rep. Com. on Civil Serv. Exp., Com. Papers, 1873, VII., 391, pp. vi–viii.

Effect of Treasury Control.

The control by the Treasury is sometimes vexatious in small matters,[1] but it does not seriously hamper the administration, or impair the efficiency of the service;[2] and while it can hardly prevent an expenditure on which a department is seriously determined,[3] the very need of consultation can hardly fail to act as a restraint upon extravagance.[4]

In addition to its control over the application of the sums voted by Parliament, and its authority to permit the use of appropriations for purposes not contemplated in the estimates, the Treasury has a limited power to open the national purse in case of necessity when no grant has been made by Parliament. For this purpose it has three sources of supply at its disposal: the Treasury Chest Fund, limited to £1,000,000, may be used to make temporary advances for carrying on the public service, to be repaid out of sums afterwards appropriated; the Civil Contingencies Fund, limited to £120,000, is available on similar terms for unforeseen contingencies and deficiencies; and, finally, any incidental receipts, not granted by Parliament as appropriations in aid, may be used as such under the authority of a Treasury minute to be laid before the Houses.[5]

The Organisation of the Treasury.

In the remarks on the history of the Treasury Board, at the beginning of the last chapter, it was pointed out

[1] Rep. Com. on Civil Estabs, Com. Papers, 1888, XXVII., 1, Qs. 18076, 18088, 19150, 19165, 19171–75, 19178–82. As Lord Farrer, formerly permanent under-secretary of the Board of Trade, expressed it, "We can cheat them in big things; they may bully us in little things." *Ibid.*, Q. 20,021.

[2] Rep. of Com. on War Office Org., Com. Papers, 1901, XL., 179, p. 8; Rep. of Com. on War in South Africa, Com. Papers, 1904, XL., 1, p. 143.

[3] *Cf.* Sir R. E. Welby, Rep. Com. on Civil Estabs., Com. Papers, 1888, XXVII., 1, Qs. 20382–83.

[4] The real sanction of the control of the Treasury lies in the support it is almost certain to receive from the Committee on Accounts of the House of Commons. In 1901, for example, in a case where the War Office, without exceeding its total vote, but before seeking the approval of the Treasury, paid to a contractor an addition of £1000 upon a contract for which no item appeared in the votes of the year, the Committee of Accounts remarked, "Your Committee deprecate in the strongest manner any diversion of Parliamentary funds without Treasury sanction." 3d Rep. Com. of Pub. Accounts, Com. Papers, 1901, V., 13, pp. iv–v.

[5] Public Accounts and Charges Act, 54–55 Vic., c. 24, § 2 (3).

that the board no longer meets. The Treasury minutes are still drawn up in the name of "My Lords," but this is merely the survival of a form, and all the members of the board, except the Chancellor of the Exchequer, have ceased to take part in directing the financial administration. The three junior lords have at times some small departmental duties, but their real functions are to act as assistants to the Parliamentary or Patronage Secretary, who is the chief government whip in the House of Commons. All the four whips receive salaries from the state on the theory that it is their duty to keep a House, or in other words to insure the presence of a quorum, while the supplies are being voted. But in fact they are officers, not of the state, but of the party in power, and it is their business to see that whenever a vote is taken in which the ministry is interested, their partisans are present in greater force than those of the Opposition. The relation of the First Lord to the Treasury is anomalous. He is usually the Prime Minister, and as such is supposed to keep a general supervision upon all branches of the administration, and to act as a sort of umpire between the different ministers, and, therefore, between the Treasury and the other departments. But whether he is Prime Minister or not he has a real connection with the Treasury. The functions of that office cover a much wider field than its name would imply, including subjects of a most miscellaneous character; and while the finances are entirely under the charge of the Chancellor of the Exchequer, — who is, in fact, the Minister of Finance, with the Financial Secretary of the Treasury as his parliamentary under-secretary, — the First Lord may be said, speaking very roughly, to be at the head of the outlying departments which are not concerned with financial affairs.

The Subordinate Departments.

The Treasury has been described as a superintending and controlling office that has properly no administrative functions;[1] and this, in a sense, is true, for even in money matters its duty as an organised department is financial direction

[1] Todd, II., 545.

and control, not the actual collection and disbursement of the revenue. It prepares the budget, reviewing the estimates submitted to it, and devising the means of defraying them; it supervises the collection of the revenue, and keeps watch over the expenditure. In this work the political chiefs are assisted by a body of clerks, headed by the permanent under-secretary, whose office is generally regarded as the highest in the permanent civil service. The offices that have direct charge of the collection of revenue have separate organisations with distinct staffs of permanent officials; but, except for the Post Office, they have no political chiefs of their own, and are in fact subordinate branches of the Treasury. The four great offices of this kind are the Post Office, which has already been described; and the departments of Customs, of Inland Revenue, and of Woods, Forests and Land Revenues, each of which is managed by commissioners who are members of the permanent civil service, and do not change with changes of ministry.[1]

The Treasury bears a similar relation to the departments that deal with purely fiscal payments, the National Debt Office, the Public Works Loan Board, and the Paymaster General's Office, through which almost all disbursements

[1] The organisation of all these offices, and their relation to the Treasury, has been described at great length in Gneist, *Das Englische Verwaltungsrecht,*" 3 Auf., Buch III., Kap. 4.

The office of Woods, Forests and Land Revenues collects the revenue from the Crown lands, except those belonging to the Duchies of Lancaster and Cornwall, the revenues from these last never having been surrendered to the nation, and being still enjoyed by the King and the Prince of Wales respectively. It collects also some other bits of hereditary revenue; but the total amount of its receipts is small, and the commissioners are only two in number. The Customs Establishment, which collects all duties on imports and exports, is managed by a chairman, a deputy chairman and one other commissioner; and, finally, the Inland Revenue Office, which collects the excises, and all the other national taxes, is a huge concern, and has at its head a chairman, deputy chairman and two other commissioners. This department was formed by uniting the boards of Excise, of Taxes and of Stamps; and it has been suggested that the departments of Customs and of Inland Revenue should be combined, but that has been thought inadvisable. (*Cf.* 3d Rep. Com. on Civil Estabs., Com Papers, 1889, XXI., 1.)

are now made. For, although the Paymaster General is a political officer, he has ceased to have any real connection with his department, and it is administered under the direction of the Treasury.[1]

The Outlying Departments.

Besides the departments subordinate to the Treasury, there are a number of outlying departments more or less closely connected with it which have already been referred to as having nothing to do with financial affairs; and, indeed, one may say that in theory, at least, every branch of the public service — except the Ecclesiastical and Charity Commissions[2] — that does not have a political chief of its own, and is not connected with some other department, is under the supervision of the Treasury and represented in Parliament thereby. But while the commissioners, or other heads of such offices, are as a rule appointed on the recommendation of the First Lord, or of the Prime Minister, the degree of control exercised over them by the Treasury varies a great deal; and in some cases its responsibility, apart from regulating the amount of expenditure, is somewhat illusory. Several institutions in this position are intended to be entirely outside the range of party controversy; and the boards of trustees of the British Museum, the National Gallery, and the National Portrait Gallery habitually contain members of Parliament who would

[1] The Chancellor of the Exchequer is also *ex officio* Master of the Mint.

[2] The Ecclesiastical Commission manages the episcopal estates and other church property, using the revenues to pay the income of the bishops, and to promote the work of the Established Church in poor and populous places. It is not connected with any department of the government, and in fact is rather an institution belonging to the Church than a branch of the public service. The commissioners include all the bishops, several cabinet ministers, and a number of other laymen, of whom a couple sit in Parliament.

The Charity Commission, a body possessing semi-judicial powers in the regulation of charitable trusts, occupies a position more like that of an administrative department. Of the four commissioners one is unpaid, and represents the body in Parliament.

These two commissions are, therefore, in the anomalous position of having been deliberately provided with spokesmen in Parliament, who are not responsible ministers of the Crown. The British Museum, the National Gallery, and the National Portrait Gallery are in this respect in the same situation.

never think of resigning their posts by reason of a change of ministry. The principal outlying departments of the Treasury directly connected with national administration, are: the Civil Service Commission, which examines the candidates for the various branches of the civil service; the Parliamentary Counsel's office, which drafts all the bills introduced by the ministers; and the stationery office, which does all the government printing.

Throughout a great part of the nineteenth century the influence of the commercial classes was strong, the government was conducted on strict business principles, and the Treasury as the representative of those principles was the keystone of the administrative arch, or to change the metaphor, the axle on which the machinery of the state revolved. For a long time, indeed, there was a marked tendency to consider the office of Chancellor of the Exchequer as the most important in the cabinet after that of the Prime Minister, to regard the person who held it as heir presumptive to the premiership, and to make him leader in the House of Commons when his chief was a peer. But with the waning desire for economy, and the growth of other interests, the Treasury has to some extent lost its predominant position. A symptom of this may be seen in the fact that during the last dozen years of Lord Salisbury's administrations, the Commons were led, not by the Chancellor of the Exchequer, but by a First Lord of the Treasury appointed for the purpose. The turning point came at the beginning of that period, when Lord Randolph Churchill in 1886 quarrelled with his colleagues over the estimates for the Army. The occurrence did not produce, but it did mark, a change in the tone of public opinion; and although the Treasury will no doubt maintain its control over the details of expenditure, one cannot feel certain that its head will regain the powerful influence upon general or financial policy exerted thirty years ago.

CHAPTER VI

MISCELLANEOUS OFFICES

The Government and the Administration of Law.

THERE is in England no single officer corresponding to the minister of justice, or attorney general, in other countries, some of the duties performed by them elsewhere being divided in England among a number of authorities, while others are not performed at all. The principal officers who fill this important gap are the Lord Chancellor, the Law Officers of the Crown, and the Director of Public Prosecutions.

The Lord Chancellor.

The greatest political dignitary in the British government, the one endowed by law with the most exalted and most diverse functions, the only great officer of state who has retained his ancient rights, the man who defies the doctrine of the separation of powers more than any other personage on earth, is the Lord Chancellor. Apart from his duties as a judge, as the presiding officer of the House of Lords, and as a member of the cabinet, all of which have been or will be described in other places, he has many powers of a miscellaneous character connected for the most part with the administration of the law.[1] He is, for example, at the head of the Crown Office in Chancery. This, as the place where the Great Seal is affixed, is legally and formally, although not politically, important. The Commissioners in Lunacy, also, report to him. The regulations relating to public prosecu-

[1] He has some powers that have no relation to the law, such as the appointment to a large number of Crown livings; and in this connection it may be noted that the offices of Lord Chancellor of Great Britain and Lord Lieutenant of Ireland are the only ones that cannot be held by Roman Catholics. The subject is not free from doubt. See Anson, II., 158, and the debate in 1891; Hans., 3 Ser. CCCXLIX., 1733 *et seq.* On that occasion the House of Commons refused to remove any disability that might exist.

tions require his approval, and the control of the Land Registry Office devolves mainly upon him. Almost all the judicial patronage, moreover, is in his hands, for he is consulted about the highest posts, the selection of the puisne judges of the High Court is made on his recommendation, and he appoints and removes the county court judges and justices of the peace.[1]

Although the Lord Chancellor is a party leader, and is at once an active member of the legislative, the executive and the judicial branches of the government, the evils that might be supposed to result from such a combination of powers in the same hands do not in fact appear. He might, indeed, when sitting in the Judicial Committee, or in the House of Lords, be called upon to construe a statute which he had a share in enacting, but this does no great harm. The really serious matter is a confusion of the executive and judicial powers, the sitting in judgment by a political officer upon a question on which he has acted, or which may affect his future action, in an administrative capacity. But since the Chancellor never holds court alone at the present day, such a question could come before him only in the Court of Appeal, the House of Lords, or the Judicial Committee, where he sits with other judges, who have no connection with the ministry. Moreover, the Chancellor, although the legal member of the cabinet, is not its sole, nor indeed its official, legal adviser; and the government would never think of acting upon any doubtful point of law without obtaining the opinion of the Law Officers of the Crown. These gentlemen hold no judicial position; and curiously enough, while a part of the ministry, are never in the cabinet.

The Law Officers of the Crown.

The principal Law Officers of the Crown are the Attorney General, and the Solicitor General, who is his colleague and

[1] The list of justices of the peace for each county is in practice drawn up by the Lord Lieutenant, except in Lancashire, where it is made by the Chancellor of the Duchy, and that list is almost always adopted by the Lord Chancellor. No little controversy has, however, arisen of late over this subject.

substitute.[1] Their opinion on questions of law may be asked by the government, and by any department, although many of the departments are provided with permanent legal counsel of their own whose advice is sufficient for all ordinary matters. The Attorney and Solicitor General conduct personally a few prosecutions of unusual importance, file criminal informations, and appear in cases where the rights of the Crown are involved, or where their intervention is necessary to protect charitable endowments. They defend in Parliament the legality of the government's action, and explain incomprehensible legal points in its measures. While they are no longer permitted to engage in private practice, their salaries and fees are so large[2] that these posts are among the great political prizes for lawyers who have made their mark in the warfare of the House of Commons,[3] prizes the greater because, in addition to the direct emoluments, they confer a presumptive claim to the very highest places on the bench that may become vacant while the party is in power.

Public Prosecutions in England

It has been observed that the Law Officers of the Crown conduct in person only a few criminal cases of unusual importance. In other countries the prosecution of offenders is the affair of the state, and is conducted in all the courts great and small by public officers. This is true in Scotland also, where the matter is in the hands of a body of officers, known as procurators fiscal, with the Lord Advocate at their head; and even in Ireland a similar system has developed informally by the employment of crown counsel acting under the control of the Attorney General for that kingdom. But in England criminal prosecutions in the vast majority of cases are still, in theory at least, conducted by pri-

[1] There are also a Lord Advocate and a Solicitor General for Scotland, and an Attorney General and a Solicitor General for Ireland.

[2] The salary of the Attorney General is £7000; that of the Solicitor General £6000; and the fees in each case amount to about £1000 more.

[3] The Solicitor General for Scotland, and the Attorney and Solicitor General for Ireland, although political officers who change with the ministry, are not always in Parliament.

vate persons.[1] Any one, whether a person injured or not, may prosecute the offender.[2] As a rule the examining magistrate, after committing the accused for trial, binds some one over to prosecute — either the complainant, the person injured, a policeman, the magistrate's own clerk, or a solicitor employed for the purpose. The case is usually conducted by the solicitor to the local magistrate, but the person bound over may employ his own counsel to take charge of it. The costs of the trial are, however, at the present day, allowed by the court, and paid out of the national treasury, under regulations made by the Home Secretary.

The Director of Public Prosecutions.

It has always been the habit for the Attorney General to conduct great state trials, cases, for example, of high treason; and it gradually came to be the practice for the legal officers attached to the different departments to prosecute in certain other cases, such as offences against the coinage. But about the middle of the last century there arose a demand for a general system of state prosecutions under the charge of a ministry of justice.[3] This movement culminated, or evaporated, in the Acts of 1879 and 1884,[4] whereby the Solicitor to the Treasury, who is the permanent legal adviser of that department, and is also charged with a number of other duties of a legal nature, was made the Director of Public Prosecutions. The regulations governing his actions in this capacity are made by the Attorney General with the approval of the Lord Chancellor and the Home Secretary. They provide in substance[5] that he shall prosecute in all capital cases, in offences against the coinage, cases of fraudulent bankruptcy, cases where he is directed

[1] See the excellent chapter on prosecution in Maitland's "Justice and Police."

[2] The prosecution is, however, in the name of the King, and the Attorney General can put a stop to it by *nolle prosequi* if he considers it vexatious.

[3] In an article in the *Fortnightly Review* for March, 1873, entitled, "The Organisation of a Legal Department of Government," Mr. Bryce showed the need, and sketched the outline, for such a ministry.

[4] 42–43 Vic., c. 22; 47–48 Vic., c. 58.

[5] Com. Papers, 1886, LIII., 321. By an Act of 1908 (8 Edw. VII., c. 3) the office was separated from that of Treasury Solicitor.

to do so by the Attorney General or the Home Secretary, and cases where such action appears to him necessary in the public interest. He may employ counsel to conduct both the cases that he brings, and any other criminal proceedings before the high courts where no counsel has been retained; and he may also assist a private prosecutor by authorising special expenses for evidence or counsel. It is his duty to give advice to the clerks of justices of the peace, and to police officers; and, finally, he is in all these matters subject to the control of the Attorney General.

The Director of Public Prosecutions makes to Parliament an annual report of his doings, enlivened by narratives of the most interesting cases. But in spite of his activity the vast bulk of the prosecutions are conducted as of old under private direction; for out of the many thousands of criminal cases tried every year, only from three hundred and fifty to five hundred are in his charge, and the number shows no marked tendency to increase.

Enough has been said to justify the statement that no single officer exercises any considerable part of the functions of a minister of justice. Such duties are not only divided among a number of persons, but scattered in small fragments among different departments. An illustration of this is furnished by the Return of Public Prosecutions, which is submitted to Parliament by the Home Secretary, and bears his signature on the first page; while the return itself is signed by the Director of Public Prosecutions, and dated from the Treasury. Gneist, in his work on the English administrative system, portrays the Lord Chancellor as the minister of justice for civil, and the Home Secretary for criminal, matters,[1] but such a generalisation is overstrained and misleading, and it is safer to assert that when the English bring confusion into any administrative department they usually succeed in confounding utterly all general principles, and making all general statements inaccurate.

[1] *Englische Verwaltungsrecht*, II., 1022–26.

The Church.

If there is no minister of justice in England, still less is there a minister of religion such as is commonly found in countries that possess established churches. The government of the Church of England will be treated in another chapter, and it is only necessary here to point out that although a strictly national institution, often deeply involved in political controversy, the Church is in many ways singularly free from the control of the executive government. It is, no doubt, regulated by laws that cannot be altered without the authority of Parliament. Its organisation, its ritual, and its articles of faith can be changed only by statute. But in administrative affairs its dependence upon the state is very much less. The King is, indeed, its supreme head; he virtually appoints the bishops and other high dignitaries, and his assent is necessary to the exercise of their limited powers by the Convocations of the two provinces.[1] Beyond this, however, the Crown does not interfere in the government of the Church, or the discipline of its members, which are left under the charge of its own officers. Proceedings against a clergyman for doctrinal errors or violation of the ritual can be taken only with the consent of the bishop, the government having no part in it; and although the Crown appoints a portion of the members of the Ecclesiastical Commission, which manages much of the Church property, the bishops form a large majority of the body, and the commission itself is not subordinate to any minister of state. The only control, therefore, exercised by the cabinet upon the administration of the Church is to be found in the restraint upon Convocation, and in the fact that the responsibility for the selection of high ecclesiastics rests with the Prime Minister, who, curiously enough, is not necessarily, and in the last two cabinets actually has not been, a member of the Church of England. The Prime Minister also nominates the incumbents of a number of large livings, while the Lord Chancellor presents

[1] Without action by Parliament these extend only to the making of canons binding on the clergy.

to several hundred others that happen to lie in the gift of the Crown.[1] Except for these things no minister is responsible for the conduct of the Church or of its members.

The connection between Church and State in England is thus a peculiar one. In some ways the relation is very close, but it is rather legislative and judicial than administrative. The Church is minutely regulated by state laws, the judge of its principal tribunal must be confirmed by the Crown, and appeals lie to a secular court;[2] but it lives upon its own revenues without any grant from Parliament, and although its highest officers are appointed by the state, and sit in the upper House of Parliament, yet once appointed, they, like all the rest of the clergy, are practically free from the supervision and control of the executive government.

Scotland

These are all the public offices in the English government that it is necessary to mention. A description of the peculiar institutions of Scotland and Ireland is not within the scope of this book, except so far as they affect the central government. Until twenty years ago the connection of the government with matters relating exclusively to Scotland was maintained chiefly through the Home Office, but the Lord Advocate was virtually the parliamentary under-secretary for Scotch business, and took entire charge of it, unless his chief was a Scotchman, and cared to assert himself. In 1885 a Secretary for Scotland was created, one might perhaps say revived, and to him were intrusted for that kingdom duties corresponding to those discharged in England by the Home Office, the Local Government Board and the Board of Education. In fact he may be said to be the general representative for

[1] All Crown livings with less than £20 of yearly revenue are in the gift of the Lord Chancellor, Hans , 3 Ser. CLXIX , 1919, and so are many livings of considerable size. Hans., 3 Ser. CLXX , 131. The Chancellor of the Duchy of Lancaster nominates to Crown livings belonging to the Duchy, and the Home Secretary to those in the Channel Islands and the Isle of Man. Hans., 3 Ser. CCCXLIX., 1745–46.

[2] The Judicial Committee of the Privy Council.

Scotch purposes of all the various civil departments of state; and in particular he is at the head of the Scotch Local Government Board and the Scotch Education Department. He is not one of the secretaries of state and receives a much smaller salary than they do, but he is a member of the ministry, usually, though not invariably, with a seat in the cabinet, and he is always a member of one or the other House of Parliament.

The contrast between the relations of England to Scotland and to Ireland is striking. By the Act of Union of 1707 England and Scotland became one state, with a common Parliament and a common executive government, but political differences have not been obliterated. The Act of Union preserved the ecclesiastical and legal institutions of Scotland; and at the present day she has her own established church, which is Presbyterian; her own system of education, which is quite different from the English; and her own system of law, based upon the Civil not the Common Law, and adorned by a nomenclature so disfigured as to pass for her own. With such differences as these it has been not uncommon for Parliament, even where the same legislative principles were to be applied on both sides of the Tweed, to enact them in separate statutes, each adapted to the institutions of the country in which it is to operate. Socially, also, the fusion has not been complete. Every Scotchman is an Englishman, but an Englishman is not a Scotchman. The Scotch regard themselves as an elect race who are entitled to all the rights of Englishmen and to their own privileges besides. All English offices ought to be open to them, but Scotch posts are the natural heritage of the Scots. They take part freely in the debates on legislation affecting England alone, but in their opinion acts confined to Scotland ought to be, and in fact they are in the main, governed by the opinion of the Scotch members. Such a condition is due partly to the fact that Scotch institutions and ideas are sufficiently distinct from those of England to require separate treatment, and not different enough to excite

repugnance. It is due in part also to the fact that the Scotch are both a homogeneous and a practical people, so that all classes can unite in common opinions about religion, politics and social justice. The result is that Scotland is governed by Scotchmen in accordance with Scotch ideas, while Ireland has been governed by Englishmen, and until recently, in accordance with English ideas.

Ireland.

The Act of Union with Ireland in 1801 abolished the Irish Parliament, and vested the whole legislative power for the United Kingdom in the joint Parliament at Westminster; but the executive government for Ireland was left at Dublin. It is conducted in the name of the Lord Lieutenant as the representative of the Crown.[1] The work is nominally done by him in his Privy Council, subject to such instructions as may be sent to him by the English government through the Home Secretary. In practice, however, matters have worked out very differently, for the administration of Ireland has been far too important to rest under the wing of the Home Office. The Lord Lieutenant is always a great nobleman, and he is expected to keep up a vice-regal state, sometimes at an expense exceeding his enormous salary of £20,000 a year; but he is not ordinarily the real head of the Irish Office. Since 1868 he has been a member of the cabinet less than eleven years, whereas his Chief Secretary has been in the cabinet during the whole of that period, except from 1882 to 1885, and for three other intervals that were very brief. Moreover, the Chief Secretary is always a member of the House of Commons, where he must defend the administration of Ireland against the attacks of the Irish members, and often of the English Opposition also. Thus it has come about that the Chief Secretary habitually plays the part of minister for Ireland, and is practically the ruler of the country. He is at the head of the Irish Local Government Board, Congested Districts

[1] The provisions of the Test Act still apply to this office, so that the Lord Lieutenant must necessarily be of a faith different from that of the large majority of the people he is appointed to rule.

Board and Department of Agriculture and Technical Instruction, and in general he is held responsible for all administration of a political character, except in the case of the revenue and the Irish Board of Works, which are under the direct control of the Treasury.[1] He possesses, indeed, not only the authority vested in a number of ministers in England, but also powers not conferred upon them at all. During the greater part of the time since the Union in 1801, Ireland has been subject to a long series of coercion acts, temporary in duration, but renewed at short intervals under different names.[2] The provisions have varied, but the object has always been to arm the Irish government with extraordinary and arbitrary powers for the suppression of disorder. Moreover, the police of Ireland, instead of being, as in England and Scotland, under the control of the local authorities, is under the direct orders of Dublin Castle. This force, the Royal Irish Constabulary, contains over twelve thousand men, a number twice as large in proportion to the population as that of the police in Great Britain.

Causes of Misgovernment.

The administration of Ireland has been the conspicuous failure of the English government. Its history for a century has been a long tale of expedients, palliations and concessions, which have never availed to secure either permanent good order or the contentment and loyalty of the inhabitants. Each step has been taken, not of foresight, but under pressure. The repressive measures have been avowedly temporary, devised to meet an emergency, not part of a permanent policy; while concessions, which if granted earlier might have had more effect, have only come when attention to the matter has been compelled by signs of widespread and grievous discontent. Catholic emancipation was vir-

[1] Public non-technical education is directed by the Commissioners of Irish National Education, and the Board of Intermediate Education. These boards are not political, but the members, who must be partly Protestant and partly Roman Catholic, are appointed by the Lord Lieutenant, and the Chief Secretary has a certain measure of control over them.

[2] The last of them, the Crimes Act of 1887, is a permanent statute, but its provisions come into force only on a proclamation by the Lord Lieutenant, which is revocable at any time.

tually won by the Clare election; disestablishment of the Anglican Church was hastened by the Fenian movement; the Home Rule Bill followed the growth of the Irish parliamentary party, culminating in Parnell's hold upon the balance of power in the House of Commons; and the land laws have resulted from agrarian agitation. It has been said that the same thing is true of English reforms, that Parliament seldom gives redress until a wrong has been brought forcibly to its notice, and this is no doubt a natural if not an inevitable result of the parliamentary form of government. It is a part of the general tendency to treat symptoms rather than causes, to which we shall have occasion to refer again. But while Parliament, now that all classes are represented there, is certain to be made aware of an English grievance long before it has become intolerable, it is by no means so keenly sensitive to an Irish one. The fact is that Irish problems lie beyond the experience of the English member and his constituents. Being unable to distinguish readily a real grievance from an unreasonable demand, he does not heed it until he is obliged to; and the cabinet, with its hands already full, is not inclined to burn its fingers with matters in which the House is not deeply or generally interested. All this is merely one of many illustrations of the truth that parliamentary government can work well only so far as the nation itself is fairly homogeneous in its political aspirations.

Difficulty of the Problem.

But if the parliamentary system has proved an instrument ill-fitted for ruling Ireland, it is also true that the problem has been one of extreme difficulty. English statesmen might have repeated what Lord Durham said of Canada in his famous report: "I expected to find a contest between a government and a people. I found two nations warring in the bosom of a single state." [1] For centuries Ireland has remained a conquered land without a thorough fusion of the victors and the vanquished; the native stock has been subjected without being assimilated, and the difference of race has been intensified by a difference of creed. The

[1] Com. Papers, 1839, XVII., 1, p. 8.

Celt still looks upon his Saxon landlord, and upon the Orangemen in Ulster, as aliens, and upon the constabulary as the garrison of a foreign power. This has not only made the management of Ireland an exceedingly hard thing for an English government to carry on, but it also stands in the way of any other solution of the problem. To allow the Irish to govern themselves means putting the under dog on top and the upper dog underneath. The difficulty has been further increased by a deep-seated divergence in the conceptions of law and justice. Unlike Scotland, Ireland has the English system of jurisprudence. Her courts are modelled on those at Westminster, and administer the English Common Law, while most of the statutes affecting civil rights are the same. But, as men have often pointed out, there are in times of agitation two laws, and two governments, in the country; on one side the English law, administered by the English government through its officials, and on the other a hostile system resting upon very different principles, and applied by an extra-legal political organisation, but in fact more vigorously enforced than the first, and often more in harmony with the popular sense of justice.

The Land Question.

The divergence between the legal conceptions of the English and Irish is most marked in the case of land. According to the ideas of Englishmen, and of Irish landlords, the land belongs to the owner, and apart from special statutory provisions, the tenant has only a contractual right of possession, during the continuance, and subject to the terms, of his contract. But the tenants feel that, subject to somewhat indefinite duties towards the landlord in the way of rent, they have rights in the land, of which their forbears were robbed, and which they have reclaimed from the waste.[1] Such a difference is fundamental, and cannot be adjusted to the satisfaction of both parties. People speak of the hunger of the Irish for land, as if that were the cause of the difficulty, but the Irishman has no general

[1] The fact that improvements have been generally made by the landlord in England, and by the tenant in Ireland, has much to do with this feeling.

land-hunger. When he has emigrated to America, instead of going, like the Swede, to the great open prairies where any industrious man can easily own a farm, he has settled, like the landless Hebrew, in the great cities. What the Irish want is Irish land, and to this they think they have a right.

Various remedies for solving the relation of landlord and tenant have been tried. First came the Act of 1860, which based that relation strictly upon contract, though restraining to some extent its enforcement by summary eviction. Ten years later the Act of 1870 proceeded upon quite a different principle, for it extended the Ulster tenant-right over the whole country, giving to the tenant a salable property in his holding. It granted, even to a tenant from year to year, a claim against his landlord for disturbance; and it conferred a right to compensation for past as well as future improvements. But these provisions did not set the questions at rest. Later followed in 1881 the judicial reduction of rents, — the fixing by public authority of fair rents as they were called. But here trouble arose on both sides. If the landlord's views were right, and the land belonged absolutely to him, it was clearly unjust to deprive him of its market value in rent, and he was entitled to feel that the government was giving away his property to smooth its own political difficulties.[1] On the other hand, the fair rents did not end the matter for the tenant. The English, deeply impressed with the sanctity of contract, meant the new rents to be paid as rents are paid in England; but the Irishman, living in what might almost be called a world of status, and brought up under a system of rack rent, had far less respect for contract, and regarded rents as things to be paid approximately rather than exactly. The result was more friction, and a further judicial reduction in 1887. Finally, after a series of land-purchase acts designed to promote peasant proprietorship, but too limited in scope to affect general social conditions, had been tried, a number

[1] The case for the landlords has been very strongly stated by Mr. Lecky in his "Democracy and Liberty," I., 167–212.

of landlords and some of the Irish leaders held a conference in 1902, and virtually agreed that as both parties claimed rights in the land, the government should pay the landlord for it and transfer it to the tenant, an arrangement the more easy because by that time the landlords' interest had fallen greatly in value. The government undertook to carry out the plan by the Land Purchase Act of 1903, making not indeed an immediate gift, but a loan of its credit, and charging the tenant a low rent which is expected eventually to repay the advance, and leave him the owner of the land.[1] Since that time the purchase and distribution of estates, under the act, has been going on, but the process naturally takes time, and as might be expected, it has been far more rapid in the prosperous than in the poor parts of the country. One may hope that by this means the land question will in time be solved, but he must have a blind faith who believes that with it the Irish question will disappear.

A crude outline of the land legislation has been given simply to show the enormous difficulty of governing a country where the legal conceptions of rulers and ruled are irreconcilable, and yet that is precisely the kind of obstacle that arises at every step in the Irish problem.

[1] 3 Edw VII, c. 37. The Act of 1903 was hailed with joy, but the Irish members soon complained of its administration, and on July 20, 1905, they moved successfully to reduce by £100 the appropriation for the Land Commission as an expression of dissatisfaction. Hans., Ser. CXLIX., 1409–86.

CHAPTER VII

THE PERMANENT CIVIL SERVICE

Sharp Distinction between Political and Non-Political Officials.

THE history of the permanent civil service would be one of the most instructive chapters in the long story of English constitutional development, but unfortunately it has never been written. The nation has been saved from a bureaucracy, such as prevails over the greater part of Europe, on the one hand, and from the American spoils system on the other, by the sharp distinction between political and non-political officials. The former are trained in Parliament, not in administrative routine. They direct the general policy of the government, or at least they have the power to direct it, are entirely responsible for it, and go out of office with the cabinet; while the non-political officials remain at their posts without regard to party changes, are thoroughly familiar with the whole field of administration, and carry out in detail the policy adopted by the ministry of the day. The distinction has arisen gradually with the growth of the parliamentary system.

Exclusion of Non-Political Officials from Parliament.

A dread of the power of the King to control Parliament, by a distribution of offices and pensions among its members, gave rise to a provision, in the Act of Settlement of 1700, that after the accession of the House of Hanover no person holding an office or place of profit under the Crown should be capable of sitting in the House of Commons.[1] But before this act took effect the disadvantages of excluding entirely from the House the great officers of state was perceived. The provision was, therefore, modified so as to shut out absolutely only the holders of new offices created after

[1] 12–13 Will. III., c. 2, § 3. For a description of earlier efforts to the same end, see Todd, Parl. Govt. in England, II , 114–121.

Oct. 25, 1705, and of certain specified posts already existing. Members of the House of Commons appointed to other offices were to lose their seats, but be capable of re-election.[1] As there were many old offices the number of placemen in Parliament continued large, and no sharp line was drawn at once between the great officers of state and their subordinates. But two processes went on which in time rendered the distinction effective. When a new office of a political nature was created it became the habit to make a special statutory provision permitting the holder to sit in the House of Commons; and, on the other hand, place bills were passed from time to time excluding from Parliament whole classes of officials of a lower grade. These acts apply, for example, to all the clerks in many of the government departments,[2] and together with the provision excluding the holders of all new offices created since 1705, they cover a large part of all the officials under the rank of minister.[3] The distinction between the offices which are and those which are not compatible with a seat in the House of Commons, is made complete by the regulations of the service itself. These cannot render void an election to the House which is not invalid by statute. They cannot make the holding of office a disqualification for Parliament, but they can make a seat in Parliament a reason for the loss of office. They can and do provide that if any civil servant intends to be a candidate he must resign his office when he first issues his address to the electors.[4]

[1] 4 Anne, c. 8, and 6 Anne, c. 7, §§ 25, 26. By § 28 of this act officers in the Army and Navy are exempted from its operation. They may sit in the House of Commons, and they do so in considerable numbers, although they are as a rule required to resign their seats when given an active command. Military officers occupy, indeed, a position quite different from that of other public servants, for they not only sit in Parliament, and take an active part there in the discussion of questions relating to the service; but they are constantly talking to the public, a practice that would not be permitted for a moment in the case of civilians in government employ. The statements in this chapter are, therefore, confined to the members of the civil service.

[2] *Cf* Rogers on Elections, 16 Ed., II., 21–24.

[3] For a list of such statutes, see Anson, I., 93–96.

[4] Treasury Minute of Nov. 12, 1884, Com. Papers, 1884–1885, XLV., 171.

If it were not for three or four ministers, such as the Irish Law Officers, who are expected to get themselves elected to Parliament if they can, but whose tenure of their positions does not depend upon their doing so, one might say that the public service is divided into political officers who must sit in Parliament, and non-political officers who must not.

Permanent Officials take no Active Part in Politics.

In a popular government, based upon party, the exclusion of the subordinate civil servants from the legislature is an essential condition both of their abstaining from active politics and of their permanence of tenure. But it does not by itself necessarily involve either of those results. This is clear from the example of the United States, where office-holders of all grades are excluded from Congress by the provisions of the Constitution, but by no means refrain from party warfare. The keeping out of politics, however, and the permanence of tenure must, in the long run, go together; for it is manifest that office can be held regardless of party changes only in case the holders do not take an active part in bringing those changes to pass; and if, on the other hand, they are doomed to lose their places on a defeat at the polls of the party in power, they will certainly do their utmost to avert such a defeat. In England the abstinence and the permanence have been attained, and it is noteworthy that they are both secured by the force of opinion hardening into tradition, and not by the sanction of law.[1] At one time, indeed, large classes of public servants were deprived of the parliamentary franchise. An Act of 1782, for example,[2] withdrew the right to vote from officers employed in collecting excises, customs and other duties, and from postmasters; but these disqualifications were removed in 1868.[3] The

But are not Disfranchised.

[1] Electioneering by civil servants has been the subject of legislation. An Act of 1710 (9 Anne, c. 10, § 44) rendered liable to fine and dismissal any post-office official who "shall, by Word, Message, or Writing, or in any other Manner whatsoever, endeavour to persuade any Elector to give or dissuade any Elector from giving his Vote for the Choice of any Person . . . to serve in Parliament." *Cf.* Eaton, "Civil Service in Great Britain," 85.

[2] 22 Geo. III., c. 41. Rogers on Elections, I., 196–97.

[3] 31–32 Vic., c. 73. All penalties attaching to any of their acts in relation to elections were abolished by 37–38 Vic., c. 22.

police, also, were, by a series of acts, deprived of the franchise in the constituencies where they held office. Except as regards Ireland, however, these statutes were, in their turn, repealed in 1887;[1] and the only disqualifications now attaching to public officials relate to such positions as those of returning officers at elections.[2]

England enfranchised her officials at the very time when she was enlarging the suffrage and the number of office-holders. In some other countries the political danger of a large class of government employees has been keenly felt. This has been particularly true of the new democracies in Australia with their armies of public servants on the state railroads; and, indeed, the pressure constantly brought to bear in the legislature in favour of this class caused Victoria in 1903 to readjust her election laws.[3] The employees of the government have not been disfranchised altogether, but they have been deprived of the right to vote in the regular constituencies, and have been allotted one representative in the legislative council and two in the assembly to be elected entirely by their own class. They have, therefore, their spokesmen in the legislature, but they are no longer able to influence the other members as of old.

Effect of Giving them Votes.

In England these dangers are by no means unknown; but they have not taken the form of work done by civil servants for purely party ends. From that evil the country has been almost wholly free; for although all office-holders, not directly connected with the conduct of elections, have now a legal right to vote, and are quite at liberty to do so, it is a well-settled principle that those who are non-political — that is, all who are not ministers — must not be active in party politics. They must not, for example, work in a party organisation, serve on the committee of a candidate for Parliament, canvass in his interest, or make speeches on general politics. All this is so thoroughly recognised that one rarely hears complaints of irregular conduct, or even

[1] Rogers, I., 197–200. [2] *Ibid.*, 207–08.
[3] Victoria Constitution Act, Com. Papers, 1903, XLIV., 109, pp. 7–8.

of actions of a doubtful propriety. In this connection it is worthy of note that the revenue officers were disfranchised in 1782 at their own request. At that time the government controlled through them seventy seats in the House of Commons, and Lord North sent them notice that it would go hard with them if they did not support his party. His opponents sent them a similar warning, and the result was that in self-protection they sent up a strong petition asking for exclusion from the franchise.[1] The bill to reënfranchise them was carried in 1868 against the wishes of the government of the day.[2] But on that occasion, and in 1874, when the acts imposing penalties upon their taking an active part at elections were repealed, it was perfectly well understood that they would not be permitted to go into party politics, and that the government was entitled to make regulations on the subject.[3] Those regulations are still in force,[4] and it is only by maintaining them that the civil servants can continue to enjoy both permanence of tenure and the right to vote.

Attempts to Improve their Position.

The danger arising from the votes of public servants has been felt in a different way. While the government employees have kept clear of party politics, they have in some cases used their electoral rights to bring pressure to bear upon members of Parliament in favour of increasing their own pay and improving the conditions of their work. This has been peculiarly true of the dockyards. The members of the half dozen boroughs where the state maintains great shops for the construction and repair of warships are always urging the interests of the workmen; and they do it with so little regard to the national finances, or to the question whether they are elected as supporters or opponents of the ministry, that they have become a byword in Parliament under the name of "dockyard-members." [5]

The Dockyards.

[1] *Cf.* Hans., 4 Ser. LIII., 1133–34. [2] *Ibid.*, CXCIII., 389 *et seq.*

[3] In fact in 1874 the bill was amended so as to make this clear. Hans., 3 Ser. CCXIX., 797–800. For 1868 see Hans., 3 Ser. CXCIII., 405–06.

[4] *Cf.* Hans., 4 Ser. XVI., 1218; LIII., 1131.

[5] *Cf.* Courtney, "The Working Constitution of the United Kingdom," 151.

Other Officials.

Unfortunately the difficulty has not been confined to the dockyards. At the time when the revenue and post-office employees were enfranchised, Disraeli dreaded their use of the franchise for the purpose of raising their salaries;[1] and Gladstone said he was not afraid of government influence, or of an influence in favour of one political party or another, but of class influence, "which in his opinion was the great reproach of the Reformed Parliament."[2] These fears have not proved groundless. As early as 1875 it was recognised that the salaries paid by the government were above the market rate;[3] and ever since the officials in the revenue and postal departments obtained the right to vote, pressure on behalf of their interests has been brought to bear by them upon members of Parliament, and by the latter upon the government. Complaints of this have been constant.[4] It has been a source of criticism that members should have attended meetings of civil servants held to demand an increase of pay,[5] and that they should receive whips urging their attendance at the House when questions of this sort are to come up.[6] Owing to the concentration of government employees in London the pressure upon the metropolitan members is particularly severe.

Recent Efforts of Postal Officials for More Pay.

For nearly a score of years a continuous effort has been made in Parliament to secure the appointment of a committee to inquire into the pay of postal and telegraph em-

[1] Hans., 3 Ser. CXCIII., 393. [2] *Ibid*, 397.

[3] Rep. of Com. on Increased Cost of Tel. Service, Com. Papers, 1875, XX., 643, p. 5; 1st Rep. Civil Serv. Inq Com., Com. Papers, 1875, XXIII., 1, p. 9. For information and references on the efforts of the civil servants to raise their pay, and on their pressure upon members of Parliament, I am indebted to Mr. Hugo Meyer, who kindly showed me his manuscript on "The Nationalisation of the Telegraphs in England."

[4] See, for example, Hans., 3 Ser. CCLXV., 141; CCLXXI., 429; 4 Ser. XXXIX., 596–98; LI., 351–52, 355; LIII., 1107 *et seq.;* LXVI., 1523 *et seq.;* LXXII., 119; LXXXII., 199 *et seq.;* XCIV., 1382–83; CVI., 680; CXXI., 1023; and CXXXIX., 1617, 1618, 1629, 1632. 2d Rep. Com. on Civil Estabs., Com. Papers, 1888, XXVII, 1, Qs. 17444–47, 17821–28, 20238; Rep. Com. on Post Office, Com. Papers, 1897, XLIV., 1, Q. 11706.

[5] 2d Rep. Com. on Civil Estabs., Com. Papers, 1888, XXVII., 1, Qs 10562–63, 10742, 10745–49, 17444–47.

[6] Hans., 3 Ser. CCCLII., 870.

ployees, and into grievances which are said to exist in the service. The government has in part yielded, in part resisted; but in trying to prevent pressure upon members of Parliament, it took at one time a step that furnished a fresh cause of complaint. The story of this movement illustrates forcibly the dangers of the situation. In 1892 the Postmaster General, Sir James Fergusson, called the attention of the House of Commons to a circular addressed by an association of telegraph clerks to candidates at the general election, asking whether if elected they would vote for a committee to inquire into the working of the service.[1] He then sent to the clerks an official warning that it is improper for government employees to try to extract promises from candidates with reference to their pay or duties.[2] Nevertheless two of the clerks, Clery and Cheesman, who had been chairman and secretary of the meeting which had voted to issue the circular, signed a statement that the notice by the Postmaster General "does not affect the policy of the Association." Immediately after the election these two men were dismissed.[3] That became a grievance in itself, and year after year attempts were made in Parliament to have them reinstated. Shortly after they had been dismissed Mr. Gladstone came into office; and he made a vague statement to the effect that the government intended to place no restraint upon the civil servants beyond the rule forbidding them to take an active part in political contests.[4] But it would seem that Fergusson's warning circular was not cancelled,[5] and certainly Clery and Cheesman were not taken back.

Demand for a Parliamentary Committee.

The motions for a parliamentary committee to inquire into the conditions of the service were kept up; and in 1895 the government gave way so far as to appoint a commission, composed mainly of officials drawn from various departments, which reported in 1897 recommending some

[1] Hans., 4 Ser. V., 1123 *et seq.*
[2] *Ibid.*, 1536 *et seq.*
[3] *Ibid.*, VII., 188–90.
[4] *Ibid.*, XVI., 1218.
[5] *Ibid.*, LIII., 1138–39.

increases of pay both in the postal and in the telegraph service. These were at once adopted, and in fact further concessions were made shortly afterward, but still the agitation did not cease. The employees would be satisfied with nothing but a parliamentary committee, no doubt for the same reason that led the government to refuse it, namely the pressure to which members of Parliament were subject, and the additional force that pressure would have if brought to a focus upon the persons selected to serve on a committee.[2]

Pressure Brought to Bear.

Year after year grievances on one side, and on the other charges of almost intolerable pressure were repeated. In 1898 the interest centred in a motion to the effect that public servants in the Post Office were deprived of their political rights. A long debate took place in which the whole history of the subject was reviewed,[3] and Hanbury, the Financial Secretary of the Treasury, exclaimed, "We have done away with personal and individual bribery, but there is a still worse form of bribery, and that is when a man asks a candidate to buy his vote out of the public purse."[4] In 1903 Mr. Austen Chamberlain stated that members had come to him, not from one side of the House alone, to seek from him, in his position as Postmaster General, protection in the discharge of their public duties against the pressure sought to be put upon them by the employees of the Post Office.[5] He consented, however, to appoint a commission of business men to advise him about the wages of employees; but again there was a protest against any committee of inquiry not composed of members of Parliament.[6] The report of the commission was followed in 1904 by a debate of the usual character.[7] Finally in 1906 the new Liberal ministry yielded, and a select committee was appointed.[8]

[1] Hans., 4 Ser. CXXI., 1023.
[2] *Ibid.*, LXVI., 1550.
[3] *Ibid.*, LIII., 1107 *et seq.*
[4] *Ibid.*, 1138. In the course of his speech he pointed out that the membership of the trade-unions in the postal and telegraph service had grown very much of late years. But he declared that they were accorded all the privileges enjoyed by trade-unions elsewhere.
[5] *Ibid.*, CXXI., 1023.
[6] *Ibid.*, CXXII., 329, 331, 333.
[7] *Ibid.*, CXXXIX., 1600–36.
[8] *Ibid.*, CLIII., 357.

There are now employed in the postal and telegraph services about two hundred thousand persons, who have votes enough, when organised, to be an important factor at elections in many constituencies, and to turn the scale in some of them. If their influence is exerted only to raise wages in a service recruited by competitive examination,[1] the evil is not of the first magnitude; but it is not difficult to perceive that such a power might be used in directions highly detrimental to the state. There is no reason to expect the pressure to grow less, and mutterings are sometimes heard about the necessity of taking the franchise away from government employees. That would be the only effective remedy, and the time may not be far distant when it will have to be considered seriously.

As we shall have occasion to see hereafter, the pressure in behalf of individuals is comparatively small, and it is characteristic of modern English parliamentary government that political influence should be used to promote class rather than personal interests.

Permanence of Tenure of Officials.

Permanence of tenure in the English civil service, like the abstinence from party politics, is secured by custom, not by law, for the officials with whom we are concerned here are appointed during pleasure, and can legally be dismissed at any time for any cause. Now, although the removal, for partisan motives, of officials who would be classed to-day as permanent and non-political, has not been altogether unknown in England, yet it was never a general practice. The reason that the spoils system — that is, the wholesale discharge of officials on a change of party — obtained no foothold is not to be found in any peculiarly exalted sense, inherent in the British character, that every public office is a sacred trust. That conception is of comparatively modern origin; for in the eighteenth century the abuse of patronage, and even the grosser forms of politi-

[1] It may be observed that the use of competitive examinations was made general by the Act of 1870, passed shortly after the enfranchisement of revenue officials.

cal corruption, were shamelessly practised. It is rather to be sought in quite a different sentiment, the sentiment that a man has a vested interest in the office that he holds. This feeling is constantly giving rise, both in public and private affairs, to a demand for the compensation of persons displaced or injured by a change of methods which seems strange to a foreigner.[1] The claim by publicans for compensation when their licenses are not renewed, a claim recognised by the Act of 1904, is based upon the same sentiment and causes the traveller to inquire how any one can, as the result of a license ostensibly temporary, have a vested right to help other people to get drunk.

The habit of discharging officials on party grounds never having become established, it was not unnatural that with the growth of the parliamentary system the line between the changing political chiefs and their permanent subordinates should be more and more clearly marked, and this process has gone on until at the present day the dismissal of the latter on political grounds is practically unheard of, either in national or local administration.

Former Party Patronage.

While the discharge of public servants on political grounds never became a settled custom in England, such vacancies as occurred in the natural course of events were freely used in former times to confer favours on political and personal friends, or to reward party services. Such a practice was regarded as obvious, and it continued unchecked until after the first Reform Act. It was particularly bad in Ireland, where Peel, who was Chief Secretary from 1812 to 1818, took great credit to himself for breaking up the habit of treating the Irish patronage as the perquisite of the leading

[1] The prevailing American sentiment, on the other hand, is expressed in the Declaration of Rights of the Constitution of Massachusetts, adopted in 1780, which says (Art. viii), "In order to prevent those who are vested with authority from becoming oppressors, the people have a right at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments." This lays down the principle of rotation in office, and although by no means so intended by its framers, may be said to be the charter of the spoils system.

families, and for dispensing it on public grounds, that is, using it to secure political support for the party in power.[1] That the patronage was used for the same purpose in England at that period may be seen in the reports and evidence laid before Parliament in 1855, 1860 and 1873 after a different system had begun to take its place.[2] It was no doubt an effective means of procuring political service, and Lord John Russell speaks of the Tories in 1819 as apparently invincible from long possession of government patronage, spreading over the Church, the Law, the Army, the Navy, and the colonies.[3] The support most needed by the ministry was that of members of the House of Commons, and they received in return places for constituents who had been, or might become, influential at elections. Thus it came about that the greater part of the appointments, especially to local offices, were made through the members of Parliament.[4] The system hampered the efficiency of administration, and harassed the ministers. Writing in 1829, the Duke of Wellington used words that might have been applied to other countries at a later time, — "The whole system of the patronage of the government," he wrote, "is in my opinion erroneous. Certain members claim a right to dispose of everything that falls vacant within the town or county which they represent; and this is so much a matter of right that they now claim the patronage whether they support upon every occasion, or now and then, or when not required, or entirely oppose; and in fact the only

[1] Parker, "Sir Robert Peel," I., 50, 160–62, 222, 269. At this time the permanent under-secretary in Ireland was expected to take an active part in politics, for we find Peel writing to him to use every exertion to get the Irish members to support the government on the Catholic question. *Ibid*, 73.

[2] Dorman B. Eaton, "Civil Service in Great Britain." Although not always accurate, this is the best, and indeed almost the sole, history of the patronage system and the gradual substitution therefor of appointment by examination.

[3] "Recollections and Suggestions," 33.

[4] Sir Thomas Erskine May, although writing when this system was passing away, seemed to regard it as essential to party government. Speaking of the effects of parliamentary reform upon the state of parties, he says, "But throughout these changes, patronage has been the mainspring of the organisation of parties." "Const Hist. of England" (1 Am. Ed.), II., 99.

question about local patronage is whether it shall be given to the disposal of one gentleman or another." [1]

The Introduction of Examinations

At last a revulsion of feeling took place. Between 1834 and 1841 pass examinations, which discarded utterly incompetent candidates, were established in some of the departments, and in several cases even competitive examinations were introduced. But the great impulse toward a new method of appointment dates from 1853, and it came from two different quarters. In that year the charter of the East India Company was renewed, and Parliament was not disposed to continue the privilege hitherto enjoyed by the directors of making appointments to Haileybury — the preparatory school for the civil service in India. A commission, with Macaulay at its head, reported in the following year that appointments to the Indian service ought to be made on the basis of an open competitive examination of a scholastic character. The plan was at once adopted, Haileybury was abandoned, and with some changes in detail, the system of examination recommended by the commission has been in operation ever since.[2]

In 1853, also, Sir Stafford Northcote and Sir Charles Trevelyan, who were selected by Mr. Gladstone to inquire into the condition of the civil service in England, reported in favour of a system of appointment by open competitive examination. The new method met with far more opposition at home than in India, and made its way much more slowly. Foreseeing obstacles in the House of Commons, Lord Palmerston's government determined to proceed, not by legislation, but by executive order, resorting to Parliament only for the necessary appropriation. An Order in Council was accordingly made on May 21, 1855,[3] creating a body of three Civil Service Commissioners,[4] who were to examine all candidates for the junior positions in the vari-

[1] Parker, "Sir Robert Peel," II., 140.
[2] *Cf.* Lowell and Stephens, "Colonial Civil Service."
[3] Com. Papers, 1854–1855, XLI., 369.
[4] These have since been reduced to two.

ous departments of the civil service. The reform was not at the outset very radical, for political nomination was not abolished, and the examinations — not necessarily competitive — were to be arranged in accordance with the desires of the heads of the different departments. The change could progress, therefore, only so fast as the ministers in charge of the various state offices might be convinced of its value; but from this time the new method gained favour steadily with high administrative officials, with Parliament and with the public. In 1859 [1] it was enacted that (except for appointments made directly by the Crown, and posts where professional or other peculiar qualifications were required) no person thereafter appointed should, for the purpose of superannuation pensions, be deemed to have served in the permanent civil service of the state unless admitted with a certificate from the Civil Service Commissioners. In 1860 a parliamentary committee reported that limited competition ought to supersede mere pass examinations, and that open competition, which does away entirely with the privilege of nomination, was better than either.[2] The committee, however, did not think the time ripe for taking this last step, and the general principle of open competition was not established until June 4, 1870. An Order in Council of that date,[3] which is still the basis of the system of examinations, provides that (except for offices to which the holder is appointed directly by the Crown, situations filled by promotion, and positions requiring professional or other peculiar qualifications, where the examinations may be wholly or partly dispensed with) no person shall be employed in any department of the civil service until he has been tested by the Civil Service Commissioners, and reported by them qualified to be admitted on probation.[4] It provides further that the appointments

Open Competition.

[1] 22 Vic., c. 26, §§ 4, 17.

[2] Com. Papers, 1860, IX., 1.

[3] *Ibid.*, 1870, XIX., 1, p. vii.

[4] §§ 2, 7, and Schedule B. *Cf.* Orders in Council, Aug. 19, 1871, § 1; Sept. 15, 1902. The Order of 1870 requires a certificate of qualification from the Civil Service Commissioners as a condition of employment in "any situa-

named in Schedule A, annexed to the Order, must be made by open competitive examination; and this list has been extended from time to time until it covers the greater part of the positions where the work does not require peculiar qualifications, or is not of a confidential nature, or of a distinctly inferior or manual character like that of attendants, messengers, workmen, etc.[1]

A Test of Capacity rather than Fitness.

Since the general introduction of open competition, by the Order in Council of 1870, two tendencies have been at work which are not unconnected. The first is towards simplification, by grouping positions that have similar duties into large classes, with a single competition for each class, and thus diminishing the number of examinations for separate positions.[2] The second is the tendency so to examine the candidates as to test their general ability and attainments, and hence their capacity to become useful

tion or appointment in any department of the civil service," not specially excepted from the operation of the Order. The exceptions were enumerated in Schedule B, and are those described in the parenthesis of the sentence to which this is a note. The order originally applied, therefore, to all other positions whatever their nature; but by § 8 the chief authorities of any department were given power, with the concurrence of the Treasury, to add to the schedules, or withdraw situations therefrom; and this power has been used to add to Schedule B, and thus exempt from examination altogether a number of positions, almost exclusively menial, such as those of messengers, porters, charwomen, etc. The Orders in Council and Treasury Minutes relating to the civil service may be found at the end of the Civil Service Year Book.

[1] Schedule A at first contained a list, not of situations, but of departments; so that the system of open competition applied to all the positions (not specially expected) in some departments, and to none of those in others. This irrational classification recurs constantly in the history of the civil service examinations, but in the case of open competitions it has been changed under the reserved power to modify Schedule A. Clerkships, and other posts, in departments not previously included, have been added to the schedule; while large classes of situations have been withdrawn therefrom. These are, for the most part, manual occupations, such as office keepers, messengers, porters, foremen, artisans, labourers, matrons and domestic servants. Some of them, as explained in the preceding note, have been exempted from examination altogether, and for the rest the candidates are nominated subject to a pass examination, or a limited competition. The requirements in the case of the more important classes among them will be described in a later part of this chapter.

[2] *Cf.* 45 Rep. Civil Serv. Comrs., Com. Papers, 1901, XVIII., 129, pp. lxxxiii–lxxxvii.

in the positions assigned to them, rather than the technical knowledge they possess.[1] This distinction marks an important difference between the system of civil service examinations as it exists in the United States, and the form which the system has assumed in England. For in the United States the object is almost entirely to discover the immediate fitness of the candidates for the work they are expected to do; in England the object in most cases is to measure what their ability to do the work will be after they have learned it. The difference arises partly from the fact that in America the examinations were superimposed upon a custom of rotation in office and spoils, while in England permanence of tenure was already the rule; and partly from the fact that the system is applied in America mainly to positions requiring routine or clerical work, whereas in England it affects also positions involving, directly or prospectively, a much greater amount of discretion and responsibility. Now, it is clear that if men are to be selected young for a lifelong career, especially if that career involves responsible administrative work, any acquaintance with the details of the duties to be performed, and any present fitness for the position, are of far less consequence than a thorough education, keen intelligence and capacity for development. Proceeding upon this assumption, Macaulay's commission on the Indian Civil Service laid down two principles: first, that young men admitted to that service ought to have the best general education England could give; and, second, that ambitious men should not be led to spend time in special study which would be useless if they were not successful in the competition. The commission urged, therefore, that the examinations should be closely fitted to the studies pursued in the English universities. This plan was adopted, and although at one time the age of admission, and with it the standard, was lowered, they were afterwards restored; and the same principle is now also applied to the higher grades

[1] *Cf. Ibid.*, pp. lxxiii–lxxv.

in the home service. For the lower positions in that service, where the work is of a clerical nature, and hence less discretion and responsibility are involved, it was formerly the habit to make the examinations more of a test of immediate preparation for the duties of the office; but this, as we shall see, has recently been replaced by a system based upon Macaulay's ideas, though applied, of course, to an inferior scale of education.

The Different Grades in the Civil Service.

The permanent officials of a typical department comprise a permanent under-secretary at the head, and one or more assistant under-secretaries and chiefs of branches. These offices are treated as not subject to examination under the Order of 1870, either because they are filled by promotion, or on the ground that the positions require peculiar qualifications.[1] As a matter of fact such posts are by no means always filled by promotion, and persons are sometimes selected for them who are outside of the service altogether. Next in rank come the principal clerks; but they are recruited entirely by promotion from the first-class clerks, who are, therefore, the highest grade of officials entering the service by competitive examination. Below them are the men now properly called clerks of the second division, although the title of this class of civil servants has been changed so often that one finds strange variations of nomenclature in the different departments. Below these again come the assistant clerks (abstractor class), and finally the boy clerks.

Their Origin.

The sharp separation of the clerks into classes, with distinct examinations for each class, did not arise at once. The first examinations under the original order of 1855 were required only for a "junior situation in any department,"

[1] Under Order in Council June 4, 1870, § 7, and Schedule B.

Playfair's commission remarked of these positions, that in order to obtain superannuation pensions the holders must have been appointed with a certificate from the Civil Service Commissioners, or must, under Section 4 of the Superannuation Act of 1859, be excepted from the rule by the Treasury on the ground that the office is one requiring peculiar qualifications. The commission found that in fact the examination was not in general required. (Com. Papers, 1875, XXIII., 1, p. 6.)

and they were not the same in the different departments. They were elementary affairs,[1] evidently designed to sift out incompetence rather than to test superiority; for it must be observed that in only a very small proportion of these examinations was there even a limited competition.[2] When, however, the Order of 1870 extended the admission examinations to all positions in the service, not specially excepted or filled by promotion, and set up the principle of open competition, it became necessary to distinguish between the higher posts, involving discretionary powers and requiring a liberal education, and the lower ones where the duties are of a clerical kind; to distinguish, in other words, between the administrator and the clerk. Such a distinction was made by the commissioners in their earliest regulations under the Order of 1870,[3] the two classes being recruited separately by examinations of different character, the first of which was adapted to university graduates, and the second to young men from commercial life. At the outset the line was drawn somewhat at haphazard without sufficient attention to the real nature of the work to be done, and it was readjusted several times before it assumed its present form.[4]

[1] They covered reading, writing and arithmetic, often dictation, précis, geography, English history, Latin and French, sometimes bookkeeping, and occasionally something more; 3d Rep. of Civil Serv. Comrs., Com. Papers, 1857–1858, XXV., 1, App. B.

[2] Rep. of the Com. on Civil Service Appointments, Com. Papers, 1860, IX., 1., pp. vii–viii.

[3] 16th Rep. Civil Serv. Comrs., Com. Papers, 1871, XVII., 1, App. 1.

[4] In 1873 a Committee on Civil Service Expenditure suggested abolishing the distinction altogether, and having a single examination for admission to each department, the men to stand upon an equality as regards subsequent promotion by merit. (3d Rep., Com. Papers, 1873, VII., 415, p. iv.) No action was taken on this recommendation; and two years later Playfair's Commission on Admission to the Civil Service reported (Com. Papers, 1875, XXIII., 1) that the distinction between a higher division to do the responsible work, and a lower division to do the routine work, ought to be maintained. But they criticised the existing division into Classes I and II, on the ground that there was no possibility of promotion from the second to the first, and that the distinction did not correspond with the real difference in the nature of the work, so that mechanical work was done by the first class and responsible work by the second, while the clerks in some of the departments belonged wholly to one class. They recommended that there

Exceptional Positions.

Aside from the regular grades of clerks recruited by open competition, there are various kinds of inspectors, clerks and other special officials, appointed after open competition, limited competition, pass examination or no examination at all. In fact the departments are full of anomalies, some of them the necessary result of peculiar conditions of service, and others due apparently to no very rational cause. The reader will, no doubt, be sufficiently wearied by a description of the more common methods of examination, without going into the eccentricities of the system. It may be convenient to consider first the open competitions, and then the appointments that are made in other ways.

The First-class Clerkships.

The highest posts in the permanent civil service to which admission is obtained by competitive examination are known as the first-class clerkships. In 1895 the examinations for these positions and for the Indian Civil Service were consolidated, and in the following year those for the Eastern Cadets[1] were added; so that a single annual competition is now the gateway to all three careers, the successful candidates being allowed, in the order of their rank at

should be in every department a lower division of men and boy clerks; that its members should serve in any department to which they were appointed or transferred; and that after ten years' service they might, if they had shown exceptional capacity, be promoted to the upper division. These recommendations were embodied in the Order in Council of Feb. 12, 1876. The organisation of the civil service was thereby simplified and improved, but it was still imperfect. The Commission on Civil Establishments, in their second report, in 1888 (Com. Papers, 1888, XXVII. 1), said that in practice the work of the two divisions had overlapped, and the line between them had been drawn too low. They suggested also that the name of the lower division should be changed to second division. This was carried into effect by an Order in Council of March 21, 1890, which constituted the second division of the civil service, with a higher grade to be reached by promotion, and made the boy clerks into a separate division. The rules affecting the second division have since been embodied in a new Order in Council of Nov. 29, 1898, amended by another Order of Sept. 15, 1902. The first division, known as Class I of the Civil Service, was regulated afresh by an Order in Council of Aug. 15, 1890, which created there also an upper grade to be reached by promotion.

It may be added that appointments made as the result of competitive examination are not absolute at once, but are probationary for a certain period.

[1] These are the men entering the civil service of the Eastern colonies, Ceylon, Hong Kong, the Federated Malay States, etc.

the examination, to choose the service they will enter. In spite of the smaller pay the first men on the list have usually selected the home service, because the life is more agreeable; and so far as the vacancies make it possible they are assigned to the particular department they prefer.

The Entrance Examinations

Although these positions are called clerkships, the work is not of a clerical, but of an administrative, and in the upper grades of a highly responsible, character. The aim of the commissioners is, therefore, to recruit young men of thorough general education for an important and lifelong administrative career. With this object the candidates are required to be between twenty-two and twenty-four years of age, and the examination, which has no direct connection with their subsequent duties, is closely fitted to the courses of study in the universities. As a matter of fact the papers in mathematics and natural science are based upon the requirements for honour degrees at Cambridge, the papers in classical and other subjects upon those at Oxford; and thus it happens that by far the larger part of the successful candidates come from one or other of these two great universities.[1] The range of subjects is naturally large, and a candidate is allowed to offer as many as he pleases, but by an ingenious system of marking a thorough knowledge of a few subjects is made to yield a higher aggregate of marks than a superficial acquaintance with a larger number.[2] The examination papers are set, and the books are read, by well-known scholars, instructors at the universities and others, who are selected for the purpose. That the papers

[1] Of the 514 successful candidates for the Class I clerkships, the Indian Civil Service and the Eastern Cadets, from 1896 to 1900 inclusive, 262 had studied at Oxford, 148 at Cambridge, 83 at other universities in the United Kingdom, 7 in colonial and Indian universities, and 14 in no university at all. (45th Rep. of the Civil Serv. Comrs., Com. Papers, 1901, XVIII., 129, pp lxxix–lxxxii.) The proportion from Oxford and Cambridge in the Class I clerkships alone would be somewhat larger still. The later reports of the Civil Service Commission show that these proportions have not been very much changed.

[2] A more detailed statement of the method of conducting the examination and its results may be found in Lowell and Stephens, "Colonial Civil Service."

are severe any one may convince himself by looking at them. Moreover the number of candidates, which is two or three times as large as the vacancies in all three services together, insures a rigorous competition; and the result is that the candidates who win the appointments are men of education and intellectual power. They belong to the type that forms the kernel of the professions; and many of them enter the civil service simply because they have not the means to enable them to wait long enough to achieve success in a professional career. They form an excellent corps of administrators, although the time has not come to express an opinion on the question whether they will prove the best material from which to draw the permanent under-secretaries and the other staff officers at the head of the different services. As yet few of them have attained positions of this grade, but it must be remembered that they have only recently begun to reach an age when they could be expected to do so.

Their Social Effect.

When the government was considering the introduction of competitive examinations, in 1854, fears were expressed that such a system would result in driving the aristocracy out of the civil service, and replacing it by a lower social class.[1] Mr. Gladstone himself did not share that belief. On the contrary, he thought the plan would give to the highly educated class a stronger hold than ever upon the higher positions in the service.[2] In this he proved a better prophet than his critics. By far the greater part of the successful competitors for the Class I clerkships now come, as we have seen, from Oxford and Cambridge; and the men educated at those universities are still drawn chiefly from the upper classes, from the aristocracy, the gentry, the sons of clergymen, of lawyers, of doctors, and of rich merchants who have

[1] Morley, "Life of Gladstone," I., 511.

[2] In a letter to Lord John Russell he wrote: "It must be remembered that an essential part of any such plan as it is now under discussion is the separation of *work*, wherever it can be made, into mechanical and intellectual, a separation which will open to the highly educated class a career, and give them a command over all the higher parts of the civil service, which up to this time they have never enjoyed." *Ibid.*, 649.

made, or who hope to make, their way into the higher strata of society. Men of more humble extraction go, as a rule, to the provincial colleges. The Civil Service Commissioners have given in some of their annual reports the occupations of the fathers of the successful candidates at the chief open competitions; and while in the case of the joint examination for the Class I clerkships and the Indian Civil Service the list includes no peers, and does include some tradesmen, yet on the whole it consists of persons belonging to the upper and the upper middle class. Thus it has come about that competitive examinations, instead of having a levelling tendency, by throwing the service open to a crowd of quick-witted youths without breeding, has helped to strengthen the hold of the upper classes upon the government, by reserving most of the important posts for men trained in the old aristocratic seats of learning. In this connection it may be observed that the highest positions in the civil service are often held by men of noble blood, and it has sometimes happened that the permanent under-secretary has been a man of higher social position than his political chief. Sir Robert Herbert and Sir Courtenay Boyle, for example, who were recently the permanent heads of the Colonial Office and the Board of Trade, were scions of ancient families in England and Ireland; and the latter had at one time as his political chief Mr. Mundella, who had begun life as a printer's devil.[1]

The Second Division Clerkships.

Ranking below the Class I clerkships, there is a large body of persons whose work is mainly clerical. These are known as the second division clerks, and they are recruited by open competition. The standard of education required by the examination is naturally much less high than in the case of the first-class clerks, and the candidates are consequently younger, the competition being now limited to youths between seventeen and twenty years of age.[2]

[1] For Mundella's origin see Davidson, "Eminent English Liberals," Ch. xii.; Hinton, "English Radical Leaders," Ch. viii.

[2] As in all such cases, the upper limit is extended to some extent for men who have served the public in a military or other capacity.

Nature of Examinations.

As the work done by the second division is of the same general character as that performed by clerks in commercial houses, the examination was at first devised on the supposition that the candidates would have a commercial training, and it was adapted to test their immediate fitness for that work. Besides the elementary general subjects of writing, English composition, arithmetic, geography and English history, it covered copying, indexing, digesting returns and bookkeeping. Such a test was not inappropriate in the earlier days, when appointments were made by nomination and the object of the examination was simply to eliminate individual appointees who were unfit for their duties; but it was continued long after the system of open competition, with its crowd of eager young candidates almost devoid of actual commercial training, had brought in a very different state of things. In 1896 the Association of Head Masters pointed out, in a memorandum, the bad effect produced on general education. They showed that, in order to improve their chance of success, boys were prematurely taken from school and placed in the hands of crammers to acquire "a high degree of polish upon a rather low though useful order of accomplishment"; and they asked that the examination might be brought more into line with the curriculum of the schools. This was done, without giving up the former methods altogether, by introducing a number of options, so that a candidate need offer only the subjects ordinarily taught in a secondary school.[1] The result in the future will no doubt be to make proficiency in regular school work the real test for appointment, and thus, in accordance with Macaulay's principle, to base the selection upon general education instead of technical knowledge.

[1] 45th Rep. Civil Serv. Comrs., Com. Papers, 1901, XVIII., 129, pp. lxxiii-iv. Under the present regulations, writing (with copying), arithmetic and English composition are required; and of the eight optional subjects — précis (including indexing and adjusting of returns), bookkeeping and shorthand, geography and English history, Latin, French, German, elementary mathematics (plane geometry and algebra), and chemistry and physics — not more than four may be offered, including not more than two of the three languages.

Unlike the first-class clerks, the clerks of the second division are drawn mainly from the middle and lower middle classes, and their education has been obtained in the grammar schools and other schools of a similar kind. Although a distinct corps, recruited by a different examination, and intended for a lower grade of work, they are not altogether cut off from the higher positions. After eight years of service they can, in exceptional cases, be promoted to first-class clerkships, and this is sometimes done. But as the number of second division clerks appointed each year is about three hundred, and the number promoted to first-class clerkships is on the average only about four, the chance of reaching that grade is very small.[1]

Assistant Clerks.

Within the last few years a new grade, called assistant clerks (abstractor class), has been formed, recruited at present by competitive examinations among the boy clerks. The work is chiefly in the nature of copying, but an assistant clerk may for special merit be appointed to the second division without competing in the examination.[2]

Boy Clerks.

The lowest grade of officials recruited in common for a number of departments is that of boy clerks.[3] These come from much the same class in the community as the clerks of the second division, and the competitive examination, though more elementary, is of the same character,[4] the limits of age being fifteen and seventeen years. The employment is essentially temporary, and in fact boy clerks are not retained after they are twenty; but the position is

[1] During the thirteen years from 1886 to 1898, inclusive, 147 first-class clerks were appointed by open competition, 34 were promoted from the second division (or the corresponding class that preceded it), and 8 came from other sources (virtually by transfer from distinct services). During the same period 123 second division clerks were promoted to other posts carrying an increase of salary. Com. Papers, 1899, LXXVII, 751. From the later reports of the Civil Service Commissioners it would appear that the proportion of first-class clerkships filled by promotion does not increase.

[2] Order in Council, Nov. 29, 1898, § 15.

[3] Or boy copyists. They were formerly two separate classes, but are now combined.

[4] The nature of the examination was changed at the same time, and for the same reason as that of the second division clerks.

a step towards further advancement, for the boy clerks alone can compete for the assistant clerkships, and if they go into the examination for the second division a credit for the service they have done is added to the marks they obtain. Yet the examination for boy clerks is one of the few competitions for a large number of positions, where the quantity of candidates is insufficient.

Other Competitive Examinations.

Besides the open competitions for the general grades of clerks, there are many others for special classes of employees in the different departments. Some of these positions require no peculiar qualifications, and there is no obvious reason for having a number of separate examinations differing slightly from one another; but certain departments still cling to their own schemes, and the Post Office to several schemes. All this is being gradually simplified, by having the same examination for a number of distinct services, that for the second division clerks, for example, being now used for recruiting the clerks in the Custom House.[1] The examinations for the second division could, probably, be combined with those for clerks in the Customs and Inland Revenue, just as a combination has been made in the case of the first-class clerkships, the Indian Civil Service and the Eastern Cadets — and that will, no doubt, be the tendency in the future. The same criticism does not, of course, apply to all the examinations. Some of them require very different degrees of education; for others, such as those for draughtsmen, law clerks, and many more, professional or technical training is obviously necessary; while certain positions are reserved for women. Each of these examinations is governed by regulations prescribing the age of the candidates, the fee to be paid, and the subjects included, but it is clearly needless for our purpose to follow them in detail.[2]

In most of the departments there are positions in the

[1] 45th Rep. of the Civil Serv. Comrs., Com. Papers, 1901, XVIII., 129, pp. lxxxiii–vii.

[2] *Ibid.*, 129, pp. lxxxiii–vii.

permanent civil service not filled by competition, because the kind of experience and capacity needed cannot be tested, or fully tested, by examination; and in that case the examination may be wholly or partially dispensed with under Clause VII of the Order in Council of 1870. There are other positions where open competition is inapplicable because the places to be filled are not numerous enough, or sufficiently tempting, to attract competitors at large; or, because, as in the case of the higher class clerks in the Foreign Office, of attachés of legation, and of inspectors of various kinds, the work is of a delicate and confidential nature, and can be intrusted only to persons whose character is well known. In such cases it is common to have competitive examinations limited to candidates selected for the purpose.[1] Even a limited competition has a tendency to raise the standard, but it must be remembered that in order to obtain a chance to compete in such cases some influence, direct or indirect, is indispensable; although the power of nomination does not, in fact, appear to be abused for political purposes.

Limited Competition.

There are positions for which no competition is held, but where a single person is nominated subject to an examination to test his competence. Some of these places might very well be open to competition, and, indeed, there are still strange anomalies in various branches of the civil service; the strangest being the fact that the employees of the Education Department are, almost invariably, appointed without any examination at all, and this is true not only of inspectors, whose work requires peculiar qualifications, but even of clerks of the abstractor class. There are, however, positions in the civil service where the technical knowledge or experience needed are really such as to render a competition difficult. Even in manual occupations this is believed to be the case. In the royal dockyards, for example, although the apprentices are recruited by open competition,

Nomination with a Pass Examination.

[1] The Committee on Civil Establishments reported that this method of appointment was a necessity in the Foreign Office. Com. Papers, 1890, XXVII, 1, p. 9.

the artificers are appointed subject to a pass examination touching only their skill in their trade, while the foremen are usually selected by a limited competition which includes something more. Provincial postmasters also form a class by themselves. Until a few years ago they owed their positions to political influence; for long after the members of Parliament had lost all control over other appointments, they retained the power to fill any vacancies that might occur in the postal service within their constituencies, provided, of course, they belonged to the party in power. But this last remnant of parliamentary patronage was abolished in 1896, and provincial postmasters are now appointed on the recommendation of the surveyors of the postal districts.[1]

Nomination without Examination.

Finally there are the appointments made entirely without examination of any kind, either because examination is dispensed with under Clause VII of the Order in Council of 1870, or because the position is one excepted altogether from the operation of the Order. Such posts are chiefly at the top or at the bottom of the service. They include positions of responsibility at one end of the scale; and those of messengers,[2] porters and servants at the other.

Promotions.

Political influence has not only ceased almost entirely to affect appointments to office, but it has also been very nearly eliminated in the matter of promotion. The struggle on this subject began as early as 1847, and the government has been strong enough to declare that an effort to bring influence to bear will be treated as an offence on the part of the employee; or as the minutes adopted by the Treasury in 1867, and by the Admiralty a couple of years later, ingeniously and forcibly express it, the attempt by a public officer to support his application by any solicitation on the part of members of Parliament, or other persons of influence, "will be treated . . . as an admission or the part of such

[1] Courtney, "The Working Constitution," 149–50. The local member, however, is still often consulted, but rather as having local knowledge than with a view to political influence.

[2] Messengers are often examined in the three R's.

officer that his case is not good upon its merits." [1] These measures seem to have had the desired effect.[2]

Why the Civil Service was Easily Freed from Political Influence.

If we seek to understand how it happened that the baneful influence of political patronage in the civil service, which had been dominant in England in the eighteenth century, was thrown off with comparative ease a hundred years later, while in some other nations that influence was, at the same period, growing in strength, and has proved extremely tenacious; if we seek to explain this contrast, we must take account of a striking peculiarity of English public life at the present day that has come with the evolution of the parliamentary system. For reasons that will be discussed hereafter a member of the majority of the House of Commons votes on the side of the government with singular constancy; and as compared with most other countries under a popular form of government politics turn to an unusual extent upon public questions. The House is engaged in almost ceaseless battles between the two front benches with the ranks of their followers marshalled behind them; and the battles are over public matters. Questions affecting private, personal or local interests occupy a relatively small share of the attention of the member of Parliament. He is primarily the representative of a national party elected to support or oppose the cabinet, rather than the delegate of a district sent to watch over the interests of his constituents, and push the claims of influential electors. The defence, said to have been triumphantly made elsewhere, by a member accused of absence from important divisions, that he had procured more favours for his constituency than any other representative, could not be pleaded as an excuse in England. Hence the ministry is not compelled to enlist personal support either in the legislature or at the polls, by an appeal to private gratitude. It can afford to turn a deaf ear to solicitations for patronage, and

[1] Com. Papers, 1883, XXXVIII., 543.

[2] Third Rep. of the Com. on Civil Serv. Exp., Com. Papers, 1873, VII., 415, Qs. 4270–72, 4727, 4762, 4764. There was at that time some trouble in the case of dismissals. *Ibid*, Qs. 4271–72.

stand upon its public policy alone. In short, the enormous strength of party, in the legitimate sense of a body of men combined for a common public object, has enabled the government to do what it could not have done so easily had party required the support of artificial props. The political condition that has strengthened the government for this work is not in itself an unmixed good. It brings with it evils, which will be noticed in due course; but to its credit must be placed the purification of the civil service.

At the outset ministers feared that the change would meet with resistance in Parliament, but using one's influence to procure favours for others is not a wholly agreeable task, especially when more supplicants are disappointed than gratified. The reform brought to the House of Commons relief from pressure by importunate constituents, and all the later steps have been taken with the approval of the members themselves.

Pensions.

With the elimination of politics the civil service has become a career, steady and free from risk. But the salaries are not high in relation to the capacity required, and as a rule they begin low with a small increment for each year of service. They are not large enough to provide for illness and old age; and, hence, along with the progress of reform there grew up a demand for pensions. The law on the subject, although frequently amended, is still based upon the Superannuation Act of 1859, which grants to "persons who shall have served in an established capacity in the permanent civil service of the state" for ten years, and retire at sixty years of age or by reason of infirmity, a pension equal to ten sixtieths of their final salary. For every additional year of service another sixtieth is added up to a maximum of forty sixtieths. Provision has been made, also, for the case of injuries received in the public service; while more recent statutes have authorised gratuities to women employees upon marriage — an allowance apparently given, as in the case of the other grants, rather in a spirit of commiseration, than in order to encourage matrimony.

CHAPTER VIII

THE MINISTERS AND THE CIVIL SERVICE

The Need of both Expert and Layman.

As scientific and technical knowledge increase, as the relations of life become more complex, there is an ever-growing need of men of special training in every department of human activity; and this is no less true of the government than of every other organisation. Any work, therefore, carried on at the present day without the assistance of experts is certain to be more or less inefficient. But, on the other hand, experts acting alone tend to take disproportionate views, and to get more or less out of touch with the common sense of the rest of the world. They are apt to exaggerate the importance of technical questions as compared with others of a more general nature — a tendency which leads either to hobbies, or, where the organism is less vigorous, to officialism and red tape. These evils have become so marked in the case of some governments as to give rise to the ill name of bureaucracy. In order, therefore, to produce really good results, and avoid the dangers of inefficiency on the one hand, and of bureaucracy on the other, it is necessary to have in any administration a proper combination of experts and men of the world. Now, of all the existing political traditions in England, the least known to the public, and yet one of those most deserving attention, is that which governs the relation between the expert and the layman.

The Judge and Jury.

The first branch of the English government to reach a high point of development was that which dealt with the administration of justice; and it is here that we first see the coöperation of professional and lay elements. They appear in the form of judge and jury; and in that form they have

him his book or his clerk. The reader will probably remember Justice Foxley and his clerk in "Redgauntlet"; and also Dickens's burlesque of the relation in the scene at Ipswich, where after much whispering between the justice (Mr. Nupkins) and his clerk (Mr. Jinks) the magistrate says to Mr. Pickwick: —

"An information has been sworn before me that it is apprehended you are going to fight a duel, and that the other man, Tupman, is your aider and abettor in it. Therefore — eh, Mr. Jinks?"

"Certainly, Sir."

"Therefore, I call upon you both to — I think that's the course, Mr. Jinks?"

"Certainly, Sir."

"To — to — what, Mr. Jinks?" said the magistrate pettishly.

"To find bail, Sir."

"Yes. Therefore, I call upon you both — as I was about to say, when I was interrupted by my clerk — to find bail."

The satire here is particularly keen, because before the public the magistrate always takes the whole credit to himself, and is very sensitive about having the world believe that he is under the control of his clerk.

Lay Chief with Expert Subordinate an English Usage.

Leslie Stephen, I think, remarks somewhere that the characteristic feature of the English system of government is a justice of the peace who is a gentleman, with a clerk who knows the law; and certainly the relationship between the titular holder of a public post, enjoying the honours, and assuming the responsibility, of office, and a subordinate, who, without attracting attention, supplies the technical knowledge and largely directs the conduct of his chief, extends throughout the English government from the Treasury Bench to the borough council. Perhaps, indeed, it is not altogether fanciful to attribute the ease with which the principle has become established in the national government to the fact that the members of Parliament, and the ministers as well, have been drawn in the past mainly from

the same class as the justices of the peace, and have brought with them to a larger sphere the traditions of the local magistrate.

Influence of Permanent Officials in the Colonial Office.

The extent of the control exerted in the national administration by the permanent officials is forcibly illustrated by the history of the Colonial Office. My colleague, Professor Edward Channing, has pointed out to me that the records of the American colonies reveal how largely the Committee for Trade and Plantations was in the hands of Blathwayt, its secretary. In spite of all the violent political upheavals of the time that functionary retained his post without interruption from the latter part of the reign of Charles II. until some years after the revolution of 1688; and if a colony wanted anything done by the home government it was he that must be persuaded, sometimes by inducements of a pecuniary nature.

The power, but happily not the corruption, of the permanent officials in the Colonial Office can be traced still more clearly at a much later time. In 1839 Lord Durham, in his famous "Report on the Affairs of British North America," complains that owing to the repeated changes in the political chiefs of the Colonial Office, the real management of the colonies fell into the hands of "the permanent but utterly irresponsible members of the office"; and he quotes from a report made in the preceding year by a select committee of the Assembly of Upper Canada, to show that this was felt by the colonists themselves as a grievance.[1] The group of English colonial reformers, with whom Lord Durham was associated, held the same opinion. Gibbon Wakefield tells us, in his "View of the Art of Colonization" that "The great bulk, accordingly, of the labours of the office are performed, as the greater portion of its legislative and executive authority is necessarily wielded, by the permanent under-secretary and the superior clerks."[2] Wakefield and his school disapproved of the colonial policy of the day, and disliked cordially the permanent officials and their

[1] Com. Papers, 1839, XVII., 1, pp. 37–38.

[2] P. 235.

methods. "Our colonial system of government," Wakefield adds, "is the bureaucratic, spoiled by being grafted on to free institutions." [1] He had a special aversion for Sir James Stephen — long the legal adviser, and afterwards permanent under-secretary, to the Colonial Office — whom he regarded as the archetype, if not the founder, of the class of officials that had become the real arbiters of the destinies of the colonial empire.[2]

Mr. Mother-country.

Wakefield quotes from Charles Buller's "Responsible Government for Colonies" (a work published in 1840, but at that time already out of print), an extract entitled "Mr. Mothercountry, of the Colonial Office." [3] Parliament, Buller declares, takes no interest in the colonies, and exercises no efficient control over the administration and legislation affecting them; and hence the supremacy of England really resides in the Colonial Office. But the Secretary of State holds a shifting position. Perplexed by the vast variety of questions presented to him, he is obliged at the outset to rely on one or other of the permanent officials, and the official who thus directs the action of the British government Buller calls "Mr. Mothercountry." He is familiar with every detail of his business, and handles with unfaltering hand the piles of papers at which his superiors quail. He knows the policy which previous actions render necessary; but he never appears to dictate. A new Secretary of State intends to be independent, but something turns up that obliges him to consult Mr. Mothercountry. He is pleased with the ready and unobtrusive advice which takes a great deal of trouble off his hands. If things go well, his confidence in Mr. Mothercountry rises. If badly, that official alone can get him out of the colonial or parliamentary scrape; and the more independent he is the more scrapes he falls into. Buller goes on to point out the faults of Mr. Mothercountry; his love of routine, his tendency to follow precedent, his dislike of innovation, and his dread of being criticised.

[1] P. 235. [2] P. 268. [3] P. 279.

Memoirs of Colonial Officials.

Any one, with even a slight knowledge of government offices in England, will recognise that the portrait of Mr. Mothercountry and his influence is hardly overdrawn, in cases where the political chief either holds his place for a short time, or is not a man of commanding ability. The impression of the critics of colonial administration is, indeed, strikingly reënforced in this respect by memoirs of the permanent officials themselves; although some allowance must, no doubt, be made for a natural overestimate of their own importance.[1] Sir Henry Taylor confided to the world in his autobiography a number of remarks that throw light on the internal working of the Colonial Office in the second quarter of the century. While never its permanent under-secretary, he was for a great many years a highly influential person there, as may be seen from the fact that early in his career he drew up, on his own judgment, a despatch recalling a governor, which the secretary signed.[2] Taylor tells us that Lords Goderich and Howick, who became the political chiefs of the Colonial Office in 1831, were "not more in pupilage than it is necessary and natural that men should be who are new to their work."[3] He says that when Lord Stanley was appointed Secretary of State, in 1833, he asked no advice from his subordinates, and a measure he prepared was blown into the air by the House of Commons; whereupon he had recourse to Mr. Stephen,[4] "who for so many years might better have been called the Colonial Department itself than the 'Counsel to the Colonial Department.'"[5] A little later he repeats this last statement, saying that while Lord Glenelg was Secretary "Stephen virtually ruled the Colonial Empire."[6] Taylor's own influence was shown when complaints were made of his

[1] For the quotations from these memoirs I am indebted to Mr. Evan Randolph, who made, while a student at Harvard College, a careful examination of the subject.

[2] "Autobiography," London Ed. (1885), I., 70.

[3] *Ibid.*, 130. [4] *Ibid.*, 133. [5] *Ibid.*, 136.

[6] *Ibid*, 233, *cf.* 123. It was during Lord Glenelg's time that Stephen became permanent under-secretary.

administration of the West Indies. The House of Commons appointed a committee of inquiry, and the report of that committee, with the exception of the last few sentences, was entirely drawn up by Taylor himself.[1]

Sir Frederick Rogers (afterwards Lord Blachford), who was permanent under-secretary from 1860 to 1871, has left in his letters suggestive comments upon most of his political chiefs. The Duke of Newcastle, he says, is "very ready to accept your conclusions, very clear in his own directions, and extremely careful (which I respect very highly) never to throw back on a subordinate any shadow of responsibility for advice that he has once accepted."[2] "Cardwell," he remarks, "is happily absent, though not so much as I could wish";[3] and, finally, he writes that he likes Lord Granville, who "is very pleasant and friendly, and I think will not meddle beyond what is required to keep us clear of political slips."[4] Some people outside of the office evidently thought that the secretaries of state had not meddled overmuch, for George Higginbottom, afterwards Chief Justice of Victoria, once remarked in the Assembly, "It might be said with perfect truth that the million and a half of Englishmen who inhabit these colonies, and who during the last fifteen years have believed they possessed self-government, have been really governed during the whole of that time by a person named Rogers";[5] and in the same vein Rees, in his "Life and Times of Sir George Grey," refers to Sir Robert Herbert (permanent under-secretary from 1871 to 1892) as the man who "controls the destinies of the Colonial Office."[6]

Influence of Permanent Officials in Other Departments.

With the growing interest in the empire, there has come a change; but until a very recent period the fact that British statesmen knew little of the subject, and did not care much more, no doubt made the power of the permanent officials peculiarly great in the Colonial Office.

[1] "Autobiography," II., 38.
[2] Marindin, "Letters of Lord Blachford," 227.
[3] *Ibid.*, 252.
[4] *Ibid.*, 275.
[5] Morris, "Memoirs of Higginbottom," 183.
[6] II., 505.

Their influence, however, upon the policy of the government in the other departments, if less absolute, has nevertheless been very large. This impression one obtains both from published documents, and from private conversations, although the former alone can be cited as evidence. As far back as 1845 we find the Lord Lieutenant speaking of the permanent under-secretary as "the main-spring of your government in Ireland." [1] But more important than scattered statements of this kind is the information derived from the testimony taken by parliamentary committees of inquiry. One cannot read, for example, the evidence collected in 1900 by the Committee on Municipal Trading [2] without being convinced that not only the efficiency, but also in large measure the current policy, of the Board of Trade depended upon the permanent official at its head, and this is true of every branch of the administration.[3] Sir Lyon Playfair gave the reason for it when he said: "The secretary being a very busy man is very apt to take the advice of the clerk who has been looking over all the details

[1] Parker, "Sir Robert Peel," III., 184.

[2] Com. Papers, 1900, VII., 183.

[3] In that same year much discussion was provoked by Lord Salisbury's sweeping remark that the British Constitution was not a good fighting machine on account of the power of the Treasury to restrain military expenditure. (Hans., 4 Ser. LXXVIII., 32, 237, 239.) It was pointed out that if the political chiefs of the Army and Navy want to increase their expenditure they cannot be blocked by the Treasury clerks. They can confer with the Chancellor of the Exchequer, and if he will not consent, they can appeal to the Prime Minister, and ultimately to the cabinet. Nevertheless it is true that if the political chief does not consider a matter of first-class importance — and many of the most far-reaching matters do not appear so at the time — or does not want to fight about it, the opinion of the Treasury officials may prevail, even to the extent of blocking useful reforms that cost a little money.

Moreover, if a matter is fought out between the political chiefs, their opinions may very well be derived from their permanent subordinates. When the subject of Treasury control was investigated by the Committee on Civil Establishments, Sir Reginald (now Lord) Welby was asked, "Is not this question not so much between political ministers as between permanent heads of departments?" He answered "Yes, but the permanent heads of departments to (*sic*) convince their political chiefs behind whom they fight," and added that the political chiefs commonly support their subordinates. (Com. Papers, 1888, XXVII., 1, Qs. 10721, 10723.)

and the correspondence before it comes to him."[1] A superior, indeed, lacking the time to become thoroughly familiar with the facts, must be to a great extent in the hands of a trusted subordinate who has them all at his fingers' ends. It is the common case of the layman and his confidential expert; and it must be observed in this connection that with exacting parliamentary and other duties, the cabinet ministers cannot devote all their time to the work of their departments.

Theoretical Relation of Political and Permanent Heads

The theoretical relation between the political chief and his permanent subordinate is a simple one. The political chief furnishes the lay element in the concern. His function is to bring the administration into harmony with the general sense of the community and especially of Parliament. He must keep it in accord with the views of the majority in the House of Commons, and conversely he must defend it when criticised, and protect it against injury by any ill-considered action of the House. He is also a critic charged with the duty of rooting out old abuses, correcting the tendency to red tape and routine, and preventing the department from going to sleep or falling into ruts; and, being at the head, it is for him, after weighing the opinion of the experts, to decide upon the general policy to be pursued. The permanent officials, on the other hand, are to give their advice upon the questions that arise, so as to enable the chief to reach a wise conclusion and keep him from falling into mistakes. When he has made his decision they are to carry it out; and they must keep the department running by doing the routine work. In short the chief lays down the general policy, while his subordinates give him the benefit of their advice, and attend to the details. It is easy enough to state a principle of this kind, but in practice it is very hard to draw the line. The work of a public department consists of a vast mass of administrative detail, the importance of which is not self-evident until some strain is brought to bear upon it; and all the acts done, however trifling in

[1] Com. Papers, 1888, XXVII, 1, Q. 20168.

themselves, form precedents, which accumulate silently until they become as immovable as the rocks of the geologic strata. To know how far the opinion of an expert must be followed, and how far it may be overruled; to know what is really general policy, and what is mere detail; to know these things is the most valuable art in life. The capacity of an administrator on a large scale depends upon what he attends to himself, and what he commits to others. But the political chief of a department is so situated that it is difficult for him to determine what questions he will reserve for himself and what he will leave to his subordinates. To understand why that is the case it is necessary to know something of the procedure in the government offices.

Procedure in the Public Departments.

The method of doing business in a public office is of necessity more elaborate than in a private concern. There is more responsibility for the work done; more subjection to public criticism in small matters; and a stronger obligation to treat every one alike, which means a more strict adherence to precedent. All this entails a complicated machinery that is less needed in private business, where a man can say that if he makes a mistake the loss falls upon himself and is no other person's affair. In a public office, therefore, more writing is done, more things are preserved and recorded, than in a private business, and there are more steps in a single transaction.[1] Now although the procedure in the English departments varies somewhat in detail, the general practice is much the same throughout the public service.

When a minister wishes to prepare a measure for Parliament, or to make any change in administrative policy, he consults the permanent under-secretary and any other officials especially familiar with the subject; if, indeed, the matter has not been suggested to him by them. He weighs their advice, and states his conclusion to the permanent under-secretary, who in turn gives his directions to the proper subordinates for carrying it into effect. In such a case the

[1] *Cf.* Giffen's Ev., 2d Rep. Com. on Civil Estabs., Com. Papers, 1888, XXVII., 1, Qs. 19131–32, 19139.

procedure is obvious; but by far the greater part of the action in the central offices begins at the other end, and comes from the contact of the government with the public, or from questions that arise in the course of administration. When anything of this kind occurs, whether it be in the form of a despatch, a petition, a complaint, a request for instructions, or a communication of any sort, it is sent by the official charged with the opening of correspondence to the principal, or senior, clerk within whose province it falls. The senior clerk intrusts it to one of the junior first-class clerks in his division. He examines the paper, and unless it is of such a purely routine character that he feels authorised to dispose of it, he affixes to it a minute or memorandum, which gives a history of the matter, the precedents in similar cases, and any other information that may assist his superiors in reaching a decision, commonly adding a suggestion of the course to be pursued. The paper then goes back to the senior clerk, who inspects it, and if the question is of small consequence approves the minute or directs a different disposition, subscribing his initials. If the affair is more weighty, he adds his own comments in the form of a second minute, and transmits the paper to the permanent under-secretary.[1] That officer, as the permanent head of the department, gives the final directions,[2] and returns the paper, unless the matter is of great importance, or involves a new question of policy, or is likely to give rise to discussion in Parliament, when he submits it to his political chief with a further minute of his own.[3]

Each permanent official thus performs a double service

[1] If there is an assistant under-secretary the paper passes, of course, through his hands; and in case local conditions require to be examined an inspector is sent down to report.

[2] It has already been observed that in some departments the parliamentary under-secretary is the administrative head for some matters.

[3] Todd, with his unfailing industry, searched the Blue Books for information on this subject. (Parl Govt in England, 2 Ed. II., 542, 614, 628–31, 645–46, 671, 708.) Since he wrote, a great deal of evidence on the procedure in the several departments has been collected by the Com. on Civil Estabs. (2d Rep., Com. Papers, 1888, XXVII , 1, Qs. 10992–11001, 11849–51, 12034–35, 12072–78, 12360–64, 12887–91, 19434, 19442–43).

for his immediate superior. He collects all the material that bears upon a question, presenting it in such a form that a decision can be readily and quickly made; and he acts to a certain extent as a reader, examining a mass of papers that the superior would be quite unable to go through, and making up his own mind how far they contain anything that requires his chief's attention.[1] This system runs throughout the department, from the junior first-class clerks to the parliamentary head, each official deciding what he will submit to his superior; in the same way that the minister himself determines what matters he will settle on his own authority, and what he had better lay before the cabinet. No doubt a subordinate in undertaking to decide a question occasionally makes a mistake for which the minister must assume the responsibility; but that is not a serious danger. The besetting sin of bureaucracy is the tendency to refer too much to a higher authority, which cannot become familiar with the facts of each case, and finds its only refuge in clinging to hard and fast rules. It is fortunate, therefore, that the growth in the machinery of central administration in England has been accompanied by greater deconcentration within the departments.[2] The process has not been without effect on the position of the permanent under-secretary. By relieving him of detail it has made him more free to devote his attention to general policy; and, in fact, a departmental committee reported a few years ago that he ought "to divest himself of all but the most important matters in which the application of a new principle is involved." No question, the report continued, ought to reach him until it has been threshed out by the responsible head of a division, and is ripe for decision. "The permanent secretary should be able to devote himself to such work as conferring with and

Each Official a Reader for his Superior.

[1] Com. Papers, 1888, XXVII., 1, Qs. 12072–78.

[2] In the Home Office, for example, the minuting for replies to papers was formerly done by the permanent under-secretary alone. Later the senior clerks were allowed to make minutes, and now the process begins with the junior clerks. (Com. Papers, 1888, XXVII., 1, Qs. 10992–11001.) The same tendency has been at work in the Foreign Office, as will be explained later.

advising his Parliamentary chiefs, framing or elaborating proposals for new legislation or administrative reform, considering all questions in Parliament, receiving members of Parliament, or representatives of the Public on questions of difficulty, and generally controlling and directing the conduct of the Department." [1]

Differences between the Departments.

The point to which deconcentration is carried is not the same in all branches of the public service. Mr. Gladstone declared that the Chancellor of the Exchequer could not take as active a part as other ministers in the current business of his department;[2] while in the Foreign Office, on the other hand, it has been the tradition that the Secretary of State ought to see almost everything. No doubt this is in part due to the very nature of diplomatic relations, but there can also be no doubt that in the past it has been carried much too far. When Mr. Hammond was under-secretary for foreign affairs he insisted on making the first minute on all papers in the office.[3] A change has been made in this respect, and the practice brought more into accord with that which prevails in other departments;[4] but the Foreign Secretary is still expected to give his personal attention to a greater mass of detail than other ministers.[5]

[1] Rep. on clerical staff of Local Gov. Board, Com. Papers, 1898, XL., 429, p. 12.

[2] He said "The relation of the Chancellor of the Exchequer to the Treasury is somewhat anomalous; it does not correspond at all with that of a Secretary of State to his department, because of course he lies a good deal outside the Treasury, and a good deal of the current business never comes before him at all." (3d Rep. Com. on Pub. Accounts, Com. Papers, 1862, XI., 467, Q. 1610.)

[3] *Cf.* Mr. Hammond's memorandum entitled "The Adventures of a Paper in the Foreign Office," Rep. of Sel. Com. on Trade, Com. Papers, 1864, VII., 279, Q. 1384; reprinted in 1st Rep. of Com. on Dip. and Cons. Services, Com. Papers, 1871, VII., 197, Qs. 1145–46.

[4] Com. Papers, 1871, VII., 197, Qs. 1145–46. Hans. 3 Ser. CCXXXII., 1058.

[5] 4th Rep. Com. on Civil Estabs., Com. Papers, 1890, XXVII., 1, Ev. of Mr. Bryce, Qs. 27927–31, Sir Charles Dilke, Q. 29252.

The position of the Secretary of State for War, and the First Lord of the Admiralty, although in most ways not unlike that of the other ministers, is peculiar in the fact that they are the lay heads of great professions. Their relation to the military officers detailed for service in the principal administrative posts in their departments has already been discussed in Chap. IV.

Now any subordinate who determines what questions he may decide himself, and what he will refer to his superiors, and who prepares the materials for a final judgment in the cases that he does refer, is certain to exert a great deal of influence. The permanent under-secretary, holding his position, as he does, for an indefinite period, devoting his whole time to the work, and becoming thoroughly familiar with the affairs of his department, can, no doubt, regulate the class of questions that shall be referred to him, and can acquire complete control over the administration. But the minister, who is usually unfamiliar with the department to which he is assigned, who remains at its head a comparatively short time, and whose attention is largely engrossed by the more exciting scenes enacted in the cabinet, in Parliament, and on the platform, must, unless gifted with extraordinary executive capacity, be to a considerable extent in the hands of his permanent subordinates.

Effect of the Procedure on the Power of Officials.

The smooth working of a system of this kind evidently depends upon the existence of mutual respect and confidence between the minister and the permanent under-secretary. If the minister, knowing that the under-secretary does not share his own political views, fails to treat him with perfect frankness, or if, after one party has been long in power, the permanent officials have little sympathy with a new ministry from the other party, and do not give it their active and cordial help, then mistakes are certain to be made, the efficiency of the service suffers, and the plans of the government are likely to miscarry. The permanent under-secretary ought to feel, and in fact does feel, a temporary allegiance to his chief, although of a different political party. He gives his advice frankly until the chief has reached a decision, and then he carries that out loyally. Confidential communications — and they are numberless — he treats as sacred even from the next parliamentary chief. If one minister prepares a measure which never sees the light, the permanent under-secretary might refuse to show the documents to the succeeding minister, and the latter would

Need of Mutual Confidence between Political and Permanent Heads.

recognise the propriety of such a course. The minister on his part seeks the advice of the under-secretary on all questions that arise, making allowance for bias due to preconceived political or personal conviction. This does not mean that if a government comes into power pledged to a definite policy, such as Home Rule or a preferential tariff, the under-secretary would be consulted about the general principle. In a case of that kind the policy has been settled in Parliament or by a general election, and the advice of the permanent officials would be limited to the details of the measure proposed.

The system has, of course, its limits. There are cases where the known opinions of the under-secretary would make it almost impossible for him to conduct a certain policy effectively. When the Conservatives, for example, came into office in 1895 with a policy of coercion for Ireland, they found as permanent Irish under-secretary Sir Robert Hamilton, who was known to be a strong Home Ruler, and believing that it would be very difficult for them to govern the country through his agency, they promoted him out of the way; such cases must sometimes occur, but they are extremely rare. It is, indeed, astonishing how far the system can be carried; to what an extent an under-secretary can act as the loyal adviser and administrator for chiefs of totally different political opinions.

Actual Relation Depends on Personality.

The actual relations between the minister and the permanent under-secretary depend in any particular case very much upon the personality of the men. Peel and Gladstone, for example, maintained a close supervision and control over the departments under their charge, while John Bright felt that his real field of usefulness was in the House of Commons, and left the affairs of the Board of Trade almost altogether in the hands of the permanent officials. The system naturally works at its best when minister and under-secretary are both strong, good-tempered men, when each is active, but recognises clearly the province of the other. The saying has become almost proverbial that the most

valuable minister is one who knows nothing about his department when appointed, and like most paradoxes it contains a distorted truth. A good minister must be a good administrator, but he must look to results, and not suppose that he knows as much about the technical side of the work as his permanent subordinate. For, as Bagehot quotes Sir George Cornewall Lewis, "It is not the business of a Cabinet Minister to work his department. His business is to see that it is properly worked."[1] If he attempts to go beyond his province, to be dogmatic and to interfere in details, he will cause friction and probably come to grief.

Methods of Controlling a Minister.

The permanent officials have, indeed, several means of controlling a minister who ventures to disregard them. They have been heard to say that a fool, if given rope enough, will hang himself. If he does not care for their advice they need not tender it, and then he is sure to make mistakes for which he alone will be held responsible. If, on the other hand, he tries, with the best intentions, to go too much into detail, nothing is easier than the trick, familiar, probably, to every bureaucracy, of overwhelming him with detail. He wishes to decide questions himself. The papers bearing upon them are brought to him in ever-increasing piles, until he finds himself hopelessly unable to cope with the mass of documents, and virtually surrenders at discretion. Then there are the means of control arising from the audit of accounts and from questions in Parliament. The permanent under-secretary points out to his chief that an expenditure he proposes is likely to be disallowed by the auditor, or that an action he suggests may very well give rise to an embarrassing question in the House of Commons, and to these things a minister is highly sensitive. Questions afford, indeed, a means of mutual control, for the permanent officials are usually far more afraid of the House of Commons than the minister is himself, and tend to be reticent in preparing answers.

The Treasury Bench is not so omniscient as it appears

[1] "The English Constitution," 1 Ed., 240.

when answering questions in the House. After notice of a question has been given, the materials for a reply are prepared, and often the answer itself is drawn up, by some permanent official in the department. Sometimes the minister merely reads the answer as it has been placed in his hands, but more commonly while keeping the substance, he puts it into words of his own that he thinks better suited to the temper of the House. The labour of working up the answers to innumerable questions on every conceivable subject, and of every degree of importance and triviality, is in the aggregate very great, and places a heavy burden upon the permanent officials during the session of Parliament. But no satisfactory method of limiting the privilege has yet been devised, and although abused, it has the effect of keeping the administration up to the mark. The system affords an opportunity for constant public criticism, and while it gives the permanent officials some control over the minister, it is, on the other hand, a most effective means of preventing the growth of a bureaucratic spirit.

Evils where a Minister is Inactive.

If the permanent officials can restrain a minister from interfering overmuch, there is no similar means of preventing him from neglecting his duties. Yet in that case the service suffers. It is apt to become numbed and bureaucratic. Permanent officials tend to follow precedent, and, indeed, the force of precedent furnishes the basis of their power, but the tendency to be too rigid in their rules is the curse of all their tribe. They shrink from innovation, rarely making a new precedent themselves. This is particularly true in the lesser offices, giving rise, at times, to complaint; and the political chief has to insist upon the need of making exceptions in hard cases, without allowing the hard cases themselves to make bad law. The surest remedy for an excess of routine is a parliamentary head who is interested in the department, and with him a permanent under-secretary of large calibre and wide experience in affairs.

Speaking in 1884 about the Reform Bill then pending, Sir Stafford Northcote predicted that an extension of the

franchise would increase the power of the permanent officials;[1] and many people think that the prophecy has been fulfilled. But this would seem to be one of the cases where an impression is due not so much to a real change of conditions, as to the fact that a state of things already existing has become recognised. The power of the civil service has undoubtedly grown very much within the last hundred years; owing partly to the fact that the ministers, instead of being primarily administrators, have become legislators, engrossed by the work of Parliament and by general politics; partly to the much shorter periods for which they hold office. During the one hundred and two years from 1721 to 1823 there were nineteen chancellors of the exchequer; of whom five held office for more than ten years apiece, the aggregate length of their services being seventy-eight years. In the eighty-two years from 1823 to 1905, twenty-three men held the office, one of them for thirteen years, another for nine, and no one else for more than about six years. The effect of such a shortening of the minister's tenure of office upon the position of his permanent subordinates is self-evident. But the present conditions of political life have now existed with little change for a generation; and, in the opinion of men well qualified to form a judgment, the power of the permanent officials, while varying from time to time with the personnel of the ministry, has not of late years shown any general tendency to increase.

Influence of Permanent Officials not Increasing.

Although the civil servant enjoys a great deal of the substance of power, yet he purports to act only under the directions of his political chief. Sir Stafford Northcote was admonished early in his career by Mr. Gladstone "that references from the Opposition Bench to opinions of the permanent officers of Government, in contradiction to the opinion of the Minister who is responsible in the matter

Self-Effacement of the Civil Servants.

[1] "After that there will come a bureaucratic despotism; that is to say, the permanent officials will take the management of affairs into their hands, and Parliament will have little to do." Andrew Lang, "Life, Letters, and Diaries of Sir Stafford Northcote," 2 Ed., II., 219.

at issue, were contrary to rule and to convenience." [1] If this were not so the principle of ministerial responsibility could hardly be maintained. The minister is alone responsible for everything done in his department, and he receives all the credit and all the blame. The civil servant never talks in public about the policy of his department,[2] never claims anything done there as his own work; and, on the other hand, the minister ought not to attribute blunders or misconduct to a subordinate unless prepared at the same time to announce his discharge. This rule is not, indeed, always observed in the military services, for within a few years the House of Lords has heard the late Secretary of State for War and the Commander-in-Chief charge each other with the responsibility for the lack of preparation in South Africa; [3] and in 1901 the First Lord of the Admiralty in the House of Lords laid the blame for the capsizing of the royal yacht at her launching upon the naval constructor, while praising, at the same time, his skill in designing battleships.[4] In the civil services the principle has been, as a rule, very strictly followed; although here, also, in the case of Sir Antony MacDonnell, the under-secretary to the Lord Lieutenant of Ireland, an exception occurred which caused no small stir at the time.[5] Nor is the re-

[1] Lang, "Life, Letters, and Diaries of Sir Stafford Northcote," I., 160.

[2] After resigning his post in the Education Department in 1903, Sir George Kekewich condemned publicly the Education Bill which had been passed while he was in office, but it may safely be said that even this is not regarded as the best form.

[3] Hans. 4 Ser. XC, 327 *et seq.*, XCI, 6 *et seq.*

[4] *Ibid*, XCVI., 969.

[5] Sir Antony MacDonnell, who had distinguished himself greatly as an Indian administrator, and had just been given a place on the Council of India, was appointed by Mr. Wyndham under-secretary for Ireland in September, 1902, in spite of the fact that he was an Irishman, a Roman Catholic and a Liberal in politics. In the summer of 1904, believing that he had the approval of Mr. Wyndham, the Chief Secretary, in so doing, he assisted Lord Dunraven to formulate the policy of devolution in Ireland. But Mr. Wyndham hastened to make public his disapproval of that policy as soon as the plan appeared in the press. When Parliament met in February, 1905, Mr. Wyndham, in reply to questions of the Irish Unionists, stated these facts, adding that Sir Antony MacDonnell had been censured by the cabinet, which was, however, thoroughly satisfied that his conduct was not open to

sponsibility of the minister merely formal and conventional, for the mistakes of the officials in his department go into the great balance of good and evil report, whereby the reputation of the cabinet is made, and its fate at the next election is determined. In short, the permanent official, like the King, can do no wrong. Both are shielded by the responsibility of the minister, and in fact it may happen that a policy adopted, let us say by the Foreign Office, which is popularly attributed to the personal wishes of the King, is in reality the work of some permanent subordinate.

Fifty years ago the public was not aware of the power of the civil servants, and Parliament, regarding them as clerks, paid little attention to them. But now that their importance has come to be understood there is, in the opinion of some of their own members, a danger that they will be made too prominent, that the screen which protects them from the public gaze will be partly drawn aside, and that they will

the imputation of disloyalty. (Hans. 4 Ser. CXLI., 324–26.) The occurrence gave rise to a good deal of hot discussion in both Houses of Parliament in the latter half of February, in the course of which Mr. Wyndham said that he could not invite such a man as Sir Antony MacDonnell to come and help him as a clerical assistant, that he was invited rather as a colleague than as a mere under-secretary. (Hans. 4 Ser. CXLI., 650, and see Lord Lansdowne's remarks, *Ibid.*, 461.) The letters that passed between Mr. Wyndham and Sir Antony MacDonnell at the time of his appointment were then produced, and they contain a stipulation couched in language that can fairly be interpreted as implying either a position of exceptional importance, or merely such influence as an under-secretary possessing the full confidence of his chief might enjoy. (Hans. 4 Ser. CXLI., 979–81.) The debate led to the resignation of Mr. Wyndham; and his successor, Mr. Long, as well as Mr. Balfour, insisted that no agreement made with Sir Antony gave him a position different from that of other under-secretaries in the civil service. (Hans. 4 Ser. CXLI., 995; CXLII., 1225–26; CXLIV., 647–48, 1278–79). An aftermath of the trouble came in the autumn of 1906 when Mr. Long challenged Sir Antony MacDonnell to publish any letters bearing upon the events of 1904–1905, but these the Conservative government, when in power, had declined to produce in Parliament. (The *Times*, Aug. 30, 31, Sept. 1, 4, 1906.) Correspondence of this nature cannot, of course, be published, at the good pleasure of the possessor. The whole episode illustrates clearly the difficulties that arise when a parliamentary chief fails to assume complete responsibility for everything that happens in his department. It shows also that the relations between the political chief and his permanent subordinate are fixed by the nature of the parliamentary system, and cannot be effectively changed in special cases.

thereby lose their complete irresponsibility, and with it their permanence and their non-political character. Whether such a danger will prove serious is at present only a matter for conjecture.

Honours Conferred upon Civil Servants.

While the permanent official can win no credit for particular acts, a life of exceptional service does not pass unrecognised. Sir Robert Peel, who appreciated their importance, lamented that honours were not conferred upon them more freely.[1] Such a complaint could hardly be made to-day, for a number of them are knighted every year, and occasionally a permanent under-secretary, on retiring from office, is even raised to the peerage. In spite of self-effacement, therefore, the career of a permanent official is honourable and attractive. If he is debarred from the excitement and the glory of the political arena, he is spared its hazards, its vexations, and its disappointments. He wields great power, takes a real part in shaping the destinies of the nation, and if capable and fortunate he may end his days in the subdued lustre of the House of Lords.

[1] Parker, "Sir Robert Peel," II., 35–36.

CHAPTER IX

THE HOUSE OF COMMONS

Constituencies and Voters

Electors and Constituencies Offer Distinct Problems.

THE composition of any representative body involves two separate things; the electors and the constituencies. During the first part of the nineteenth century public attention outside of England was mainly concentrated upon the electors, or in other words upon the extension of the franchise. But now that something like universal suffrage has been introduced into most of the countries which have a popular element in their government, the franchise is little discussed, and much more is said about the constituencies, that is, the method of combining the voters into groups. The change is largely due to discontent with some of the results of democracy, a feeling which finds vent in widespread criticism of representative institutions.[1]

It was formerly assumed that the interests of the masses of the people were fundamentally identical; and hence the mode in which the electors were grouped was comparatively unimportant, the main question being the enlargement of the basis of representation. We have now learned that the formation of the constituencies offers a distinct problem with grave practical effects, and popular government not having brought the millennium that was foretold, men seek a remedy in different methods of combining the voters. We constantly see discussions of this subject. We hear of the relative advantage of *scrutin d'arrondissement* and *scrutin de liste;* that is, single electoral districts or large areas choosing a number of representatives apiece. We hear

[1] This feeling was forcibly expressed by Godkin in his essay on "The Decline of Legislatures."

about the grouping of voters on the basis of their natural economic relations into urban and rural constituencies; or on the basis of wealth, as in the three-class system of Prussia. We hear suggestions of possible grouping on the basis of occupations;[1] and a vast amount of literature has been published to prove the advantage of a grouping on the basis of opinions, by some form of proportional representation.

How Treated in England.

In England the two questions of the electors and the constituencies, although usually considered, and made the subject of legislation, at the same time, have always been kept distinct. Each of the great series of measures of parliamentary reform has touched both subjects, but in unequal degree; and, in fact, it was really the state of the constituencies that forced both problems upon public attention.

The Reform Act of 1832 brought in a general franchise for boroughs in place of the multifarious, and on the whole highly exclusive, privileges which had existed before. It also changed, though in a less radical way, the franchise in the counties. But as a political measure its greatest importance lay in its effect upon the constituencies by the redistribution of seats. It took from small boroughs in various stages of decay and rottenness one hundred and forty-three seats, and gave them to the counties, and to new large towns hitherto unrepresented. The Act of 1867, on the other hand, while transferring seats to some extent, was mainly a measure for extending greatly the borough franchise. In 1884 and 1885 both subjects were dealt with radically. By the Act of 1884 the franchise for counties was much enlarged; and by that of 1885 the distribution of seats was reorganised upon a basis closely akin to equal electoral districts.

The Constituencies.

The constituencies for the English Parliament are of three kinds; counties, boroughs and universities. The last are quite different from the others in nature and franchise, and a word may be said about them here.

[1] This is elaborately discussed by Charles Benoist, *La Crise de l'État Moderne*.

Oxford and Cambridge were given two seats apiece by James I. The University of Dublin, which had already one seat, obtained another by the Reform Act of 1832; and, finally, the Act of 1868 gave one member to London University, one to Glasgow and Aberdeen combined, and another to Edinburgh and St. Andrews. The franchise for the universities belongs in general to the registered graduates.[1] Universities.

Until 1832 each county, and each borough that had the privilege of being represented, elected, as a rule, two members of Parliament. This, however, was not true of the Scotch boroughs, which were, with few exceptions, grouped into districts returning a single member apiece; a system that has been maintained to the present day. Some of the English boroughs had been given the right of electing members by the Tudors and the early Stuarts, not because they were places of importance, but, on the contrary, because they were not populous, and their members could be easily controlled by the Crown — the electoral rights being commonly vested in the governing council, which was a close corporation. Other boroughs that had once been places of consequence had, in the course of time, fallen into decay. So that by the beginning of the nineteenth century many members of the House represented no substantial communities, and were really appointed either by small self-perpetuating bodies, or by patrons, who, owning the land, controlled the votes of the few electors in the constituency. This condition of things was made scandalous by the open practice of selling elections to Parliament for cash; and the demand for reform, which had been checked by the long struggle with France, began again after the peace, culminating finally in the Reform Act of 1832.[2] The object of this measure was to remove a manifest abuse, rather than The Reform Act of 1832.

[1] For "keeping one's name on the books" the university sometimes requires a fee which diminishes seriously the number of graduates entitled to vote either for Parliament or on academic questions. In Cambridge, for example, the electors are only about one half the graduates.

[2] For England, 2 Will. IV., c. 45. For Scotland, 2–3 Will. IV., c. 65. For Ireland 2–3 Will. IV., c. 88.

to reorganise the representation of the country on a new basis, and it applied to the conditions a somewhat rough and inexact remedy. The parliamentary boroughs with less than two thousand population were disfranchised altogether, those with more than two thousand and less than four thousand lost one member, and the seats thus obtained were divided about equally between the counties and the new large towns that had hitherto been unrepresented.[1] But the constituencies still remained very uneven in population — and, indeed, the framers of the act had no desire for equal electoral districts.

The Reform Act of 1867.

The same process was continued by the Act of 1867, which again took members from little towns and gave them to larger ones and to the counties. While there was no general attempt to make the number of representatives proportional to the size of a constituency, a few of the largest provincial towns were given three members; and in that connection an interesting experiment was tried. With the object of providing for minority representation, the electors in the boroughs returning three members — the so-called three-cornered constituencies — were allowed to vote for only two candidates apiece. This resulted in diminishing the real representation of the borough, as compared with the rest of the country. If Manchester, for example, was Liberal, she would probably be represented by two Liberals and one Conservative. But in a party division the Conservative would neutralise one of the Liberals, so that Manchester would count for only one vote, and would, therefore, have only half as much weight as a much smaller borough with two members both belonging to the same party. The experiment gave so little satisfaction that it was afterward abandoned; and it is chiefly interesting to-day because the effort to organise a large party majority so as to compass the election of all three members gave rise to the Birmingham Caucus, whose birth and whose progeny will be described in a subsequent chapter. Except for the

[1] Scotland obtained eight additional members, and Ireland five.

few three-member constituencies, and a much larger number of boroughs having only a single seat, the constituencies still returned two members apiece; and this continued to be the rule until the third and last of the great measures of parliamentary reform.

The Reform Act of 1885.

The Redistribution Act of 1885, although, like all English measures of reform, to some extent a compromise between the old ideas and the new, rested upon the principle of equal electoral districts each returning a single member. The proportion of one seat for every 54,000 people was roughly taken as the basis of representation; and in order to adapt the principle to the existing system with the least possible change, boroughs with less than 15,000 inhabitants were disfranchised altogether, and became, for electoral purposes, simply a part of the county in which they were situated. Boroughs with more than 15,000 and less than 50,000 people were allowed to retain, or if hitherto unrepresented were given, one member; those with more than 50,000 and less than 165,000, two members; those above 165,000 three members, with an additional member for every 50,000 people more. The same general principle was followed in the counties.[1]

The boroughs that had hitherto elected two members, and were entitled to the same number under the new scheme, remained single constituencies for the election of those two members. Of these boroughs there are twenty-three,[2] which, with the City of London, and the three universities (Oxford, Cambridge, and Dublin), makes in all twenty-seven cases where two members are elected together. All the other constituencies are single-member districts, a result which was brought about by a partition of the counties, of boroughs with more than two members, and of the new boroughs with only two members, into separate electoral divisions, each with its own distinctive name.

[1] In several cases small Scotch counties are combined in pairs for the election of a single member, but this antedated the Act of 1885.

[2] Whereof twenty are in England, and one each in Wales, Scotland, and Ireland.

It may be interesting to note that the Reforms of 1832 and 1867 did not change the total number of members of the House, but merely redistributed the existing 658 seats. By the disfranchisement, after 1867, for corrupt practices, of four boroughs returning six members, the number was reduced to 652; and the Reform Act of 1885 increased it to 670, where it has since remained.

Inequalities in Representation.

The distribution of seats under the Act of 1885 was only a rough approximation to equal electoral districts; and in time it has become far less close, until to-day the difference in the size of the constituencies is very great. The smallest is the borough of Newry in Ireland, which had at the census of 1901 a population of only 13,137; or, if we leave Ireland aside on account of its peculiar conditions, the smallest in Great Britain is the city of Durham with a population of 14,935; while the largest is the southern division of the County of Essex, with 217,030 inhabitants; so that the largest constituency to-day is nearly fifteen times as populous as the smallest.[1] Nor are the inequalities confined to extreme cases; for they exist in lesser degree throughout the electoral body, many of the constituencies being two or three times as large as many others.

But unless one assumes that the exact equivalence of all votes is a fundamental principle of political justice, differences of this kind are of little consequence, provided one part of the community, or rather one set of opinions or interests, is not distinctly over-represented at the expense of another. Now, in Parliament an over-representation of this kind does exist; not, indeed, in regard to the different social classes or economic interests in the nation — for inequalities of that sort are not marked enough to be important — but between the different parts of the country.

[1] This is not because the county constituencies are essentially larger or smaller than those of the boroughs. The Borough of Wandsworth, for example, had, in 1901, a population of 179,877. These figures are taken from single-member constituencies; for it so happens that the two-member boroughs, when their population is divided by two, are neither among the largest or the smallest. Com. Papers, 1905, LXII., 333 *et seq.*

Over-Representation of Ireland.

Some parts of Great Britain have grown very rapidly, while the population of Ireland has actually diminished during the last half century; and the result is that whereas in the United Kingdom as a whole there is now, on the average, one member of Parliament for every 62,703 people, England has only one for every 66,971; and Ireland one for every 44,147. If a redistribution of seats were to be made in strict proportion to population, Ireland would therefore lose thirty members, and England would gain about as many, while Scotland would gain one seat, and Wales would lose three.

The question of the proportional representation of England and Ireland is a burning one, because the parliamentary system cannot work well unless one party has a majority which can give to the ministry a stable support. But eighty of the Irish members are Nationalists, who do not belong to either of the great parties, and may at any general election acquire a balance of power, and cause confusion in politics, as they did after the election of 1885. The loss of twenty-five seats, which they would suffer by a reduction of the Irish representation, would materially lessen that danger. The Conservative government was constantly urged by its supporters to make the transfer of seats from Ireland to England, and was actually preparing to do so at the time it resigned in 1905. On behalf of Ireland it was argued that this would be a violation of the Act of Union, which was in the nature of a treaty, and allotted to Ireland one hundred members in the House of Commons.[1] On the other hand the advocates of the policy replied that the terms of the Act of Union cannot be forever binding under a change of circumstances; they referred to the fact that in 1868 the Church of England was disestablished in Ireland, notwithstanding the provision in the Act for its perpetual establishment there;[2] and they said that conditions had so changed as to justify a redistribution of seats. The Irish,

[1] 39–40 Geo. III., c. 67, Art. 4.
[2] *Ibid.*, Art. 5.

however, claim that the great bulk of their people wanted disestablishment, and that Ireland could waive provisions made in her behalf; but it may be urged that the provision about the Church was made for the benefit not of Ireland, or its people, but of a minority there.

The formation in England of new constituencies for the seats transferred would raise great practical difficulties. Even if it did not involve a general redistribution bill, it would necessitate changing many of the districts. Quite apart from the danger of incurring a charge of gerrymandering for party purposes, there would be a host of personal interests of members of Parliament to be considered. Each member affected would be anxious that the change should not make his seat less secure than before; and claims of this sort have peculiar weight in a country where, as in England, the sitting member has almost a prescriptive right to renomination by his party.

Effect of the English Method of Distributing Seats.

The English practice of rearranging the constituencies, and apportioning the representatives among them, only at long intervals, of treating a bill for the purpose as an exceptional measure of great political importance, instead of the natural result of each new census, has the advantage of preventing frequent temptations to gerrymander. But, on the other hand, it raises the matter of electoral districts to the height of a constitutional, and almost a revolutionary, question, preceded sometimes by long and serious agitation, and always fought over on party grounds. This is a perpetual difficulty, for the shifting of population, which must always be changing the ratio of representation, will from time to time make a redistribution of seats inevitable.

The Franchise.

The extension of the franchise was long a grave constitutional question also, but it has now been so nearly worked out that it can hardly be regarded in that light in future. Before the Reform Act of 1832 the franchise in the counties depended entirely upon the ownership of land, an old statute of 1429,[1] having confined the right of voting to

[1] 8 Hen. VI, c. 7.

forty-shilling freeholders; that is, to men who owned an estate of inheritance, or at least a life estate, in land of the annual value of forty shillings.[1]

In the boroughs the franchise was based upon no uniform principle, but varied according to the custom or charter of the borough. Sometimes it depended upon the tenure of land; and, since residence was by no means always necessary, it might happen that the voters did not live in the place, and there were even cases where members were returned to Parliament by boroughs that had no longer a single inhabitant. Sometimes the right belonged to the governing body of the town; sometimes to all the freemen; sometimes to all householders who paid local taxes; and in one place, at least, it extended to all the inhabitants. In these last cases the franchise was actually wider before the Reform Act of 1832 than it was afterward, so that although the act enlarged the electorate very much on the whole, and preserved the rights of all existing voters, it narrowed the franchise seriously for the future in a few places.[2]

Reform Act of 1832

Counties.

In the counties the Act of 1832 continued to treat the right to vote as dependent upon the tenure of land, although in some ways restricting and in others much more largely extending it. In order to prevent the manufacture of forty-shilling freeholders for electoral purposes, the act provided that a voter must have been in possession of his land for six months, unless it came to him by descent, devise, marriage or promotion to an office;[3] and, also, that if he held only a life estate he must either have acquired it by one of these methods, or must be in actual occupation, unless again it was of the clear yearly value of ten pounds.[4] On the other hand the act extended the right of voting in counties

[1] In Scotland the value of the land, if not of "old extent," had to be £400 a year. In Ireland an Act of 1829 had raised the limit of annual value to £10, to restrain the practice of manufacturing fagot voters on the eve of an election.

[2] In Ireland the borough franchise was multifarious as in England. In Scotland it was wholly in the hands of the councils of the royal burghs.

[3] 2–3 Will. IV., c. 45, § 26.

[4] *Ibid.*, § 18.

to persons entitled to copyholds, and leaseholds for sixty years, of the annual value of ten pounds; to leaseholds for twenty years of the value of fifty pounds; and to leaseholds of fifty pounds annual value without regard to the length of the term, if the tenant was in actual occupation of the land.[1]

Boroughs.

In the boroughs the Reform Act wrought a complete change. Except that it preserved the personal rights of living voters,[2] and retained the privileges of freemen in towns where they existed,[3] it swept away all the old qualifications,[4] and replaced them by a single new franchise based exclusively upon the tenure, or rather the occupation, of land. The new qualification was uniform throughout England, and included every man who occupied, as owner or tenant, a house, shop, or other building, worth, with the land, ten pounds a year. But while the franchise in the boroughs was thus based, like that in the counties, upon land, the effect was entirely different, and was intended to be so. It has been said that the framers of the act meant the county members to represent property, and the borough members to represent numbers. The boroughs, as will appear later, did not really stand for numbers, but the counties did certainly represent property, and that in spite of the Chandos Clause which admitted fifty-pound leaseholders and was resisted by the authors of the bill. The electorate in the counties consisted of the landholders with a few large farmers, while in the towns it comprised the great middle class.

Later in the same session acts of a similar nature were passed for Scotland[5] and Ireland;[6] and in fact it was the practice until 1884 to deal with the franchise in the three kingdoms by separate statutes.

[1] 2–3 Will. IV, c. 45, §§ 19, 20. The last provision was added during the passage of the bill, and is known from its proposer as the Chandos Clause.

[2] *Ibid*, § 33.

[3] *Ibid*, § 32; but freemen thereafter admitted could vote only if made such by birth or servitude.

[4] *Ibid.*, § 33. By § 31, 40*s*. freeholders retained the franchise in boroughs that are counties by themselves.

[5] 2–3 Will. IV., c. 65.

[6] *Ibid*, c. 88

Effect of the Act of 1832.

As the practice of keeping a register of persons entitled to vote at parliamentary elections did not begin until this time, it is impossible to say precisely how much the Act of 1832 increased the size of the electorate. But from returns made just prior to the passage of the Act,[1] it would appear that the number of borough electors in England and Wales was then about 180,000; whereas immediately after the Act had gone into effect it was 282,398.[2] The total increase in the borough electorate, which was the one chiefly affected, was therefore about 100,000, and a great part of this increase consisted of the voters in the large towns that had been given seats for the first time by the Act.

The new system was in no sense either democratic or proportionate to population. The average ratio of electors to population for the whole United Kingdom was about one in thirty; but the variation in different constituencies and different parts of the kingdom was very great. In the English and Welsh counties the ratio ran all the way from one in five in Westmoreland, to one in thirty-seven in Lancashire, one in thirty-nine in Middlesex, and one in sixty in Merioneth. In the English and Welsh boroughs it ran from nearly one in four in Bedford and Aylesbury, where practically all adult males were voters, to one in forty-five in the manufacturing towns. In Scotland even a smaller part of the population enjoyed the franchise. In the counties the ratio ran from one in twenty-four in Selkirk, to one in ninety-seven in Sutherland; and in boroughs or districts, from one in twenty in the Elgin district, to one in forty in that of Linlithgow. In the Irish counties it ran from one in fifty-eight in Carlow, to one in two hundred and sixty-one in Tyrone; and in the boroughs from one in nine in Carrickfergus and Waterford, to one in fifty-three in Tralee.

[1] Com. Papers, 1831–1832, XXXVI., 489.

[2] It is interesting to observe that of these, 108,219, or nearly two fifths were freemen, scot and lot voters, potwallopers and other persons whose ancient rights had been preserved. They belonged, of course, only to the old boroughs. Election Returns (Boroughs and Counties), Com. Papers, 1866, LVII., 215, p 8.

The proportion of members of Parliament to population was far more uneven still. As reformers at a later date were constantly pointing out, one half of the borough population of England was contained in sixteen boroughs, and elected only thirty-four members; the other half, numbering less than two and a half millions, still returning two hundred and ninety-three members; while the counties with eight millions of people returned one hundred and forty-four members. Thus it happened that less than one fifth of the population in England elected nearly one half of the representatives; and as these came from the boroughs it can hardly be said that the borough members represented numbers.[1]

Later Reform Bills.

Mr. G. Lowes Dickinson, in his "Development of Parliament during the Nineteenth Century," [2] has pointed out that while the framers of the Act of 1832 had not the least intention of introducing democracy, the measure itself could not have furnished a permanent settlement of the franchise, and was destined inevitably to lead to further steps in the direction of universal suffrage. The first step was a slight reduction, in 1850, of the amounts required for the qualification of voters in Ireland.[3] This was followed by a series of moderate English reform bills, which failed to pass the House of Commons.[4]

The Act of 1867.

In 1867 Disraeli, who had educated his reluctant party until it accepted the political need of extending the franchise, brought in a bill with elaborate safeguards against the predominance of the masses. Under the existing law a small fraction of the working classes had votes in the boroughs;[5]

[1] These figures, about the proportion of electors and members to population, are taken from a Report on Electoral Expenses, Com. Papers, 1834, IX., 263, App A [2] Pp 47 *et seq* [3] 13–14 Vic , c 69.

[4] In reading the debates on these bills a foreigner is often puzzled by the distinction between ratable value and clear yearly value. The latter is what is called gross estimated rental in the Rate Book, while the ratable value is supposed to be the net yearly value, and it is obtained by making a reduction from the gross, which varies from place to place, but is on the average about ten per cent.

[5] Of the borough electors in England and Wales 26 3 per cent belonged to the working classes; Com. Papers, 1866, LVII., 47, p. 5. In Scotland the proportion was 18.3 per cent. *Ibid.*, 805, p. 12.

and it was Disraeli's intention to admit a larger number of the more prosperous workingmen without giving them an overwhelming weight in the electorate. But the parliamentary situation was peculiar. The Conservative government, which had come into power only through the quarrels of its opponents, had not a majority in the House of Commons, and could not insist upon its own policy; while the Liberals were not under the sense of responsibility that comes with office. The result was that the bill was transformed by amendments, the safeguards proposed by the cabinet were swept away, and a far longer stride toward universal suffrage was taken than any one had expected.

In the counties the Act of 1867 [1] reduced the ten-pound qualification for owners and long leaseholders to five pounds, and created a new twelve-pound occupation franchise. But a far greater extension was made in the boroughs, where two new franchises were introduced. The most important of these was that of the "householder," whereby a vote was given to every man who occupied, as owner or tenant for twelve months, a dwelling-house, or any part of a house used as a separate dwelling, without regard to its value.[2] The other franchise admitted lodgers who occupied for the same period lodgings of the clear value, unfurnished, of ten pounds

[1] 30–31 Vic , c. 102

[2] One of the safeguards in the bill was the provision that householders must be separately rated for the relief of the poor, and must have paid their rates; and in order to insure personal payment by the householder, the Act forbade the common practice of rating the owner of dwellings in lieu of the occupier. But the practice saved the local authorities much trouble It enabled them to receive the rates in a single payment from the owner of a number of houses, instead of collecting small sums from many tenants; and they were in the habit of allowing a commission or rebate to owners who paid in this way

The convenience of the old practice was so great that in 1869 it was again permitted; and the Act (32–33 Vic , c. 41) also provided that such a payment by the owner should be deemed a payment by the occupier for the purpose of the franchise, thus sweeping away the safeguard of personal payment of rates.

The practice is called compounding for rates, and the tenant whose rates were paid by the landlord was the subject of fierce discussion under the name of "compound householder," although it was in fact the rate, and not the house or the holder thereof, that was compounded

a year.[1] In the course of the next session acts, in general similar, were passed for Scotland and Ireland.[2]

Its Effects.

From 1832 to 1862, in spite of the general gain in wealth, the electors had increased very little faster than the population; in England and Wales, indeed, the voters remained about one twentieth of the people,[3] while in Scotland they had risen only from one thirty seventh to one thirtieth.[4] But the Acts of 1867 and 1868 almost doubled the electorate. In the counties the voters, who numbered 768,705 just before those acts, were, by 1871, 1,055,467; while the borough voters increased from 602,088 to 1,470,956.[5]

The Act of 1884.

It was evident that the qualifications for voting could not long remain far wider in one class of constituencies than in another; that the franchise of the boroughs must, in time, be extended to the counties. This was done in 1884,[6] and the change more than doubled the county electorate. The franchise, therefore, is now substantially uniform throughout the United Kingdom, except that certain owners

[1] It will be observed that the £10 occupier differed from the householder in the fact that he might occupy any shop, warehouse, or other building, whereas the householder was qualified only by a dwelling-house On the other hand, the premises occupied by a £10 occupier must be of the clear yearly value of £10, whereas the householder was qualified without regard to the value of the house.

By the Act of 1867 the householder might occupy any part of a house used as a separate dwelling; while the £10 occupier must occupy a whole building. This difference was, however, done away with in 1878 by an act (41–42 Vic., c. 26, § 5), which provided that the occupation might be of any separate part of the building, if that part were of the yearly value of £10.

[2] 31–32 Vic., cc. 48, 49.

[3] They ran from a little less than one in twenty-one to a little more than one in twenty. *Cf.* Com. Papers. 1866, LVII., 215, 569

[4] *Ibid*, 643. The extension of the franchise in Ireland in 1850 nearly trebled the number of county voters there, in spite of the falling off in population.

It may be observed that the growth in registered voters is not an exact measure of the increase in the number of persons qualified for the franchise, because with the organisation of the political parties there has been a greater and greater effort to make every man register who is entitled to do so.

[5] Com Papers, 1872, XLVII., 395.

[6] 48–49 Vic., c. 3. The Act also extended the household qualification — both for counties and boroughs — to men who occupy a dwelling-house not as owners or tenants, but by virtue of their office or employment, provided the employer does not also occupy the house, the object of that proviso being to exclude domestic servants. This qualification is known as the "service franchise."

and leaseholders have a right to vote in counties, and that in some old towns the freemen still possess the suffrage. Inasmuch as most of the boroughs are included in counties, the occupier, householder, or lodger would be entitled on the same qualifying property to vote in both; and hence a man in a borough would have two votes at an election, while another man with the same qualification outside of the borough would have only one. To avoid this result it is provided that a man shall not be entitled to vote at an election for a county in respect of the occupation of a dwelling-house, lodging, land or tenement in a borough;[1] but he may vote in the county on account of the ownership of land in a borough which he does not occupy, or on account of land which he both owns and occupies if he occupies other land in the borough sufficient to qualify him there.[2]

The Existing Qualifications.

Although the franchise is now substantially uniform, it is not exactly the same for the different parts of the United Kingdom; nor is it by any means simple. The latest acts have not codified the law. It must still be sought in many statutes, whose provisions are so complicated, and often obscure, that they can be understood only by studying the interpretation put upon them by the courts. The reader who wishes to ascertain the law on a special point must refer to treatises upon the subject, such as Rogers on "Elections." It will be enough for our purpose to summarise the various franchises as they exist to-day.

Property.

There are two qualifications which are not universal. One of these, relating to property rights in land, applies only to counties, and to some extent to boroughs which are counties in themselves.[3] It confers the right to vote on

[1] 48–49 Vic., c. 3, 6; and see also 2–3 Will. IV., c. 45, § 24, and 30–31 Vic., c. 102, § 59.

[2] Rogers on Elections, I., 64–66 The references to Rogers are to the 16th Ed. of Vol. I., to the 17th Ed. of Vol. II.

[3] The amount required for the qualification of freeholders in boroughs which are counties is not exactly the same as in counties; and the leasehold qualifications do not extend to them. In England there are now only four boroughs which retain these rights: Bristol, Exeter, Norwich, and Nottingham. Rogers on "Elections," I., 160 *et seq.*

owners of land[1] of forty shillings yearly value, who hold an estate of inheritance; or who hold an estate for life, and are in actual occupation of the land, or have acquired it by some means other than purchase, or whose land is of five pounds clear yearly value.[2] Under this franchise come, also, the leaseholders of land of five pounds yearly value if the original term was not less than sixty years, and fifty pounds value if the term was not less than twenty years.[3] The corresponding qualifications for Scotland and Ireland are slightly different in their conditions and in the values required.

Freemen.

The other franchise which is not universal is that of freemen in those towns where they had a right to vote before 1832. The privilege still exists in a number of old boroughs, but, except in the City of London, is confined to freemen who have become such by birth or apprenticeship.

Occupiers, Householders, and Lodgers.

The three remaining franchises are universal, though not precisely uniform. They are those of the ten-pound occupiers, the householders, and the lodgers. The first of these gives the right to vote to a man who occupies, as owner or tenant, any land or tenement of the clear yearly value of ten pounds. The second confers the right on a man who occupies, as owner or tenant, any dwelling-house, or part of a house used as a separate dwelling, without regard to its value. The qualification extends also to men who are not owners or tenants, but who occupy by virtue of an office, service, or employment, a dwelling-house in which the employer does not himself reside. The third of these franchises confers the right to vote upon a man who occupies lodgings of the value, unfurnished, of ten pounds a year.

The application of these franchises to particular cases has

[1] Rent charges, whether arising from the commutation of tithes or otherwise, are realty, and qualify a voter as land.

[2] If the land is copyhold or other tenure, it must in any case be of the yearly value of £5.

[3] The £50 leaseholders admitted by the Chandos Clause in the Act of 1832 were required to occupy the land, and are now included in the £10 occupation franchise.

given rise to a great amount of litigation, and in particular the courts have found it almost impossible to distinguish between a householder and a lodger. For the general reader, who is concerned with the study of the English government, and not with the effort to get the largest possible number of party members registered, such questions have little interest; but there are two or three matters that ought to be noted, because they have an important bearing on the actual size of the electorate.

Period of Occupation.

One matter of political consequence relates to the period of occupation required. Owners of land in counties, who have acquired it by descent, marriage, promotion to an office, etc., are not required to have owned it for any period. All other owners must have held the title for six calendar months before the 15th of July preceding the registration; and all other voters, except freemen, must have been in occupation of the qualifying premises, or some other premises within the same constituency, for one year preceding the 15th of July.[1] This, of course, has the effect of disqualifying entirely persons whose occupation has not been continuous for the whole of that year, and as the register does not take effect until the 1st of January following, and then remains in effect a whole year, voters who have moved to another part of the country within eighteen months after their year of occupation can vote only by a journey back to their former place of abode.

Residence

A second matter that must be noticed is the question of residence. Before the Reform Act of 1832 the qualification for counties was based upon ownership; that for boroughs varied very much; but in those places where the franchise was broad it was based mainly upon residence. This distinction has, to some extent, persisted. In general it may be said that for English and Scotch counties, and in Ireland for both boroughs and counties, residence is not required, except so far as the occupation of a dwelling-house or lodging may involve residence and this is not necessarily the case.[2]

[1] Rogers, I., 61–63, 125. [2] *Ibid.*, 27, 66.

In English boroughs a voter must have resided for six calendar months previous to the 15th of July in the borough, or within seven miles thereof;[1] and in Scotland he must have resided there for a whole year.

The requirement of residence does not, however, imply quite so much as might appear, because, according to English law, the possession of a chamber in which a man occasionally sleeps, and to which he can return at any time, is enough to constitute residence; and, hence, he may have a residence in more than one place.[2] In the counties, therefore, residence is unnecessary, and even in the boroughs the requirement of residence does not limit a man to voting in a single constituency. The importance of this will shortly be pointed out.

Payment of Rates.

The third matter to be noticed is the question of rating. We have already observed that at one time the personal payment of rates by the voter was much discussed, and was regarded as an important guarantee of character.[3] In England poor rates are assessed upon the occupiers, not the owners, of the property, and it is still provided that all voters whose qualification depends upon the occupation of land (except lodgers, who are not from the legal point of view occupiers) must have been rated and must have paid their rates.[4] But this means only that the rates must have been paid on their behalf; and the practice of compounding by the landlord for small tenements is so universal that practically the landlord pays the rates in almost all cases where the occupiers would be likely to fail to do so. In England, therefore, the requirement that the rates must have been paid has little or no effect on the electorate. In Scotland, on the other hand, this is not the case. There the rates are divided between the owner and the occupier, and the practice of compounding does not exist. The

[1] Rogers, I., 148–49, 162. In the City of London he may reside within twenty-five miles.

[2] *Ibid.*, 149–50.

[3] Page 207, note 2, *supra.*

[4] Rogers, I., 27, 30, 126 *et seq*, 142 *et seq.*

result is that many occupiers are omitted from the parliamentary register every year on account of their failure to pay rates. For the whole of Scotland the number reaches fifty thousand.[1]

Actual Extent of the Suffrage.

A comparison of the number of electors on the register with the total population shows that England is not very far to-day from manhood suffrage. The ratio is about one in six,[2] whereas the normal proportion of males above the age of twenty-one years (making no allowance for paupers, criminals, and other persons disqualified by the laws of all countries), is somewhat less than one in four. The only classes excluded from the franchise are domestic servants, bachelors living with their parents and occupying no premises on their own account, and persons whose change of abode deprives them of a vote. Now, these are not necessarily the worst political elements in the community. No doubt the provision requiring twelve months' occupation excludes vagrants, but it also excludes excellent artisans who migrate with changes of trade, and other persons whose calling compels them to move from place to place. In 1902 a school-teacher, in a plaintive letter to *The Times*,[3] described how he had never been able to vote at a general election. He had graduated with honours from his university, was nearly forty years old, married, and prosperous; but his very success in his profession, by involving changes of residence, had always cost him the right to vote. It is a common saying that many respectable people are disfranchised from this cause, although the slums, which move little, are not.

The present condition of the franchise is, indeed, historical rather than rational. It is complicated, uncertain, expensive in the machinery required, and excludes a certain number of people whom there is no reason for excluding, while it admits many people who ought not to be admitted

[1] Com. Papers, 1898, LXXX , 755
[2] It is slightly less in Scotland than in England and Ireland.
[3] Aug. 30.

if any one is to be debarred. But the hardship or injustice affects individuals alone. No considerable class in the community is aggrieved, and neither political party is now anxious to extend the franchise. The Conservatives are not by tradition in favour of such a course, and leading Liberals have come to realise that any further extension would be likely to benefit their opponents.

Plural Voting.

Although there is no urgent demand for a closer approach to manhood suffrage, there has long been a strong desire to restrict each man to a single vote. That a man should have a vote in two different constituencies is as clearly a breach of political equality as if he had two votes in the same place; and for this reason, as well as from the fact that most of the men who have more than one vote are Conservatives, a demand for the abolition of plural voting has been for many years an article in the Liberal programme. So far as the franchise is not dependent upon residence there is nothing to prevent a man from voting in every constituency where he possesses a qualification.[1] Now for the counties and the universities residence is not necessary; and even in the boroughs, where it is required, plural voting is restrained only in part, because a man may have more than one residence, and because residence within seven miles of the borough is enough, so that the men who carry on their business in the town and live in the suburbs are qualified in the borough by reason of their offices or workshops, and in a suburban borough or the county by reason of their dwellings.

It is not easy to determine how many persons are entitled to vote in more than one constituency, or how much they affect the result of elections. In a return of resident and non-resident voters made to Parliament in 1888,[2] it appeared,

[1] A man cannot vote in more than one division of the same borough. 48–49 Vic., c. 23, § 8. But there is no such limitation in the case of divisions of a county. *Ibid*, § 9 Metropolitan London is not a single borough, but a collection of boroughs, several of which contain more than one division, and hence the effect of this provision is quite irrational there.

[2] Com. Papers, 1888, LXXIX., 907.

as was natural, that the proportion of the latter was greatest among the freeholders in the counties, nearly one quarter of whom were non-residents. In all there were about two hundred thousand non-resident voters in England and Wales. This is between four and five per cent. of the total electorate, which does not seem an important fraction; but it fails to express the full effect of plural voting, because it does not include the persons who have more than one residence, or who live outside the limits of a borough but within seven miles of it, or those again who reside in a borough that forms part of a county and are qualified to vote in both. Moreover, the men with more than one vote, although a small proportion of the whole electorate of the kingdom, are quite numerous enough to turn the scale in a close constituency.

One of the first acts of the new Liberal ministry in the session of 1906, was to bring in a bill to abolish plural voting altogether. This could not be done simply by making residence a condition of the franchise, because in England a man may have more than one residence. The measure provided, therefore, that the voter must elect in which of the places where he possessed a qualification he would be registered, and forbade him to vote anywhere else. The bill was passed by the House of Commons, but rejected forthwith by the Lords.

Number of Electors by Classes.

It is interesting to observe the number of voters registered under the different franchises. In 1906 the figures for the United Kingdom were as follows: —

Owners	Occupiers	Lodgers	Freemen, etc.	Univs.	Total
579,827	6,357,817	226,191	57,728	45,150	7,266,706

By far the greater part of the voters are registered as occupiers, a class which includes both the householders and the ten-pound occupiers. The table contains a surprisingly small number of lodgers; and this is due to the fact that whereas the lists of owners and freemen are virtually permanent, and the list of occupiers is made up by the over-

seers of the poor from the rate-book,[1] a lodger alone must make every year a personal application to be registered.[2] The result is that no one seeks to be enrolled as a lodger if he has any other franchise; and no doubt many lodgers, who have no other qualification, neglect to register at all.

Disqualifications for Voting.

A characteristic, although not in itself a very important peculiarity of the English electoral law, is the rule depriving peers of the right to vote;[3] and in fact the Commons still profess to be highly jealous of any part taken in electoral campaigns by members of the House of Lords.[4] In other respects the disqualifications for voting in England are now much the same as in other countries. There are the usual rules excluding aliens, infants, idiots, paupers, convicts, and persons who have been guilty of corrupt practices at elections. Formerly there were also provisions excluding large classes of public officers, but these have been repealed, except in the case of the Irish police, of certain officers directly concerned in the conduct of elections, and of persons employed and paid by the candidates.

Women cannot vote for members of Parliament, although they possess the franchise for almost all local elections. This question has of late aroused much interest. Although both of the political parties have at times adopted resolutions in favour of woman suffrage, the leading men in both are divided about it, and the Labour Party may be said to be the only political organisation of men in England that want it heartily. But many women are agitating for it very vigorously, and the most enthusiastic of them have sought martyrdom by refusing to pay taxes, by creating a disturbance in the ladies' gallery of the House of Commons, and by getting arrested for speech-making in the

[1] Where the landlord compounds for the rates he is required to give to the overseers a list of the actual occupiers. Rogers, I., 130.

[2] Rogers, I., 265, 266, 268.

[3] An Irish peer actually sitting for a constituency in Great Britain can vote.

[4] They adopt every year a sessional order that for a peer "to concern himself in the election of members" is "a high infringement of the liberties and privileges of the Commons."

Palace Yard. They are known as Suffragettes, and evidently have faith in the old adage that Parliament never redresses grievances until they are brought forcibly to its notice. Women will no doubt ultimately obtain the suffrage if they are substantially united in wanting it, and the principle is certainly making great headway among them in England to-day.

Registration.

It is not enough that a man possesses the requisite qualifications for the franchise. His name must also be upon the register of voters for the constituency, and the process of compiling the register is cumbrous and expensive. This is due in part to the complicated nature of the various franchises, which may involve intricate questions of law and of fact, and partly to the practice of leaving the duty of proving claims and objections mainly in the hands of private individuals. The lists are made up in the first instance by the overseers of the poor in each parish; but any person whose name is omitted may claim to have it inserted, and any person whose name is on the lists may file an objection to any other name which he thinks ought not to have been included. These claims and objections are heard in September by the Revising Barrister — a barrister of not less than seven years' standing, appointed for the purpose by the judge in whose circuit the constituency lies, and paid by the Treasury. It is his duty to revise the register by adding the names of persons who prove their claims, and by striking off names improperly inserted. In doing this he is not limited to names against which objections have been filed, for he has a right to make inquiries and summon witnesses on his own motion.[1] In practice, however, the cases are prepared beforehand, and argued before him, by the local agents of the two political parties, whose object is to get the names of their partisans on to the register and keep off those of their opponents.

[1] For the duties of the Revising Barrister, see Rogers, I., 297–336. From the decision of the Revising Barrister an appeal lies on questions of law to the King's Bench Division of the High Court of Justice.

The process is repeated every year, and the work and cost involved are considerable, the money being provided by the candidate for Parliament, or by means of subscriptions to the party funds. This is one of the things that makes elections expensive; and it helps to explain the desire of each party in a constituency to have a candidate at all times, even when an election is not impending. In Scotland registration is far less of a burden upon the parties, and costs the candidate very little, because the qualifications of all the voters, except the lodgers, are investigated by a public officer, called the assessor, and a corps of assistants, with the result that there are few claims or objections for the political agents to contest. There seems to be no self-evident reason why this should not be done everywhere, and for every class of voter.

CHAPTER X

THE HOUSE OF COMMONS

Electoral Procedure

ALL elections to Parliament, whether general elections following a dissolution, or the so-called by-elections resulting from an accidental vacancy, take place in pursuance of a writ under the Great Seal, issued from the Crown Office, and directed to the returning officer of the constituency. In all counties, and in Scotch and Irish boroughs, the returning officer is the sheriff or his deputy. In English boroughs he is the mayor.

Procedure at Elections.

Before the Ballot Act.

Until 1872 candidates for Parliament were nominated *viva voce* at the hustings, — a temporary platform erected for the purpose. If more names were proposed than there were seats to be filled, the election was said to be contested, and a show of hands was called for. Many of the persons present were probably not entitled to vote, but that was of no importance, because the show of hands was merely formal, and a poll was always demanded. A time for taking it was then fixed, extending over a number of days, during which the electors declared their votes publicly. This gave a chance for bribery, for the intimidation of voters, and for disturbances of various kinds, not seldom deliberately planned. The disorderly scenes that accompanied an election have often been described both in histories, and in novels such as "The Pickwick Papers" and "Coningsby," written by men familiar with the old polling days. In 1872 the method of conducting elections was changed by the Ballot Act,[1] which introduced secret voting, and made the procedure more orderly in many other respects.

[1] 35–36 Vic., c. 33.

Existing Procedure.

Nomination.

Nominations are now made in writing by proposer, seconder, and eight others, all registered voters. If only one person is nominated for a seat, the candidate, or candidates if it be a two-member constituency, are at once declared elected; nor is this a hypothetical case, because, for reasons that will be described hereafter, usually more than one fourth, and sometimes more than one third, of the seats are not contested at a general election.

Election Days.

If, on the other hand, the election is contested, a day is fixed for the poll; for voting is now confined to a single day in each constituency. It is not the same day in all of them, on account of the latitude still given to the returning officer. He has a right, within certain limits which are different for counties and boroughs, to determine how many days shall elapse between his receipt of the writ and the election (that is, the nomination) and how many between the election and the poll.[1] The result is that in boroughs the voting may take place anywhere from four to eight days after the receipt of the writ; and in counties anywhere from six to seventeen days. Now, as the writs are sent out by mail at the same time, the voting at the general election covers a period of more than two weeks.

It might be supposed that such a power to arrange the order of elections would be used by the returning officer to help his own party, and this is said to be done, not systematically over the country, but in particular places. The multiplicity of election days has another and more important political effect; for it gives time to the out-voters, as the non-residents are called, to get from one constituency to another, and thus it facilitates voting in more than one place. For this reason the Liberal party — which

[1] He must, within a day after receiving the writ in boroughs and two days in counties, give notice of the day of election. This must be not less than three days in boroughs, or four in counties, after the notice is given; and must be in boroughs within four days of the receipt of the writ, and counties within nine days. If, on the day fixed for nomination, the election is contested, he must appoint for the polling a date falling within the next three days in boroughs, and not less than two nor more than six days distant in counties.

is opposed to plural voting — has demanded in its platform that all elections should take place on the same day. To this it has been objected that the change would, by lengthening the electoral period in the boroughs, increase the fatigue and cost to borough candidates; and in view of the rate at which labour and money are expended on such occasions the objection is not altogether without foundation.

Method of Voting.

For the convenience of voting the constituency is divided into a number of polling districts; and when an election is contested, the vote is taken in these districts between eight in the morning and eight in the evening of the appointed day. The method of voting under the Australian system of secret ballot, which was adopted in 1872, need not be described, because in some form its use has become well-nigh universal in civilised countries.[1] It may be noted, however, that the Ballot Act has never been extended to the universities, where voting is still done orally, or by means of a voting paper tendered at the polls by another elector to whom it has been intrusted.[2] In fact most of the university votes are given by proxy — a practice which was introduced in 1861,[3] and would be abolished by the ballot.

Legislation against Corruption

Before the Reform Act of 1832, huge sums of money were sometimes expended at parliamentary elections, and bribery and corruption were rife. Nor did the disfranchisement of rotten boroughs, and the extension of the franchise, by any means put an entire stop to the practice. Even as late as 1880 the special commissions appointed to inquire into the conduct of a number of boroughs, for which election petitions had been filed, found a bad state of affairs.[4] In Macclesfield

[1] "In one only of the three kingdoms the ballot helped to make a truly vital difference; it dislodged the political power of the Irish landlord. In England its influence made for purity, freedom, and decency, but it developed no new sources of liberal strength." Morley, "Gladstone," II., 370. But the ballot is also said to have slowly strengthened the Liberal party in English rural districts by shielding the agricultural labourer.

[2] 35–36 Vic., c. 33, §§ 27, 31. Rogers, II., 118.

[3] 24–25 Vic., c. 53.

[4] Com. Papers, 1881, XXXVIII.–XLV.

and Sandwich about half the voters had been guilty of bribery and other corrupt practices;[1] and as a result of the investigation those two boroughs, which were decidedly the worst, were entirely disfranchised. A series of attempts have been made to root out the evil by legislation. They have been more and more elaborate, and reached their culmination in the Corrupt and Illegal Practices Act of 1883.[2] These laws seek to restrain improper conduct at elections by several methods; first, by forbidding altogether certain classes of acts, which either interfere directly with the purity of elections, or have proved a source of inordinate expense; second, by limiting the total amount that can be spent, and the purposes for which it can be used; third, by requiring that disbursements shall be made through one recognised agent, who is obliged to return to the government a full account thereof; and, fourth, by imposing for violation of these provisions penalties, political and other, inflicted not only by criminal process, but also summarily by the tribunal that tries the validity of a controverted election.

Corrupt Practices.

The most demoralising acts forbidden by law are known as corrupt practices. They are bribery, treating, undue influence, and personation.[3]

Bribery.

Bribery at elections is, of course, criminal in all countries; and in England the offence is defined in great detail, for just as there are seven recognised kinds of lies, so the English statutes describe seven distinct methods by which bribery can be committed.[4] It is unnecessary for anybody who is not engaged in electoral work to remember these; and it is enough here to point out that they include a promise, or endeavour, to procure any office or employment for a voter in order to influence his vote.

Treating.

Treating differs from bribery in the fact that bribery involves a contract for a vote, express or implied, whereas the person who treats obtains no promise from the voter,

[1] Com. Papers, 1881, XLIII., XLV., and schedules to these reports.
[2] 46–47 Vic., c. 51.
[3] *Ibid.*, § 3.
[4] 17–18 Vic., c. 102, §§ 2, 3.

and relies only upon his general sense of gratitude. But, as one of the judges remarked in the trial of an election petition some years ago, it is difficult in the large constituencies of the present day to bribe successfully, while a small amount of treating is sufficient to procure a great deal of popularity.[1] This is particularly true in England, where the habit of treating is made easy by the existence of sharp class distinctions. Treating was forbidden as long ago as the days of William III., and it is now defined [2] as giving, or paying the expense of giving, "any meat, drink, entertainment or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote."

Undue influence is defined by the Act of 1883 [3] as making use, or threatening to make use, of any force, violence, or restraint, or inflicting, or threatening to inflict, any temporal or spiritual injury on any person in order to influence, or on account of, his vote; or by duress or fraud impeding the free exercise of the franchise by any man. These provisions cover threats by an employer to discharge workmen,[4] and the denunciation by priests of spiritual penalties on political opponents.[5]

Undue Influence.

Personation it is unnecessary to describe.

All these corrupt practices are criminal offences punishable by fine or imprisonment, and by the loss of political rights for seven years.[6] What is more important for our purpose, they are liable to cost the member his seat; for if upon the trial of a controverted election the court reports that any corrupt practice has been committed by the candidate, or that bribery or personation has been committed with his knowledge and consent, his election is void, and he is forever incapable of being elected to Parliament by that

Corrupt Practices avoid the Election.

[1] Hexham Div., 4 O'M. & H., 143, at 147. After the general election of 1906 a member was unseated on this ground. Bodmin Div., 5 O'M & H, 225.

[2] 46–47 Vic, c 51, § 1

[3] *Ibid.*, § 2.

[4] Rogers, II, 316–19

[5] So. Meath & No. Meath, 4 O'M. & H, 130, 185.

[6] 46–47 Vic., c. 51, § 6.

constituency.[1] Moreover, if the election court reports that a corrupt practice has been committed by his agents, although he may be personally quite innocent, his election is void, and he is incapable of being chosen by that constituency for seven years.[2]

But only if done by the Candidate or his Agents.

It will be observed that in order to set aside an election, the corrupt practice must be brought home to the candidate, personally or through his agents. In accordance with the older traditions of English public life, the election is regarded as the affair of the candidates alone. The action of party organisations, or other bodies, is not taken into account,[3] and their conduct has no effect upon the result, unless their relations with the candidate have been such as to make them his agents. So long as a political association is urging the general interests of the party, rather than supporting a particular candidate, he is not responsible for their acts. It has been held, for example, that a candidate is not responsible for treating by such an association, although he was present and spoke at the meeting where it was done, if it was got up by them for their own purposes, and not to assist in his election.[4] It has been held, also, that a payment by a party organisation of bills for music and beer at public meetings, previous to an election, and even the candidate's subscription to their funds, need not be included in his election expenses, unless the organisation was a sham supported by him.[5]

In all such cases it is difficult to prove agency to the satisfaction of an election court. The time must come in any election, however, when the local party association by active

[1] 46–47 Vic , c. 51, § 4. [2] *Ibid.*, § 5.

[3] In the return of election expenses the candidate and his agent must declare that to the best of their knowledge or belief no person, club, society, or association has made any payment in respect to the conduct of the election. *Ibid* , Sched 2. But this merely requires them to take care to be ignorant of any such payment.

[4] Cockermouth Div , 5 O'M. & H., 155. St. George's Div., 5 O'M. & H., 89, at 97–98. In the first of these cases the treating was done by a Liberal Unionist Association; in the second by an Irish Unionist Alliance.

[5] Lancaster Div., 5 O'M. & H., 39, at 42–43.

assistance to the candidate becomes his agent.[1] But this is not true of other bodies less directly connected with the party organisation, which are, nevertheless, in the habit of doing a great deal of work at elections. Thus it has been held that a Licensed Victuallers Association, having a distinct and direct interest in the election, did not become the agent of the candidate, although it played an important part in the campaign.[2] That this leaves a door wide open for corrupt influence is self-evident.

General Corruption.

To the general principle that a corrupt practice must be brought home to the candidate there is one exception. If bribery, treating, personation, intimidation, or undue influence, whether physical or ecclesiastical, has been general in the constituency — that is, so extensive that the voting could not have been the free expression of the will of the electorate — the result of the election is invalid at common law, although neither the candidate nor his agent is directly implicated.[3]

Distinction between Corrupt and Illegal Practices.

Besides corrupt practices, certain other acts are forbidden under the name of illegal practices; but the provisions relating to them are mainly designed to restrain the expense of elections, and will be described under that head. The essential distinction between the two practices is much like that which lawyers were formerly in the habit of drawing in the case of crimes between *malum prohibitum* and *malum in se.* A corrupt practice involves moral turpitude, and it is necessary to prove a corrupt intent.[4] A gift to a voter, for example, is not bribery unless it is made for the purpose of influencing his vote; but an illegal practice is simply an act forbidden by statute, and as such — in the case, for instance, of a payment of expenses above the maximum fixed by law — is illegal without regard to the motive with which it is done. For this reason a corrupt practice cannot be

[1] Walsall, 4 O'M. & H., 123, per Pollock B, at 124.
[2] *Ibid.*
[3] Rogers, II., 293, 308, 325–329, 335.
[4] A false statement in the return of election expenses, if made knowingly, is a corrupt and not illegal practice. 46–47 Vic., c. 51, § 33 (7).

excused,[1] while the election court may grant relief from the consequences of an illegal practice where it is trivial in itself, and was committed without the connivance of the candidate who took all reasonable means to prevent it; or where, although the direct act of the candidate or his election agent, it arose from inadvertence, accidental miscalculation, or other reasonable cause; or, finally, where a failure to make a return of expenses has been due to illness.

Practices Tending to Lower the Tone of Elections.

Some acts which, without involving great expense, tend to lower the tone of elections, are treated as illegal practices, and forbidden by statute. Such are the use for committee rooms[2] of premises where liquor is sold, and the furnishing of voters with cockades, ribbons, or other marks of distinction,[3] a proceeding which is believed to engender broils.

Restraint of Expenditure.

Other acts apparently harmless are prohibited in order to prevent extravagance. The most curious example of this is the provision forbidding the use of hired carriages to take voters to the polls.[4] Such a rule may seem unnecessary; but before the Act of 1883, by which it was enacted, thousands of pounds were said to have been spent in certain cases for the conveyance of electors. The Act does not forbid the use of carriages, but only of hired ones; and the result is that the private carriages and motor cars of wealthy partisans, sometimes blazoned with ancient armorial bearings, are placed at the disposal of the candidate. In fact in estimating the chances of an election one constantly hears that the Conservative has the advantage of a larger number of carriages.

Authorised Expenses.

But by far the most systematic effort to restrain extravagance at elections is found in the provisions that prescribe on the one hand the objects of expenditure, and on the other its total amount. A schedule to the Act of 1883 enumer-

[1] Here, again, there is an exception; for relief may be given in the case of treating or undue influence committed by an agent, other than the election agent, if trivial in itself, and if the candidate and his election agent did not connive at it, but took all reasonable means to prevent corrupt and illegal practices. 46–47 Vic., c. 51, § 22.

[2] *Ibid.*, § 20.

[3] 17–18 Vic., c. 102, § 7.

[4] 46–47 Vic , c. 51, §§ 7, 14.

ates the objects for which expenses may be legally incurred, and the first part of the schedule deals with the persons who may be employed. These are: one election agent;[1] a polling agent to watch the voting at each polling station; and clerks and messengers in proportion to population, the allowance being somewhat more liberal in counties than in boroughs on account of the greater area of the constituency. The act provides that, except as authorised by this schedule, no person shall be employed for pay;[2] and that no paid employee shall vote.[3] It may be noticed that among the list of persons who can be employed, canvassers are not mentioned, and hence the use of paid canvassers is illegal.[4] Now, as canvassing, that is the personal solicitation of votes, is by far the most effective part of the work done at an election, each candidate is always assisted by an army of volunteers. Wherever possible he is also helped by the agents of other constituencies, or of distinct associations, who, not being paid by him, and in fact, receiving no additional pay for their services on this occasion, are not within the prohibition of the law. Employment.

The other expenditures authorised by the schedule are printing, advertising, stationery, postage, and the like; public meetings; one committee room for every five hundred electors;[5] and miscellaneous expenses not exceeding two hundred pounds for matters not otherwise illegal. The candidate is also allowed to incur personal expenses for travelling and hotel bills;[6] and, finally, there are the charges of the returning officer for the cost of erecting polling booths, the payment of persons on duty thereat, and the other expenses attending the election.[7] These last charges are divided between the candidates and they are by no means Other Expenses.

[1] And in counties a sub-agent for each polling station.
[2] 46–47 Vic., c 51, § 17
[3] *Ibid.*, § 36 and Sched I., Part 1 (7).
[4] Rogers, II, 156, 160, 350.
[5] In counties one central committee room, and in each polling district one committee room for every five hundred voters.
[6] 46–47 Vic., c. 51, § 31.
[7] 38–39 Vic., c 84; 48–49 Vic., c. 62.

small, as may be seen from the fact that at the general election of 1900 they amounted, for the whole United Kingdom, to £150,278 10*s.* 11*d.*, or nearly one fifth of the whole expense incurred.[1] The National Liberal Federation has, indeed, repeatedly urged in its programme that such charges ought to be defrayed by the state, instead of being a burden upon the candidates.

Maximum Expenditure.

In order to reduce the cost of elections, Parliament has not only enumerated the objects for which money may be used, but has also set a maximum limit to the amount that may be spent.[2] In the case of boroughs this is fixed at three hundred and fifty pounds if the registered electors do not exceed two thousand, with an additional thirty pounds for every thousand electors above that number. In the counties the scale is somewhat higher, six hundred and fifty pounds being allowed where the registered electors do not exceed two thousand, with sixty pounds for each thousand electors more.[3] These sums do not, however, represent the total cost, for they include neither the personal expenses of the candidate to an amount of one hundred pounds, nor the charges of the returning officers.

Penalties for Illegal Payments.

The rules in regard to election expenses are furnished with sanctions of the same nature as those attached to corrupt practices, although the penalties are less severe. In addition to the criminal punishments that may be inflicted, it is provided that a candidate, or his election agent, who violates those rules shall be guilty of an illegal practice;[4] and that if a candidate is guilty, personally or by his agents, of an illegal practice (from the consequences of which he has not been relieved as heretofore described) he shall lose his seat, and cannot be elected by the same constituency during the life of that Parliament.[5]

[1] Com. Papers, 1901, LIX., 145, p. 84.
[2] 46–47 Vic , c 51, Sched. I, Part IV.
[3] In Ireland the limit both for boroughs and counties is somewhat lower.
[4] 46–47 Vic., c. 51, § 21.
[5] If the offence was committed with his knowledge and consent, the incapacity continues seven years. *Ibid.*, § 5.

The Election Agent

It is one thing to make elaborate regulations about election expenses, and it is quite a different thing to insure their observance. The device adopted for this purpose in England is that of requiring each candidate to appoint an election agent, who is responsible for the disbursements. Except for the personal expenses of the candidate, to an amount not exceeding one hundred pounds, no payment of election expenses can be made by the candidate, or by any person on his behalf, except through the election agent,[1] and no contract for any such expenses is valid unless made by him.[2] Within thirty-five days after the election the agent must give to the returning officer an account of all his payments, and of all sums that he has received from the candidate or any one else, for the purposes of the campaign; and the candidate must certify that the account is true to the best of his knowledge and belief.[3]

The class of person selected for this duty is not only a matter of great importance to the candidate, but upon it depends also in large measure the purity of elections. A candidate may act as his own election agent, but this is rarely done. Usually, though by no means invariably, he takes the paid secretary of the local political association, who has the advantage of knowing the constituency better than any one else; and the Practical Manual for Parliamentary Elections, issued by the Conservative party, advises that course.[4] Rogers, on the other hand, in his work on Elections,[5] warns candidates that it is unwise to select such persons, because "when this is done attempts are frequently made to saddle the candidate with responsibility for the acts of the association and its members." "A further danger," he remarks, "arises in such cases of the election expenses being confused with or concealed under registration or other expenses of the association." With the modern organisation of parties a confusion of that kind is liable to occur in any event; and perhaps it is not so much dreaded by candidates as the

[1] *Ibid.*, §§ 28, 31. [2] *Ibid.*, § 27. [3] *Ibid.*, § 33 and Sched. II.
[4] 2 Ed. (1892), 14. [5] II., 152–153.

author of the text-book on elections might imply. In spite of any dangers that may lurk in the practice, it is not only common, but apparently growing; and in fact the occupation of a paid secretary and agent has developed into a profession whose characteristics will be discussed in the chapters on party organisations.

The Election Court.

Formerly the validity of elections was decided by the House of Commons itself, with the natural consequence that politics were a large factor in the result. To such an extent was this true that the fall of Sir Robert Walpole was brought about by a hostile vote on an election case. In 1770 the matter was placed by statute in the hands of select committees of the House; but that did not put an end to political bias, and finally in 1868, the trial of election petitions, whether filed on the ground of a miscount, or of corrupt or illegal practices, was committed to a judicial body. The tribunal now consists of two judges of the King's Bench Division of the High Court of Justice, selected by the other judges of that division.[1]

A defeated candidate, or any voter, may present to the court a petition stating the grounds on which he claims that the election is invalid, and the case is then tried, witnesses are examined, and costs are awarded, according to the usual course of judicial proceedings. The decision takes the form of a report to the Speaker of the House of Commons, but it is really a final judgment upon the questions involved, for if the court finds that corrupt or illegal practices have taken place, the report has the effect not merely of avoiding the election, but of subjecting the candidate, and any guilty persons, to the political incapacities which those practices entail.[2]

Results of the Corrupt Practices Act.

Reduction of Expense.

So far as the reduction of the cost of elections is concerned, the English method of dealing with the subject has certainly been successful. According to the returns laid before Parliament, the total aggregate expenses incurred by candidates throughout the United Kingdom at the general election of

[1] 31–32 Vic., c. 125; 42–43 Vic., c. 75; 44–45 Vic., c. 68, § 13.
[2] 46–47 Vic., c. 51, §§ 4, 5, 11.

1880 — the last that took place before the Corrupt Practices Act of 1883 — was £1,736,781; at the next election in 1885 it fell to £1,026,645, and on every subsequent occasion it has been less than that. In 1900 it was £777,429, which is not far from the average in these days. The expense of English elections is, however, far from small to-day. In 1900 the average cost for the United Kingdom in constituencies that were not uncontested was four shillings and four pence, for every vote cast.[1]

Returns of Expenses Sometimes Incomplete

Moreover the returns undoubtedly do not in every case include all that is spent. A recent series of letters to *The Times*, under the title "The worries of a parliamentary representative," throws light on this subject.[2] It opened with a letter from the member for a Welsh borough complaining that about a month after he had signed the return of his election expenses he received a note from his agent in regard to claims by workers at the election; that upon his refusal to pay any such claims in violation of the Corrupt Practices Act the agent wrote asking whether he would or would not fulfil the obligations made on his behalf during the election. His continued refusal, the member declared, had made him unpopular with many of his former supporters, who were now trying to prevent his renomination. In answer to this charge the agent, in a letter to *The Times*, explained that all he had meant was that the member "should find some way — legal, of course — of expressing his gratitude to men who had worked splendidly in his cause;" and he added that this way had eventually been found, its name being "undoubted distress." In his reply in *The Times* the member denied that his relief of distress in the constituency had any relation to the election, or was a mode of expressing gratitude to men who had worked for him. It would be rash to assert that indirect means of rewarding party workers are not often found; and in fact another election agent stated in a letter to *The Times*[3] in

[1] Com. Papers, 1901, LIX., 145, p. 85. [2] July 22, 26, 29, 1904.
[3] July 25, 1904.

the course of the foregoing controversy, that promises of such a nature, made in behalf of the candidate, were unfortunately too common.

Ease of Evasion.

Apart from occasional acts involving direct violations of the Corrupt Practices Act by the candidate himself, the statute has holes through which others can pass so readily that an election agent has been known to speak of the return of expenses as largely a farce. In fact the elaborate provisions of the law can easily be evaded if the candidate and his agent have a mind to do so. If they only keep their eyes shut tight enough, and are sufficiently ignorant of what goes on, it is very difficult to connect them with corrupt or illegal practices in such a way as to avoid the election.[1] An agent from another constituency may pay the railway fares of out-voters. The Primrose League, or some other body, may give picnics, teas and what not, which would be corrupt treating if done by the candidate, but for which he is not held responsible. The brewers may furnish free beer in public houses where voters are collected before going to the polls, and yet the candidate has done nothing to forfeit his seat. Nor is this an imaginary danger; for, with the introduction of what is known as the tied-house system, the publicans have come under the control of the great brewing establishments, which have to-day a huge stake in the results of parliamentary elections. Agency, in short, is a very difficult thing to establish in such cases. As Rogers, who devotes a whole chapter to the subject, remarks: "It is to conceal agency, and so to relieve the candidate from the consequences of corruption practised on his behalf, that efforts of unscrupulous men engaged in the conduct of an election have been generally directed, and it is not too much to say that an election inquiry has been more frequently baffled from a failure in the proof of agency than from all other causes put together." [2]

Difficult to Prove Agency;

[1] See the cases already cited in the discussion of agency.

[2] Rogers, II., 360. In a case at the general election of 1906, where bribery was proved, the election was upheld because the judges disagreed on the question of agency. Great Yarmouth, 5 O'M. & H., 176.

Or Know When Election Period Begins.

Then there is the uncertainty when the election period begins, and hence what payments must be included in the return of election expenses. The Act of 1883 defines a candidate, unless the context otherwise requires, as one who is nominated or declared to be such on or after the issue of the writ or the dissolution or vacancy in consequence of which it is issued.[1] But clearly this does not mean that a corrupt act committed earlier will not avoid the election. On the contrary it is settled by repeated decisions that a man may become a candidate, and his election expenses may begin, before that date;[2] although it is impossible to lay down any hard and fast limit of time.[3] A great deal must depend on the nature of the expense itself. Registration, for example, is something entirely distinct from the election, and the cost of registration, whenever incurred, need not be included in the return of expenses.[4] On the other hand proof of the actual purchase of a vote at any time would certainly cost the candidate his seat.[5] Between these two extremes there are a great many acts whose character is affected by the proximity of an election. A subscription to a local political organisation, made when the dissolution was impending, has been held to be a part of the election expenses,[6] when it would not be so under other circumstances;[7] and in the same way the question whether a gift of money or food to relieve distress in the constituency is or is not made with a corrupt purpose of influencing votes may depend upon the expectation of an election in the near future.[8]

Nursing Constituencies.

As general elections in England come at irregular intervals, and at short notice, it is common to select candidates without regard to the prospect of a dissolution, sometimes years before it occurs; and in fact the sitting member, hav-

[1] 46–47 Vic., c. 51, § 63.
[2] Rogers, II., 157–58.
[3] Counties of Elgin and Nairn, 5 O'M. & H., 1.
[4] Rogers, II., 162.
[5] *Ibid.*, 259, 268.
[6] Lichfield Div., 5 O'M. & H., 27, at 34–38.
[7] Counties of Elgin & Nairn, 5 O'M. & H., 1.
[8] *Cf.* Lichfield Div., 5 O'M. & H., 27; Haggerston Div., *Ibid.*, 68, at 72–88, St. George's Div., *Ibid.*, 89. So of treating, Great Yarmouth, *Ibid.*, 176, at 198.

ing a presumptive right to stand again, is regarded in the light of a permanent candidate. Under these conditions it is the habit in most places for a candidate, who can afford it, to ingratiate himself with his constituents by subscribing liberally to public and charitable objects; and since a payment to be corrupt must be made for the purpose of influencing particular voters [1] subscriptions of this kind are not deemed corrupt; nor, unless given near the time of an election, are they election expenses or illegal payments.[2] The practice is called nursing a constituency, and it takes a great variety of forms, from a subscription for a cricket club to the founding of a hospital. The sums expended vary very much with the nature of the place and the wealth of the candidate, and no one knows how large they are in the aggregate, because men do not state publicly what they give in this way; but as far as one can form an opinion, it would appear that such gifts by a member of Parliament commonly amount to a number of hundred pounds a year. It is obvious that the custom of nursing, combined with the uncertainty about the time when the election period begins, opens a door to abuse.

Difficulty in Getting Evidence.

Another difficulty in a strict enforcement of the election laws is connected with the proof of the offence. A witness cannot, indeed, refuse to give evidence on the ground that it will incriminate him, for the law provides that he must testify; and if he tells the truth he is entitled to a certificate of indemnity, which protects him against prosecution.[3] But the facts that tend to establish bribery, for example, are directly known, as a rule, only to persons who have the strongest motives for concealing them; and the same thing is true to a greater or less extent of other breaches of the

[1] Hastings, 1 O'M. & H , 217, at 218.

[2] Subscriptions *bona fide* made for public or charitable purposes are not election expenses, Rogers, II., 161–62 But it is not easy to say what is *bona fides;* for gifts of this kind by a candidate for Parliament who has no other connection with the constituency must always be made, in part at least, for the sake of indirectly gaining votes by increasing his popularity.

[3] 46–47 Vic., c. 51, § 59.

election law. It is clear, therefore, that if the offence must be proved by legally competent evidence beyond reasonable doubt, as in criminal cases, an election procured by improper means may well stand, just as many criminals escape punishment; and this brings us to another question, that of the efficiency of the election courts.

Merits of the Election Courts

The system of sending petitions for trial to a couple of judges selected by the bench itself has provided a court as free as any human tribunal can be from the party bias that always affects the decisions of such questions by a legislative body.

Their Defects.

But no institution is altogether without defects. A select committee on the subject of election petitions reported in 1898 that the grievances alleged to exist in the present system related to delay, to the expense involved, and to the lack of security for costs in favour of the successful party; and it recommended some changes in procedure to improve these matters.[1] The expense of an election trial is undoubtedly great — sometimes thousands of pounds — and since the charges are borne by the litigants, and a favourable judgment involves a fresh election, while the trial itself is likely to entail a certain amount of unpopularity, it is not surprising that a defeated candidate hesitates to file a petition.

Expense of Petitions

Uncertainty of the Result.

With all respect to the select committee of the House of Commons, it would seem to a foreign observer that the defects it reported are not the only ones to be found in the existing system. The bringing of election petitions is discouraged not only by the cost involved, but also by uncertainty both in the result and in the grounds on which it will be based. A candidate may feel convinced that his defeat was due to corruption practised by his opponent, by the publicans, and by the local political organisation, and yet the court, finding some of these charges unproved, may think it unnecessary to inquire into others because much graver questions are decisive of the case; the graver matter being

[1] Com. Papers, 1898, IX., 555.

that, contrary to the provision forbidding "marks of distinction," the defendant's agent furnished his supporters with cards to wear in their hats.[1] Where serious corrupt practices are charged, the election may be set aside on account of the payment of a railway fare to an out-voter.[2] And in a case where the facts stated by the court portrayed a bacchanalian orgy in the form of a drunken procession through the streets, headed by the candidate himself in a barouche, with some direct evidence that he offered free drink to the crowd, the judges found that there was no sufficient evidence of treating; but avoided the election on account of the payment of two shillings for conveying a voter to the polls.[3]

Attitude of the Judges.

Such results are thoroughly unsatisfactory for both parties; to the defeated party because he loses his seat; to the successful party because he does not want to have an election, which he believes to be vitiated by gross corruption, set aside on account of a trivial breach of the law. The main difficulty seems to lie in the attitude of mind of the judges. They require a degree of proof of corrupt intent, which is very proper in criminal cases, but which would seem to be out of place in an election petition. On a charge, for example, that an agent of the candidate, to whom pay was promised, had voted, it was held necessary to prove an actual express promise of payment, and not such an implied promise as would support a civil action.[4] So, also, where a candidate named Lowles caused to be distributed among the poor, some time before an election, his own visiting cards exchangeable for food, and it was announced in a newspaper that gifts of food had been arranged by the Unionist candidate, one of the judges said: "I cannot bring myself to believe in the circumstances of this case that the motive of Mr. Lowles in giving away the tickets, months before any election was

[1] Walsall, 4 O'M. & H., 123, at 126.
[2] Pontefract, 4 O'M. & H., 200.
[3] Southampton, 5 O'M. & H., 17.
[4] Lichfield Div., 5 O'M. & H., 27, at 29–30.

imminent, was to influence voters." [1] Nor is this an isolated instance. Where soup and coal tickets were distributed largely at the expense of a candidate, who reminded voters, when the election came on some months later, that he had given away soup, the court said that "although . . . it would have been more prudent for the Respondent had he kept aloof from the immediate distribution of the relief, we cannot infer, from the evidence before us, that his motive or conduct was corrupt." [2]

The difficulty seems to lie to some extent in the fact that a report of corrupt or illegal practices by the court involves not only the setting aside of an election, but the same loss of political rights as would follow upon a conviction;[3] and, hence, the judges tend to require the kind of evidence that would support a criminal prosecution. Moreover, they seem to find it incredible that a candidate for Parliament can be guilty of the grosser kind of offences. One feels this very strongly in reading the opinions in election cases.

How Much Corruption Still Exists

If the present system of trying election petitions is not a complete success, it is nevertheless certain that the old electoral abuses have been very much reduced. There is a current impression both in England and elsewhere that the bribery of voters in Great Britain has been entirely rooted out. But any one familiar with English elections knows that this is by no means altogether true.[4] That the cases where gross corruption occurs are not made public by means of election petitions is due, partly to the reluctance to bring such petitions which has already been pointed out, and partly to the fact that where bribery is extensive both sides are usually guilty. Bribery in England is disappearing. In by far the greater part of the constituencies it does not exist, and the elections are, on the whole, pure; but in a

[1] Haggerston Div., 5 O'M. & H., 68, at 84.
[2] St. George's Div., 5 O'M. & H., 89, at 96.
[3] 46–47 Vic , c. 51, §§ 4, 11.
[4] After the general election of 1906 one member was unseated for bribery by his agents. Worcester, 5 O'M. & H., 212.

few places the old traditions still persist. These are mostly boroughs in the South of England containing a considerable number of ancient freemen, among whom corruption is sometimes widespread. The writer has heard the number of such places estimated by persons in a position to know the facts at a score or two dozen. The names of several of them are well known to every one who takes an active part in electoral work; but even in these boroughs the increase in the number of voters has lowered the price paid for votes, and in some of them the practice is slowly dying out. It is only fair to add that it does not receive any countenance or encouragement from the central authorities of the great political organisations.

CHAPTER XI

THE HOUSE OF COMMONS

Disqualifications, Privilege, Sessions

Disqualifications for Parliament

No property qualification is now required for sitting in the House of Commons, and any male British subject may be elected, who is not specially debarred.[1]

Infants are excluded both at Common Law, and by statute, although this rule has been disregarded in several notable instances, the best known cases being those of Charles James Fox and Lord John Russell who entered Parliament before they came of age. Incurable insanity was a disqualification at Common Law, and so by statute is confinement in a lunatic hospital. But it would seem that a temporary lunatic, if at large, is not incompetent to sit and vote.

Peers are also excluded; and this is true even of those Scotch peers who, not having been chosen among the sixteen representatives of the peerage of Scotland, have no right to sit in the House of Lords. There is one exception, however, to the rule that peers are ineligible to the House of Commons, for a peer of Ireland, who is not selected to represent that kingdom in the House of Lords, may sit for any county or borough in Great Britain, but not for an Irish constituency. The rule excluding peers is sometimes a hardship on a rising young man transferred by the death of his father from the active battlefield of politics in the House of Commons to the dignified seclusion of the House of Lords. But it has had, on the other hand, some effect in preventing the House of Commons from absorbing

[1] In a couple of instances natives of India have been elected.

all the political life of the country, and has thus helped to maintain the vitality of the House of Lords. Among the peers there have always been men of great national authority who would have preferred to sit in the other House. It is safe to say that in the year 1900 two of the statesmen who possessed the greatest influence with the people — Lord Salisbury and Lord Rosebery — would have been in the House of Commons had it not been for the rule excluding peers.

The clergy of the Roman Catholic Church and the Church of England, and ministers of the Church of Scotland, are disqualified by statute;[1] but these provisions do not include dissenting ministers; and it may be added that at the present day a clergyman of the Church of England may by unfrocking himself remove his disqualification.[2]

As in most other countries, there are in England rules disqualifying persons who, by assuming certain relations with the government, or by misconduct, have rendered themselves unfit to serve; such are government contractors, and holders of pensions not granted for civil or diplomatic services; bankrupts,[3] and persons convicted of treason or of felony, or guilty of corrupt practices.

Office-holders.

The exclusion of permanent officials has already been discussed; and it will be remembered that by the compromise effected in the reign of Queen Anne the holders of certain specified offices, or of any offices created after Oct. 25, 1705, are absolutely disqualified; while a member accepting any other office from the Crown loses his seat, but can be re-elected.[4] It will be remembered, also, that by later statutes or by custom all holders of civil offices not distinctly political

[1] The question was raised in 1801 in the famous case of Horne Tooke, and set at rest for the future by an Act of that year: 41 Geo. III., c. 63. The provision in regard to the Roman Catholic clergy was made in 1829: 10 Geo. IV., c. 7, § 9. [2] 33–34 Vic., c. 91.

[3] A cause that disqualifies will not always unseat. For the latter purpose bankruptcy and lunacy must have continued six months. Rogers, II., 43, 44.

[4] 6 Anne, c. 7, §§ 25, 26. Referred to in the Revised Statutes as 6 Anne, c. 41.

are now excluded from the House of Commons; and so are the judges of the higher courts, and most of those in the lower ones.

Now the offices held by ministers are either old offices within the meaning of the Act of Anne, and therefore compatible with a seat in Parliament, or new offices that have been taken out of the rule by special statutes passed usually when the office was created. This is not, indeed, universally true; for by special provision of statute only four of the five secretaries of state, and four of their under-secretaries, can sit in the House of Commons at one time. With that limitation every minister is capable of sitting; but on his appointment he loses his seat, and must go back to his constituents for a new election. The last rule, however, like every other, has its exceptions. The under-secretaries of state occupy *old* offices, but as they do not accept them *from* the Crown they are not obliged to undergo a fresh election on their appointment; and they are not, in fact, in the habit of doing so.[1] The same privilege has been extended by statute to the Financial Secretary of the War Office. There is, indeed, no self-evident reason to-day why it should not be extended to all the ministers. The original fear of influence on the part of the Crown no longer applies; and the only important effect of the rule is that if a new cabinet comes into power when Parliament is in session, all business there has to be suspended while the ministers are seeking re-election. A number of attempts have been made to do away with the rule, and they have been supported by very eminent statesmen, but they have been constantly defeated, mainly on the ground that a constituency, having elected a man while he was in an independent position, has a right to reconsider its choice when he assumes the burden of public office.[2] Such reasoning is characteristic of English political life. It either proves nothing or it proves too much, for if it is sound, the same principle applies with quite as much force to the

[1] Statement by the Attorney General, Hans. 3 Ser., CLXXIV., 1236–37.
[2] Todd, "Parl. Govt. in England," 2 Ed., II., 331–39.

under-secretaries, and with a great deal more force to the Speaker. This objection to a change was avoided, while a part of the practical inconvenience was removed, by a provision in the Reform Act of 1867 that a person who has been elected to Parliament since he became a minister shall not vacate his seat on account of accepting a different office in the ministry.[1]

Extinct Disqualifications.

Formerly there were a number of other qualifications and disqualifications that have now been swept away, such as the requirement of ownership of land, and of residence in the constituency,[2] and the provision for oaths and declarations intended mainly to exclude Roman Catholics. It is curious that after the disabilities of the Roman Catholics were removed in 1829 the oath continued to be an impediment to the admission of Jews and atheists, although it had never been aimed at them. In each case the law was changed, but only after the matter had been brought somewhat violently to the attention of the House. The last religious impediment was taken away in 1888 at the conclusion of the unseemly wrangle with Mr. Bradlaugh.

Resignation.

A disqualification not only prevents a person from sitting in the House, but is also the only way in which he can voluntarily get out of it. A man cannot resign his seat, and hence the regular method of accomplishing the same result is the acceptance of a disqualifying office. Two or three sinecures are retained for that purpose, the best known being the stewardship of the Chiltern Hundreds, a position which the member desiring to leave Parliament applies for, accepts, and immediately gives up. The place is, in fact, not an office, but an exit. It may be added that the House has power, for reasons satisfactory to itself, to declare a seat vacant, and to expel a member.

It is unnecessary to say much here about the privileges

[1] 30–31 Vic., c. 102, § 52, and Sched. H.

[2] This became obsolete by long-continued disregard. It is said to be the only case of a statute which is deemed to have been annulled by "contrarius usus." It was afterwards expressly repealed by statute. Rogers, II, 38

of the House of Commons. Most of them are matters of historical rather than present political significance. At the opening of each new Parliament, the Speaker, after being confirmed by the Crown, demands the ancient and undoubted rights and privileges of the Commons, the most important of which are freedom from arrest and liberty of speech. The freedom from arrest, which is enjoyed by members during the session and forty days before and after it, does not protect a member from the consequences of any indictable offence, or of contempt of court; nor in civil actions does it now prevent any process against him except arrest.

Privileges of the House.

Freedom from Arrest.

Freedom of speech was not acquired without a long struggle; but since the Bill of Rights of 1689 it has been a settled principle that "the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." A man cannot, therefore, be prosecuted criminally, or made civilly responsible, for anything he has said in the House; although the House itself may punish what it deems an abuse of the forms of debate.

Liberty of Speech.

Curiously enough the privilege of free speech in the House does not necessarily include the right to publish that speech outside. This matter has had an eventful history. Until about one hundred years ago the House attempted to prevent the report of its debates in the public press, and in the course of the struggle became entangled in the memorable controversy with Wilkes. The question has never been dealt with by legislation, and it is still assumed that the House might declare the publication of its debates a breach of privilege, and put a stop to it. But the struggle came to an end because the House changed its mind. Instead of objecting to the publication of the debates it came, in time, to desire it; and whereas it had attempted earlier to keep out reporters, it now strove to protect them.

Publication of Debates.

The privilege of free speech covered only words uttered in the House and matter printed for circulation among the members alone. It did not extend to the printing of a speech,

or to documents intended for general distribution even though issued by order of the House itself; and in its later attempt to insist upon its right of publication, as in its earlier effort to insist upon its right to prevent publication, the House came into conflict with the judiciary. In the case of Stockdale *v.* Hansard [1] the Queen's Bench held that a publisher might be liable in damages to a person injured by defamatory matter contained in a report made to the House of Commons, although the printing was ordered by the House itself. The question was then set at rest by a statute [2] providing that publication by order of either House should be a defence to any civil or criminal proceedings. But this has no effect upon the newspapers, and although a fair account of a debate published in the ordinary course of reporting is not in itself libellous, even if it contain defamatory matter, yet a faithful report of a speech published with a malicious intent is still libellous, and it is never safe to go to a jury on a question of intent.

If the attitude of the House of Commons toward the publication of its debates has changed entirely, it is because its relation to the public has undergone a complete transformation. Every member of Parliament to-day is seeking for the approbation of his constituents, and far from dreading publication of what he says in the House, his effort is rather to attract attention to himself by the reports in the local press of his remarks in Parliament. Moreover, the House as a whole depends more than ever upon popular support; and one may find a striking illustration of the way the same thing produces different political effects under different conditions by observing that while the cabinet would lose authority if its discussions were not secret, Parliament would suffer if its debates were not public.

Privilege in the Courts of Law.

Sir William Anson remarks that "The Privileges of Parliament, like the Prerogative of the Crown, are rights conferred by Law, and as such their limits are ascertainable and determinable, like the limits of other rights, by the Courts

[1] 9 A. & E., 1. [2] 3–4 Vic., c. 9.

of Law." [1] This principle has not always been accepted by the House, which has on several occasions come into collision with the courts; but the latter have always maintained, and maintained successfully, that when a question involving a privilege of the House comes before them for decision, it is their duty to ascertain whether the privilege exists or not, and to determine its effect upon the case before them. They have further maintained that they must decide the question for themselves, and that a claim to the privilege on the part of the House is not conclusive.

In one respect the authority of the courts is incomplete; for the House has a right to order a man committed to prison for contempt, and the question what constitutes a contempt is so far within the discretion of the House that the court will not order the prisoner set at liberty on *habeas corpus* where the return to the writ simply states that he is committed for contempt by order of the House. Referring to this subject, Professor Dicey says: "The powers exercised by the Houses, and especially in practice by the House of Commons, make a near approach to an authority above that of the ordinary law of the land." [2] Such a power, however, is exceedingly unlikely to be used in any dissension with the courts to-day; and if it were used, the courts would be almost certain to win, because the commitment by the House terminates with the session.

Summons and Dissolution.

There remain to be considered only the methods of calling Parliament together, and of putting an end to its labours.

Parliament can be summoned and dissolved, and its sessions can be opened and closed by the Crown alone, the only legal restraint upon the arbitrary power of the sovereign in the matter being the Act of William and Mary, which provides that a new Parliament shall be summoned within three years after a dissolution.[3] This statute is now, of course, unnecessary; and, in fact, the same proclamation

[1] "Law and Custom of the Constitution," I., 175.
[2] "Law of the Constitution," 5 Ed., 56, note.
[3] Anson, I., 287–88.

which dissolves one Parliament always announces the issue of writs for the election of another. If Parliament is not dissolved by the Crown, its term expires at the end of the seven years prescribed by the Septennial Act of 1716; but, as a matter of fact, Parliament never dies a natural death, and if its life is not cut off earlier, a dissolution takes place shortly before the end of the seven years.

Until 1867 the death of a sovereign always wrought a dissolution of Parliament; but this rule, which depended more on ancient theory than on modern convenience, was abolished by the Reform Act of that year.

Prorogation and Adjournment.

While a session can be brought to a close only by prorogation, either house may adjourn for any period at its pleasure, subject only to the right of the Crown to terminate an adjournment of more than fourteen days. Although a prorogation is made by the Crown, and adjournment by the House itself, practically both are virtually in the hands of the ministry to-day, and the really important difference between them is that a prorogation terminates all unfinished business, while an adjournment does not. For that reason a government which has business that it cannot put through during the regular session, and does not want to abandon, will sometimes resort to an adjournment instead of a prorogation. This was done, for example, in 1902 in order to complete the stages of the Education Bill in the autumn, and again in 1906 chiefly in order that the House of Lords might consider the pending government measures. The wisdom of the rule that the close of the session puts an end to all measures that have not finished their course in both Houses is not so clear in the case of Parliament, as in that of legislative bodies where a vast number of measures are brought in by irresponsible members. In such bodies the rule may result in killing a great many bills that had better die, but in Parliament this is far less true. Almost all important legislation relating to public affairs is now introduced by the ministers; and every year measures to which both they and the House have devoted much time

Effect on Unfinished Business.

and thought are killed by the close of the session. A day comes when the leader of the House arises and states what bills he is obliged by lack of time to drop, a process commonly known as the slaughter of the innocents. The necessity would seem to be unfortunate.

In fact the House of Commons spends so much time in debating each bill that it gets through its work slowly; and whereas many other popular chambers are reproached with legislating too much, Parliament is accused of legislating too little. Moreover the House of Commons suffers less from an excess of the easy good nature, which, in America at least, is the parent of many ill-considered and unwise laws; yet the present rule does act as a serious check upon the persistent member with a mission, and perhaps it kills off, on the whole, more bad bills than good ones.

Suspending Private Bills.

There is, however, a class of measures on which the rule, if carried out strictly, would have a distinctly injurious effect. These are the private bills — a term applied to projects which relate to private or local interests, such as bills for the extension of a railway, or for authority to supply water, gas, tramways and the like. Legislation of that kind is, as we shall see, conducted in Parliament by a semi-judicial process, and as it is highly expensive for both sides, it would be unreasonable that the closing of the session, for reasons quite unconnected with these matters, should oblige the promoters and objectors to incur the cost of beginning proceedings all over again. In practice this seldom happens, for in the few cases where such a bill cannot be completed before the end of the session it is usually suspended by a special order providing that the stages it has already passed shall be formally taken at the opening of the next session, so that the bill really begins its progress again at the point it had already reached. When, as in 1895, Parliament comes to an untimely end in the midst of a session, a general provision of this kind is made suspending all unfinished private bills, and thus a great deal of unnecessary hardship is avoided.

CHAPTER XII

PROCEDURE IN THE HOUSE OF COMMONS

The House, its Rules and Officers

To the traveller who cares for history, either of the past or in the making, there is no place more interesting than the long sombre building with a tower at each end, that borders the Thames just above Westminster Bridge. Apart from occasional meetings elsewhere, chiefly in the Middle Ages, the Mother of Parliaments has sat close to this spot for more than six hundred years. Except for old Westminster Hall, almost the whole of the present structure was, indeed, built after the fire of 1834. Yet if it contains little that is really venerable, save memories, the smoke of London has given to the gothic panelling of the outer walls the dignity of apparent age. The interior has a more modern air, for it is not only well planned with a view to its present use, but in some parts it expresses with peculiar fitness the purposes it serves. From opposite sides of the large central lobby corridors lead to the two Houses, but the hall of the Lords seems designed for ornament, that of the Commons for doing work. The House of Commons is seventy-five feet long by forty-five feet wide and forty-one feet high, panelled in dark oak, and lit by long stained glass windows and sky-lights in the ceiling. From the main entrance a broad aisle runs the whole length of the chamber, with the clerks' table filling nearly the whole upper end of it, and beyond this a raised chair for the Speaker with a canopy over his head. Facing the aisle on each side long rows of high-backed benches, covered with dark green leather,

slope upward tier above tier to the walls of the room; and through them, at right angles to the aisle, a narrow passage, known as the gangway, cuts across the House. There is also a gallery running all around the room, the part of it facing the Speaker being given up to strangers, while the front rows at the opposite end belong to the reporters, and behind them there stands, before a still higher gallery, a heavy screen, like those erected in Turkish mosques to conceal the presence of women, and used here for the same purpose. The structure and arrangement of a legislative chamber are not without influence upon the mode of transacting business. The whole number of seats in the House of Commons is far from large, not large enough for all the members. The two side galleries are reserved for them, but they are very narrow, containing only a little more than one hundred seats apiece, and although they are occupied on very crowded nights, they are practically useless for any one who intends to take part in debate. A small portion of the space under the strangers' gallery is also appropriated for visitors, and the rest of the floor contains only three hundred and sixty seats, enough for little more than one half of the six hundred and seventy members of the House. During the greater part of the time even those seats are not filled, for they are adapted only for the transaction of the business of the House. They are merely benches with no means for writing. If a member wants to carry on his correspondence, he goes to the library, or to one of the other rooms near by. In the House he can only speak, listen, and applaud.

Small Number of Seats.

On a great occasion, like the introduction by Mr. Gladstone of his first Home Rule Bill, every seat in the House is taken. At the opening of an ordinary sitting, also, while questions to the ministers are asked and answered, and at a time when the leaders of the two great parties are speaking about a measure of general interest, most of the seats on the floor are occupied; but as soon as the lesser lights arise the members begin to drop off, going to the

Attendance Often Small.

lobby, the library, the smoking-room, the dining-room, or the terrace. Nor is it always the lesser lights alone that speak to nearly empty benches, or rather to the reporters' gallery. The writer well remembers, on the first occasion when he saw the House, now more than twenty years ago, that Sir William Harcourt, then Home Secretary, made a speech an hour and three quarters long upon a bill which he had brought in to reform the government of London, and that, during a great part of the time, the only persons present besides the officers of the House, were the Lord Mayor, the Chairman of the Metropolitan Board of Works, and a casual who sat on one of the upper benches behind the minister. This is the smallest number of members the writer has ever beheld in the House, but to see only a score or two on the benches is by no means unusual. Many more, however, although not within ear-shot, are potentially present. Forty members constitute a quorum, but if any one suggests that they are not there, electric bells are rung all over the building, summoning the members into the House, a two-minute sand-glass is turned, and the members are not counted until it has run out. The same process takes place whenever a division — that is a vote by count — is challenged.

Effect of This on Debates.

The small size of the chamber makes it easy to hear an ordinary tone of voice; and this, coupled with the still smaller attendance, discourages flights of oratory or popular eloquence, and gives to the debates a businesslike and almost conversational character. Moreover, the very fact that members do not stay in the House if not interested in what is being said, prevents the distracting hum of conversation which is sometimes annoying in other representative bodies. All this makes the spectator feel that the members are present for public business and nothing else. Except for occasional scenes enacted for the most part by the Irish members, the proceedings are orderly, and respect for the dignity of the House, and the authority of the chair, are almost universal.

The Arrangement of Seats

Even the arrangement of seats in the House is not without its bearing upon political life; and although a small matter, it affords another illustration of the principle that an institution which, instead of being deliberately planned, is evolved slowly, will develop in harmony with its environment, or force its environment into harmony with itself. The front bench at the upper end of the aisle, close at the right hand of the Speaker, is called the Treasury Bench, and is reserved for the ministers; the corresponding bench on the other side being occupied by the former ministers of the party now in Opposition. Behind these two benches sit for the most part men whose fidelity to their respective parties is undoubted, members whose allegiance is less absolute generally preferring seats below the gangway on either side.

Of course, on a crowded night members cannot always find seats that express their exact sentiments. Still, the arrangement is fairly well preserved, especially in the case of prominent men, with whom it is sometimes a matter of no little consideration.[1] Any group that desires to emphasise its freeedom from regular party control always sits below the gangway. The Fourth Party, for example, sat in 1884 below the gangway on the Opposition side, the Labour Party has sat there since the election of 1906, and the same position is occupied by the Irish Nationalists under every ministry; while the Liberal Unionists at the time of their breach with Mr. Gladstone over his first Home Rule Bill took up their seats below the gangway on the government side. The House at a great debate resembles a martial array, with the leaders face to face in the van, supported by their troops in ranks behind them. The minister leans over the table, and points in indignation or in scorn at the "honourable gentlemen opposite." All this expresses the idea of party government, and lends a dramatic effect to parliamentary warfare.

[1] The question where the Peelites should sit in 1852 was much discussed among themselves. Morley, "Life of Gladstone," I., 422–23.

Mode of Treating the Subject of Procedure.

Nowhere in the whole range of British institutions does the interaction of law and custom baffle any attempt at logical description so much as in the case of procedure in Parliament. The cabinet, which is becoming more and more exclusively the motive force in all important legislative action, is not, indeed, so completely unknown to the rules of the House as it is to the statute-book; and yet a study of the rules alone would give but a faint idea of the authority of the Treasury Bench. On the other hand, it is impossible to understand how the government is attacked, and how it carries through its plans, unless one is familiar with the rules themselves. At the present day the discussions connected with appropriations, for example, turn little on financial questions, and are used mainly as an opportunity for criticising administrative conduct; but to understand how this is done, and to what extent the government has sought to limit the practice, a knowledge of the process of granting supply is essential.

The actual working of the House of Commons involves three problems: first, the regular forms of procedure; second, the action of the cabinet and of private members, operating subject to those forms; and third, the methods by which the cabinet maintains a control over its own supporters, and through them over the House itself. To deal with these three matters together would involve so much confusion, that it has seemed better to take up one of them at a time. This chapter and the two succeeding ones are, therefore, devoted solely to the organisation of the House and the forms of procedure on public matters, the relation of the government to the work of the House being described in the chapters that follow, while the machinery for keeping the majority compact and under the lead of the Treasury Bench will be dealt with at a later stage under the head of "Party Organisation in Parliament." Legislation for private and local objects, which has had a peculiar and instructive development, is treated in a chapter by itself.

Before describing the organisation and procedure of the

House it may be well to explain the method of voting, because frequent reference must be made to it, and the terms are technical. After stating the question to be voted upon, the Speaker, or the Chairman, calls in the ordinary way for the ayes and noes. According to the apparent preponderance of voices he then says, "I think the ayes (or noes) have it." If no objection is raised, he adds a moment later, "The ayes (or noes) have it," and the vote is so recorded. If, on the other hand, any of the minority doubt the result, or wish the numbers and names recorded, they cry out contrary to the Speaker, "The noes (or ayes) have it." Whereupon the Speaker directs strangers to withdraw (except from the places reserved for them), the division bells are rung all over the building, the two-minute sand-glass is turned, and when it has run the doors are locked, and the question and vote are repeated in the same way.[1] If the Speaker's opinion of the result is again challenged — and this is almost always done — he orders a division of the House, that is, he directs the ayes to go to the right, the noes to the left; and he appoints two tellers from each side, one of each pair to count the ayes, and the other the noes, in order to check one another. The ayes then go into the lobby that runs parallel to the House on the Speaker's right, the noes into that on his left; and until 1906 every member in the House, except the Speaker, was obliged to go into one lobby or the other, unless he was physically disabled, when his vote might be counted in the House.[2] The tellers, standing at

The Method of Voting.

A Division.

[1] Standing Orders 28–29, Com. Papers, 1905, LXII, 159. Under the new rule adopted in 1906 the Speaker orders the lobby to be cleared, and the members begin to pass through it at once.

[2] To refuse to do so has been treated as such a disregard of the authority of the chair as will justify suspending the member. May, "Parl. Practice," 10 Ed., 338.

On March 5, 1901, twelve Irish Nationalists, who refused to go into the lobby because they had had no chance to speak when the closure was moved on a vote on account, were suspended; Hans. 4 Ser. XC., 692–96; and on Aug. 5, 1904, the Welsh members refused to vote as a protest against the use of closure on the Education (Local Authorities Defaults) Bill. After they had persisted so far that the Chairman reported the matter to the House, they consented to withdraw altogether, and no further steps were taken against them. Hans. 4 Ser. CXXXIX., 1259–68.

the door of each lobby, count the members as they pass between them in returning to the House, while clerks at tables in the lobbies take down their names.

Ever since 1836, when the method of taking a division assumed its present form, the names of members voting on each side have been printed and preserved, although curiously enough these division lists are not included among the parliamentary papers. The process may seem a clumsy way of counting votes, but under the system in force until 1906 it took, on the average, only twenty minutes, and under the new system, whereby the recording of names begins when the sand-glass is turned, it takes not much more than half as long. This is less time than would be consumed by a roll-call, and the system has been found so satisfactory that it was adopted by the House of Lords.

Until recently a division was the only means, apart from an oral vote, of taking the sense of the House; and any one member could force a division by challenging the result of an oral vote, or rather any two members could do so, for a division cannot take place unless two tellers can be found for each side. In 1888, however, as a part of the movement to prevent obstruction and waste of time, the Speaker or Chairman was empowered, if he thinks a division frivolously or vexatiously claimed, to call upon the ayes and noes to rise in their places. He can then count them, and declare the result;[1] but this is in fact rarely done.

The names of the men selected as tellers indicate the political nature of the vote. If the government intend to treat the question, I will not say as one of confidence, (for there are cases of secondary importance where a ministry may be beaten without feeling that they have lost the confidence of the House and must resign), but if they intend to treat it as one where an adverse vote is a defeat for them, if they desire to rally their followers to vote solidly upon it, then the government whips are appointed tellers. If in the same way the Opposition want to treat it as a party ques-

[1] S.O. 30.

tion, their whips are appointed tellers upon the other side. But if on one side or the other this is not the case, private members who have made or seconded the motion or taken an active part in debate are selected by the chair as tellers, and if so any member may, without disloyalty to his party, vote according to his own unaided convictions.

Standing and Sessional Orders.

Like other legislative bodies the House of Commons has printed rules, and the most important of these, the standing orders, are published every year among the parliamentary papers. But the standing orders are by no means a code of procedure, for they cover only a fraction, and so far as they relate to public business a small fraction, of the subject.[1] The procedure rests essentially upon custom, to be gathered in part from precedents and the rulings of Speakers, in part from unrecorded tradition known by personal experience. Many standing orders have, in fact, been adopted from time to time in order to modify or forbid an existing practice, and hence their effect is mainly negative. No particular formality is required for the adoption of these rules, but in 1902, when extensive changes were made, the proposals were read several times, and were, in fact, submitted to a procedure similar to that for the enactment of a bill.[2]

Standing Orders Endure from One Parliament to Another.

The standing orders differ from the rules of legislative bodies in some other countries in two important respects. In the first place they do not have to be adopted afresh by each new House of Commons, but once established they continue in force from Parliament to Parliament until repealed. There are, indeed, sessional orders which require

[1] The standing orders relating to private business are much more elaborate and come far nearer to a code of procedure.

[2] This had not been the practice earlier; but the discussion of changes in the standing orders has sometimes been very long. In 1882 the new rules, which dealt with closure, the suspension of disorderly members and the creation of standing committees, were debated for thirty-three days On the other hand, a change was made in 1901 on the motion of a private member, at a single sitting. Hans. 4 Ser. XCII., 555–75. In 1906 the changes were referred to a select committee and then each of them adopted on a motion by the government. Hans. 4 Ser. CLV., 197 *et seq.*

to be renewed at the beginning of each session, and sometimes a new rule after proving its utility in this way is given the permanent form of a standing order. Orders or resolutions without any fixed duration are also adopted at times. These expire upon prorogation, but it sometimes happens that without being formally revived they continue to be observed as a part of customary practice of the House.[1]

They Can be Suspended by a Simple Vote.

The second peculiarity of the standing orders lies in the fact that they can be suspended by a simple majority vote. Notice of a motion for that purpose is usually required and given, but it may be dispensed with; and it is not even necessary to refer in the motion to the standing orders at all. Any order or resolution, inconsistent with their terms, has, if adopted, the effect of suspending them,[2] and the House is, in fact, constantly adopting special orders which change the course of procedure as prescribed by the standing orders or the customary practice. This has often been done when the government has needed to take, for its own measures, part of the time allotted to private members, or has wanted to extend the sitting beyond the usual hour. Many of these cases are now provided for by the new rules adopted in 1902; but the most effective form of cutting short debate, the process known as the "guillotine," although now regulated by standing order in the case of supply,[3] is still applied in the case of all other bills solely by a special order of the House adopted for a particular bill on the motion of a minister.

Tendency of Changes in the Standing Orders.

Most of the changes in the standing orders made during the last fifty years have been aimed at preserving order, or preventing waste of time, or altering the distribution of time.[4] Those of the first class, such as the provisions

[1] May, 145. [2] *Ibid.*, 145. [3] S.O. 15.

[4] In his excellent *Recht und Technik des Englischen Parlamentarismus* — the only systematic history of procedure in the House of Commons — Dr. Redlich dwells on two tendencies in the evolution of the standing orders since 1832. One of these consists in giving to the ministry an ever greater control over the time, and hence over the activity, of the House; the other in keeping the House more and more strictly to its prearranged order of business for

authorising the suspension of a member for disorder, arose from the conduct of the Irish members, and may be regarded as an accident unconnected with the normal evolution of the parliamentary system. This is not true of the rules designed to prevent waste of time; for although the provisions to cut off debate grew out of Irish obstruction, the subsequent history of closure has shown that some process of this kind was certain to come sooner or later in the natural course of things, and that the Irish merely hastened it.[1]

Efforts to Save Time.

The changes made in order to save time are commonly attributed to the increase in the amount of business the House is called upon to despatch, and if in that business be included the enlarged control of the House over administrative detail by means of questions and otherwise, this is undoubtedly true, but so far as legislation is concerned, it would be more accurate to attribute the changes to the fact that it requires more time to transact business than it did formerly. There are a far larger number of members who want to interrogate and criticise the ministers, and to take part in debate. The pages of Hansard are more numerous in proportion to those of the statute-book. Now the old procedure was very elaborate. In the passage of an ordinary public bill through the House there were, apart from amendments, more than a score of different steps, upon each of which debate might take place, and a division might be claimed. Then motions to adjourn, and other dilatory tactics could be used indefinitely. Moreover, the general

the day. Now the manifestations of this last tendency, which he makes very clear, can also be classed as changes made to save time or to arrange the distribution of time. Whether in the form of forbidding motions to vary the prescribed order of business, or to confine amendments and debate to matters relevant to the main question, or to exclude dilatory motions and others that open an indefinite field for discussion, they have the effect either of preventing waste of time by debating trivial questions or matters that the House does not care to take up, or of preventing the use for some other purpose of time allotted to the government or to a private member.

Since this was written Dr. Redlich's book has happily been translated into English, but as the English edition has not yet been received the references to the German edition are left unchanged.

[1] This is also Dr. Redlich's opinion, *Recht und Technik*, 246.

rule that amendments and debate must be relevant to the question before the House[1] was subject to wide exceptions, if, indeed, there could be said to be any such general rule at all. The debate upon a dilatory motion, for example, was not limited to the motion itself;[2] and every time a motion was made to go into Committee of the Whole on Supply, any grievance could be brought forward and discussed.[3]

All this was unimportant so long as the battles between the parties were confined to occasional full-dress debates, and the rest of the time was devoted to the real work of legislation. But when systematic obstruction arose, and when without any intent to obstruct it became the recognised business of the Opposition to oppose, and in the case of measures that aroused strong party feeling to oppose at every step, the opportunities for doing so were too numerous to endure. Some of the steps in the enactment of a bill, such as engrossment,[4] passage,[5] and first and second reading in the Committee of the Whole,[6] have been discontinued altogether. Others, such as taking up the consideration of a bill,[7] or going into Committee of the Whole on a bill,[8] or bringing up a report from Committee of the Whole,[9] are taken as a matter of course without question put. In other cases again the question is put, but no debate is allowed.[10] With the same object debate upon a dilatory motion has been limited to the subject-matter of the motion, and the Speaker or Chairman has been empowered to forbid debate upon it, or even to refuse to put the question at all, if he considers the motion an abuse of the rules of the House.[11]

The opportunities for criticising the government both in going into Committee of Supply, and by other means, have also been limited in various ways, and above all the system of cutting short debate by means of closure has been brought of late years to a condition of great efficiency. These

[1] May, 299. [2] *Ibid.*, 301. [3] *Ibid.*, 571. [4] *Ibid.*, 471. [5] *Ibid.*, 472–73. [6] S.O. 36. [7] S.O. 40. [8] S.O. 32, 51. [9] S.O. 53. [10] *E.g.* S.O. 1 (7), 18, 26, 31, 91. [11] S.O. 22, 23.

matters, and the distribution of time between the government and private members will be considered more fully hereafter, and it is only necessary to remark now that the tendencies noted are permanent, because although a party while in Opposition may object to changes in the rules that enhance the control of the government over the conduct and time of the House, it finds itself compelled to maintain them when it comes into office. The tendencies are, in fact, the natural result of the more and more exclusive responsibility of the ministry for all public action, legislative as well as executive.

The Speaker.

The Commons are always summoned to the bar in the House of Lords to hear any formal communication from the Crown, and when after a general election they meet on the day appointed, they are summoned there to hear the formal opening of the new Parliament. They are then desired in the name of the sovereign to choose a Speaker, and retire to their chamber for the purpose. As soon as he has been chosen, the mace is placed on the table before him, as a symbol of his authority and a token that the Commons are sitting as a House. But he is still only Speaker-elect, until the next day, when, followed by the Commons, he again presents himself at the bar of the Lords, announces his election, and asks for the royal confirmation, which is now, of course, never refused.

His Election.

If only one person is nominated for Speaker, he is called to the chair without a vote. If more than one, they are voted upon successively, a majority being required for election.[1] The proposer and seconder are always private members, for it is considered more fitting that the ministers should not be prominent in the matter.[2] The Speaker is, however, always selected by the government of the day, and a new Speaker is always taken from the ranks of the party in power. Sometimes the election is not uncontested, and this happened when Mr. Gully was chosen in 1895. But although the Speaker may have been opposed when first

[1] May, 151.

[2] *Cf. ibid.*, 150, note 3.

chosen, and although he is elected only for the duration of the Parliament, it has now become the invariable habit to reëlect him so long as he is willing to serve. The last cases where a Speaker's reëlection was opposed occurred in 1833 and 1835, and on the second of those occasions he was defeated. The principle is well illustrated by the career of Mr. Gully. He was elected by a small majority, during the last few months of a moribund Liberal cabinet. His selection had not pleased the Conservatives, and he was warned that they held themselves at liberty not to reëlect him if they came to power in the next Parliament. Contrary to the ordinary rule his constituency was contested at the next general election, but although the Conservatives obtained a large majority in the new Parliament, he was returned to the chair without opposition.

His Powers over Debate.

The Speaker is purely a presiding officer. He has nothing to do with appointing any committees, or guiding the House in its work. He is not a leader but an umpire, otherwise he could not remain in the chair through changes of party. As an umpire, however, his powers are very great, and in some cases under the modern changes in the standing orders they are autocratic. He decides, for example, whether a motion to closure debate may be put, or whether it is an infringement of the rights of the minority;[1] he can refuse to entertain a dilatory motion if he considers it an abuse of the rules of the House;[2] and he can stop the speech of a member who "persists in irrelevance, or tedious repetition."[3] Moreover, from his decision on those matters, or on any points of order, there is no appeal.[4] The House can suspend or change its own rules by a simple majority vote, but it cannot in a concrete case override the Speaker's construction of them.[5] This is a general principle of Eng-

[1] S.O. 26. [2] S.O. 23. [3] S O. 19.

[4] But the Speaker himself may submit a question to the judgment of the House. May, 331.

[5] The action of the Speaker can be brought before the House only by a motion made at another time after due notice, but this is, of course, almost useless for the purpose of reversing the ruling complained of: Hans. 3 Ser.

lish parliamentary law, which is applied in almost all public bodies.[1] It may render a conscientious man more careful in his rulings, but it certainly places in his hands enormous power.

His Power to Preserve Order.

Familiarity with representative bodies seems to breed contempt, for the last half century has been marked by an increase of disorderly scenes in the legislatures of many countries. In England such things were brought about by the growth of the Irish Home Rule party, which regarded the government of Ireland by the British Parliament as unjust on principle, and oppressive in fact; and which, to say the least, was not distressed by loss of dignity on the part of the House of Commons. In 1880 the Speaker was given the power to repress disorder, now embodied, with subsequent modifications, in Standing Order 18. He can name a member who disregards his authority or obstructs business, and then a motion is in order, to be decided at once without amendment or debate, to suspend that member.[2] When the standing orders were revised in 1902 they contained a clause prescribing the duration of the suspension for the first and subsequent offences, but this was struck out during the discussion, and a suspension is now indeterminate. It is obvious that to a party, in a hopeless minority, which denies the authority of Parliament, a disorderly scene followed by a suspension, and an opportunity to go home and make stirring speeches, may not be an undesirable form of protest.

Apart from occasional outbursts chiefly, though not exclusively, on the part of the Irish members, a stranger in the gallery is much impressed by the respect paid to the Speaker,

CCLVIII., 10, 14. On the occasion when Speaker Brand made this ruling he intimated that a member making on the spot a motion to disagree with it would be guilty of disregarding the authority of the chair, and liable to suspension under the standing orders. *Ibid.*, 9

[1] The Lord Chancellor has far less power as presiding officer of the House of Lords. May, 186, 296, 307, 331.

[2] S.O. 18. If a member who is suspended refuses to leave the House, the Speaker may, on his own authority, suspend him for the remainder of the session. *Ibid.*

and by his moral control over the House.[1] His emoluments are in proportion to the dignity of his position. He enjoys a salary of five thousand pounds a year, with an official residence in the Houses of Parliament and other perquisites; and although standing aloof from political leadership, he is regarded as the first commoner of the realm. He is, indeed, on the threshold of the House of Lords, for it has been the habit of late years to make him a peer when he retires.

He Votes Only in Case of a Tie.

As late as 1870 the Speaker occasionally took part in debate, when the House was in Committee of the Whole where he does not preside;[2] but it would now be thought inconsistent with his position of absolute impartiality to speak or vote in committee. He therefore never votes unless he is obliged to do so by a tie occurring when he is in the chair. It is commonly said that he always gives his casting vote in such cases so as to keep the question open; but this is not strictly true. When, however, his vote involves a final decision, he bases it, not upon his personal opinion of the merits of the measure, but upon the probable intention of the House as shown by its previous action, or upon some general constitutional principle;[3] and it may be added that

The Chairman of Committees.

the chairman of a Committee of the Whole, when called upon to break a tie, follows the same practice.[4] The chair in Committee of the Whole is regularly taken by the Chairman of the Committee of Ways and Means — commonly called for that reason the Chairman of Committees — who, like the Speaker, withdraws, on his appointment, from political contests, speaking and voting in the House nowadays only on questions relating to private bills. He is nominated at the beginning of the Parliament by the ministry, from among

[1] In 1902 the provision, common in continental legislatures, which authorises the Speaker to suspend the sitting, in case of grave disorder, was embodied in S.O. 21. This has been used only once, on May 22, 1905, when the Opposition, thinking it was the duty of the Prime Minister to give an immediate explanation, refused with great disorder to hear another member of the government. (Hans. 4 Ser. CXLVI., 1061–72.) One may hope that it will rarely be necessary to apply this undignified process of taking off the lid to allow the tea-pot to cool down.

[2] May, 348–49. [3] May, 344–48. [4] May, 361–62.

their prominent supporters, and retires from the position when they resign. Considering that his duties consist in presiding, like the Speaker, with strict impartiality, and in a purely non-partisan supervision of private bill legislation, it is somewhat strange that he should go in and out of office with the cabinet, but in fact one hears no criticism of his conduct on that score, largely, no doubt, because he always takes the Speaker as his model. Since 1855 he has acted as deputy speaker, when the Speaker is unavoidably absent,[1] and in order to prevent any possible inconvenience from the absence of both of these officers from the House, or of the Chairman of Ways and Means from the Committee of the Whole, provision was made in 1902 for the election of a deputy chairman who can fill the vacant place.[2]

Other Officers of the House.

The only other officers of the House that need be mentioned here are the Sergeant-at-Arms, who acts as the executive officer and chief of police of the House under the direction of the Speaker; the Clerk of the House; and the Counsel to Mr. Speaker, who is a legal adviser, and has important duties in connection with private bill legislation. It is a curious survival that the Sergeant-at-Arms,[3] and the Clerk of the House with his chief assistants,[4] are appointed by the Crown, and hold office permanently. Their work is, of course, of a non-partisan character, and they do not always belong to the party of the ministry that appoints them. Sir Courtenay Ilbert, for example, the present Clerk of the House, although a Liberal, was appointed by the Conservative government, and not by way of promotion in the service of the House, for he was at the time Parliamentary Counsel to the Treasury.

[1] May, 191; S.O. 81 (formerly S O. 83).

[2] S O. 81 (2). By S.O 1 (9), the Speaker nominates a panel of not more than five members to act as temporary chairmen of committees, but this would seem to have been rendered less necessary by the new provision for a deputy chairman.

[3] May, 198.

[4] May, 195.

CHAPTER XIII

PROCEDURE IN THE HOUSE OF COMMONS

Committees and Public Bills

The Committees.

No great representative assembly at the present day can do all its work in full meeting. It has neither the time, the patience nor the knowledge required. Its sittings ought not to be frittered away in discussing proposals that have no chance of success; while measures that are to be brought before the whole body ought to be threshed out beforehand, their provisions carefully weighed and put into precise language, objections, if possible, met by concession and compromise, or brought to a sharp difference of principle. In short, they ought to be put into such a shape that the assembly is only called upon to decide a small number of perfectly definite questions. To enable it to do so intelligently it may be necessary also to collect information about doubtful facts. Modern assemblies have sought to accomplish these results mainly by committees of some kind; and in England where the parliamentary form of government has reached a higher development than anywhere else, the chief instrument for the purpose is that informal joint committee of the Houses, known as the cabinet. But unless Parliament were to be very nearly reduced to the rôle of criticising the ministers, and answering yes or no to a series of questions propounded by them, it must do a part of its work through other committees. The reasons why those committees have not become — as in some other European nations that have adopted the system of a responsible ministry — dangerous rivals of the cabinet, at times frustrating its objects and undermining its authority, will be discussed in the chapters on the relation between the cabinet and the

House of Commons. We must consider here their organisation and duties.

The most important committee, the Committee of the Whole, is not in this sense a committee at all. It is simply the House itself acting under special forms of procedure; the chief differences being that the Chairman of Committees presides, and that the rule of the House forbidding a member to speak more than once on the same question does not apply. But the fact that a member can speak more than once makes it a real convenience for the purpose for which it is chiefly used, that is, the consideration of measures in detail, such as the discussion and amendment of the separate clauses of a bill, or the debates upon different items of appropriations. The Committee of the Whole has had a long history.[1] It is called by different names according to the subject-matter with which it deals. For ordinary bills it is called simply the Committee of the Whole. When engaged upon appropriations it is called Committee of the Whole on Supply, or in common parlance the Committee of Supply. When providing money to meet the appropriations it is called the Committee of Ways and Means; and when reviewing the revenue accounts of India it is named from that subject. The committees of the whole called by these names are so far distinct that each of them can deal only with its own affairs, and the House must go into committee again in order to take up any other matter. But the simple Committee of the Whole can take up one bill after another which has been referred to it without reporting to the House and being reconstituted.[2]

The Committee of the Whole.

Of the real committees the most numerous are the select committees. Their normal size is fifteen members, although they are often smaller, and occasionally, by special leave of the House,[3] they are somewhat larger. They may be nominated from the floor, and elected by the House,[4] or chosen by ballot; but in order to avoid loss of time, and to

Select Committees.

[1] *Cf.* Redlich, 474–78.
[2] S.O. 33.
[3] *Cf.* S.O. 55.
[4] *Cf.* S.O. 56–57.

secure impartiality, the appointment of a part, at least, of the members is usually intrusted to the Committee of Selection.

Committee of Selection.

Some of the select committees are appointed regularly every year, and are therefore known as sessional committees. One of these, the Committee of Selection, has already been mentioned. It has been enlarged from time to time, and now consists of eleven members, chosen by the House itself at the beginning of the session.[1] The members are, in fact, designated by an understanding between the leaders of the two great parties in the House. But the object is to create an impartial body, and so far is this object attained that in the memoir of Sir John Mowbray, who was its chairman continuously for thirty-two years, we are told that divisions in the committee are rare, and never on party lines.[2] Its duties, so far as public business is concerned, consist in appointing members of select and standing committees. It appoints also the committees on all private and local bills, and divides those bills among them.[3] This is, indeed, the primary object of its existence, but, together with a description of the various committees employed in private bill legislation, it must be postponed to a later chapter. It may, however, save confusion in the mind of a reader unfamiliar with parliamentary practice to insist here upon the distinction between a private member's bill and a private bill. The former is a bill of a public nature introduced by a private member, whereas a private bill is one dealing only with a matter of private, personal, or local interest.

Other Sessional Committees.

The remaining sessional committees are the Committee on Public Accounts,[4] which goes through the report of the Auditor and Comptroller General, considers in detail objections to the legality of any expenditures by the public departments, examines witnesses thereon, and reports to the House; the Committee on Public Petitions, appointed to inspect the numerous petitions presented to the House;[5] and

[1] Standing Orders (relative to private business), 98.
[2] "Seventy Years at Westminster," 267 *et seq.*
[3] *Ibid.*, 103–15. [4] S.O. 75. [5] S.O. 76–80.

the Committee on the Kitchen and Refreshment Rooms, which has importance for the members of the House, though not for the general public.[1]

Other Select Committees.

The other select committees are created to consider some special matter that is referred to them, either a bill, or a subject upon which the House wishes to institute an inquiry.[2]

Their Object.

In either case the chief object of the committee is to obtain and sift information. Even where a particular bill is referred to it the primary object is not to take the place of debate in the House, and in fact by the present practice a select committee saves no step in procedure, a bill when reported by it going to the Committee of the Whole for discussion in detail, precisely as if no select committee had been appointed.[3] Select committees are the organs, and the only organs, of the House for collecting evidence and examining witnesses;[4] and hence they are commonly given power to send for persons, papers and records. They summon before them people whose testimony they wish to obtain; but although a man of prominence, or a recognised authority on the subject, would, no doubt, be summoned at his own request, there is nothing in their procedure in the least corresponding to the public hearings customary throughout the

[1] "At the commencement of every session an order is made 'That a committee of privileges be appointed,' but no members have been nominated to it since 1847." "Manual of Procedure of the House of Commons," prepared in 1904 by Sir Courtenay Ilbert, Clerk of the House, § 110. There are also a couple of sessional committees whose work is wholly concerned with private bills and are described therewith.

[2] The question often arises whether inquiry shall be conducted by a committee of the House, or by a commission appointed by the government. When the matter is distinctly political a committee of the House is the proper organ; but when the judgment of outside experts is needed the other alternative is obviously preferable, several members of Parliament being often included in such cases. Naturally enough, the ministry and the members chiefly interested in pushing an inquiry do not always agree about the matter. One instance of a dispute on this point has already been referred to — that in relation to the grievances of Post Office employees. Another famous example occurred upon the charges made by *The Times* against Parnell in connection with the forged Pigott Letters.

[3] May, 469–70.

[4] The private bill committees to be described in a later chapter are select committees.

United States, where anybody is at liberty to attend and express his views — a practice that deserves far more attention than it has yet received.

Their Procedure.

In select committees the procedure follows as closely as possible that of a Committee of the Whole;[1] but they choose their own chairman, who has no vote except in case of a tie. They keep minutes, not only of their own proceedings, but also of all evidence taken before them; and these, together with the report of their conclusions, are laid before the House,[2] and published among the parliamentary papers of the session. Strictly speaking, a minority report is unknown to English parliamentary usage, although the habit of placing upon select committees representatives of the various groups of opinion in the House makes a disagreement about the report very common. Practically, however, the minority attain the same object by moving a substitute for the report prepared by the majority, and as the standing orders provide that every division in a select committee must be entered upon its minutes,[3] the substitute with the names of those who voted for it, is submitted to the House, and has the effect of a minority report.

The fact that men with all shades of opinions sit upon these committees, and have an opportunity to examine the witnesses, lifts their reports, and still more the evidence they collect, above the plane of mere party documents, and gives them a far greater permanent value. Many committees are not directly concerned with legislation, that is, with a bill actually pending, but only with inquiry into some grievance, some alleged defect in the law or in administration, yet their reports often lay the foundation for future statutes; and, indeed, a large part of the legislative or administrative reforms carried out by one or both of the great parties in the state, have been based upon the reports of select committees or royal commissions.

Joint Committees.

From obvious motives of convenience joint select committees from the Lords and Commons have been occasionally

[1] May, 383–89, 471. [2] S.O. 59–61, 63. [3] S O. 61.

appointed,[1] but owing to the different standing of the two Houses they are used chiefly for private bills, and for regulating the intercourse between the two bodies.[2] The principal exceptions of late years have been the joint committees on statute law revision bills and on the subject of municipal trading.

Standing or Grand Committees.

As the pressure for time in the House of Commons grew more intense, select committees that collected information were not enough. Something was needed that would save debate in the House, and for this purpose resolutions were adopted on Dec. 1, 1882, for setting up two large committees on bills relating to law and to trade, whose deliberations should take the place of debate in the Committee of the Whole. Such committees were at first an experiment, tried for a couple of sessions, but in 1888 they were revived by standing orders, and made permanent organs of the House.[3] As distinguished from select committees, which expire when they have made a report upon the special matters committed to their charge, they were made standing bodies, lasting throughout the session, and considering all the bills from time to time referred to them; one of them being created to deal with bills relating to law, courts of justice, and legal procedure; the other with those relating to trade, shipping, manufactures, agriculture, and fishing. They consist of not less than sixty nor more than eighty members of the House, appointed by the Committee of Selection, which has power to discharge members and substitute others during the course of the session. In order to secure the presence of persons who may throw light on any particular bill, the same committee can also appoint not more than fifteen additional members for the consideration of that bill.

Their Procedure.

A peculiar provision was made for the designation of the chairman. At the beginning of each session the Committee of Selection appoints a chairman's panel of not less than four nor more than six members, and this body selects

[1] May, 398–99. [2] Redlich, 463. [3] S.O. 46–50; May, 371–77.

from among its members the chairmen of the standing committees[1] — a device intended to secure continuity of traditions and experience in the presiding officer. For the rest, the standing orders prescribed that the procedure in standing committees should be the same as in select committees;[2] but it would be more accurate to say, as May does,[3] that their proceedings were assimilated, as far as possible, to those of a Committee of the Whole House, for they were created to do precisely the same work.[4] They were to collect no evidence, examine no witnesses, but simply to debate the clauses of the bill in detail, being in fact a substitute for the Committee of the Whole; that step in the procedure upon a bill being entirely omitted when a bill goes to a standing committee. For this reason they are miniatures of the House itself, representing all the parties there in proportion to their numbers. They are samples that stand for the complete House, and like the Committee of the Whole they do not report their opinions, but report the bills referred to them with or without amendments.

In one respect only does their position differ materially from that of a Committee of the Whole. If the Committee of the Whole makes any amendments in a bill, they can be considered again, and further amendments can be made, upon the report stage. But if it makes no amendments, there is no report stage. This was equally true of the standing committees, so that if they did not amend a bill referred to them, the House never had an opportunity to do so, but must pass or reject the bill as first introduced; and, in fact, standing committees have been charged with refraining from minor changes in order to prevent amendments, which might hinder or delay the passage of the bill, from being proposed in the House itself.[5] This raised so much objection that in 1901 the standing orders were changed so as to re-

[1] S.O. 49. [2] S O 47 [3] May, 374.

[4] As in the House itself, the attendance during debate is sometimes small. Complaints are heard of this, and of the practice of fetching members in to take part in divisions. Hans. 4 Ser. XCII, 570. The divisions, by the way, are taken by roll-call.

[5] Hans. 4 Ser. XCII., 562, 566.

quire a report stage in the House on all bills from standing committees whether amended or not.[1]

Kind of Bills Referred to Them.

The standing committees were designed primarily to deal with a technical class of bills, where the discussion of details would not be of general interest.[2] For reasons that will be described hereafter, it has been recognised that the bills referred to them ought to be of a non-contentious nature, that contentious measures, which arouse strong party feelings, are not suited for their consideration. This is the general principle, not always observed in practice, and there is sometimes a sharp difference of opinion upon the question whether a particular bill is contentious or not.

Their Utility.

Within their limits the utility of the standing committees in legislation cannot be doubted. On the average about one seventh of the public bills enacted year by year have passed through their hands, and the proportion has shown a slight tendency to increase.[3] Moreover, the pressure for time in the House of Commons has become so great that a bill has a better chance of getting through if referred to a standing committee than if it has to undergo the ordeal of a long debate in Committee of the Whole. Every year the government is obliged by lack of time to drop something like one third of the bills it has introduced, but those of its bills that are referred to the standing committees rarely fail to be enacted. In the case of bills brought in by private members the contrast is even more striking; for while scarcely one tenth of all such bills become law, more than one half of those among them fortunate enough to reach a standing committee are enacted.[4] In fact these committees furnish

[1] S.O. 50. *Cf.* Hans. 4 Ser. XCII., 555–75.

[2] See the remarks of Gladstone in proposing them in 1882, Hans. 3 Ser. CCLXXV , 145–46.

[3] In the sixteen years from 1888 (when these committees were revived) through 1903, 1080 public bills were enacted, of which 109 passed through their hands. During the eight years from 1896 to 1903, this was true of 73 bills out of the 446 enacted

[4] From 1888 to 1903, 77 of the 83 government bills referred to a standing committee were enacted; from 1896 to 1906, 48 were so referred, and all but two of them were enacted From 1888 to 1903, 32 out of 58 private members' bills so referred were enacted; and from 1896 to 1903, 27 out of

by far the best chance of passing private members' bills through the House of Commons.[1]

Standing Committee for Scotland.

When the two great committees were revived in 1888, motions were made to create others to consider bills relating to Scotland and Wales. The motions were all rejected at the time; but in 1894 the Liberal government took the matter up in the case of Scotland, and in that year and the next carried resolutions establishing such a committee for the session. It consisted of all the members for Scotch constituencies, seventy-two in number, and of fifteen or twenty others appointed by the committee of selection. On each occasion the plan was vigorously opposed,[2] the chief objections being; that it tended toward legislative dismemberment of the United Kingdom; that such a committee would not, like the other standing committees, reflect fairly the proportion of the parties in the House, because two thirds of the Scotch members were Liberals;[3] and that the bills referred to it would not be exclusively of a non-contentious nature. When the Conservatives came to power they quietly dropped this committee. Even had they felt no other reason for doing so, it would, no doubt, have been enough that, in spite of considerable losses at the general election of 1895, the Liberals were still in a majority among the Scotch members. The creation of such a body illustrates, however, the exceptional position of Scotland in the British Parliament; and any one who has followed a debate on an ordinary Scotch bill, and observed how largely it is confined to Scotch members, will realise that practically the resolution of 1894 did little more than sanction formally by means of a standing committee the kind of discussion that habitually takes place in the Committee of the Whole.

41. *Cf.* Return in Com. Papers, 1902, LXXXII., 229, and the Annual Returns for 1901–03.

[1] *Cf.* Hans. 4 Ser. XCII., 563, 567.

[2] *Cf.* Hans. (1888) 3 Ser. CCCXXIII., 403 *et seq.*, 474 *et seq.*; (1894) 4 Ser. XXII., 1116 *et seq.*, 1487 *et seq.*; XXIII., 648 *et seq.*, 991 *et seq.*, 1589 *et seq*; (1895) XXXIII., 822 *et seq.*; XXXIV., 170 *et seq.*

[3] This objection was partially met by a provision in regard to the additional members. Hans. 4 Ser. XXIII., 1613; XXXIV., 1881.

The Four Standing Committees of 1907.

With a view to enlarging the legislative capacity of Parliament a select committee on Procedure in the House of Commons reported on May 25, 1906, in favour of increasing the number of standing committees from two to four, and making the reference of bills to them the normal, instead of an exceptional, proceeding. In pursuance of this recommendation the House on April 16, 1907, changed standing orders 46, 47, and 48 [1] so that there should be four standing committees, one of which is in effect the former Scotch Committee, while the other three are to consider any bills that may be referred to them, and not as heretofore only those relating to law or to trade.[2] All bills, except money bills and bills for confirming provisional orders, are to be referred to one of the standing committees, unless the House otherwise order on a motion to be decided without amendment or debate; and the bills are to be distributed among the committees by the Speaker.

The object of the change was to give a better chance of enactment for measures which there is not time to debate in Committee of the Whole; and the provision that the House may vote not to send a bill to a standing committee was designed chiefly for the great party measures of the government which must always be debated in the House itself. The new procedure has not been in operation long enough to judge of its effects, but something will be said of its relation to the parliamentary form of government in the chapter on the "Cabinet's Control of the Commons."

The Procedure on Public Bills.

The steps through which an ordinary public bill must still pass are very numerous, but while formerly a debate and division might take place at each of them, of late years the opportunity for this — and practically the number of steps — has been much reduced by causing some of them to be taken as a matter of course without a vote, and by permit-

[1] *Cf.* Hans. 4 Ser. CLXXII., pp. lxxix–lxxx.

[2] A committee to which a bill relating exclusively to Wales and Monmouthshire is referred must comprise all the members from that part of the kingdom. In order to provide chairmen enough, the maximum of the chairmen's panel was raised from six to eight.

ting no debate on others. This is well illustrated at the outset of a bill's career, where, indeed, an old complex procedure and a later and simpler one continue to exist side by side.

Introduction and First Reading.

A bill may be introduced in one of three ways. A motion may be made for an order for leave to bring it in, accompanied by a speech explaining its objects, and followed by a debate and vote. This was formerly the only method, and debates lasting over several days have occurred at this stage.[1] Amendments might be moved hostile to the provisions of the bill. In fact the adoption of such an amendment to a militia bill caused the fall of Lord John Russell's ministry in 1852. Now only important government bills are introduced in that way; for by a standing order adopted in 1888 a motion to bring in a bill may be made at the commencement of public business, and after brief explanatory statements by the mover and one opponent the Speaker may put the question.[2] From the length of time taken by the speeches this is known as the ten-minute rule. After an order to bring in a bill has been obtained in either of these ways, the question that the bill be read a first time is voted upon without amendment or debate.[3] Finally, in 1902, a still more expeditious process was established. It permits a member to present his bill, which is read a first time without any order or vote of the House whatever.[4]

Second Reading.

The next step, and, except on great party measures, the first occasion for a debate, is the second reading. This is the proper stage for a discussion of the general principles of the bill, not of its details, and amendments to the several clauses are not in order. The methods of opposing the second reading are somewhat technical. The form of the question is "that this bill be *now* read a second time"; and a negative vote does not kill the bill, because it does not prevent a motion to read it being made on a subsequent day.[5]

[1] May, 437, note 1.
[2] S O 11
[3] S. O. 31. This is also true when a bill is brought from the Lords
[4] S. O. 31.
[5] *Cf* Hans. 4 Ser. CLVII., 744

In order to shelve the bill without forcing a direct vote upon it, the habit formerly prevailed of moving the previous question;[1] but this was open to the same objection, and had, in fact, the effect of the American practice of moving to lay the bill upon the table. A similar difficulty arises when an amendment is moved stating some special reason for not reading the bill. It may express the sense of the House, but it does not necessarily dispose of the measure. Of late years, therefore, it has been customary to move that the bill be read this day six months, or three months, the date being such as to fall beyond the end of the session. On the general principle that a question which the House has decided cannot be raised again, such a vote kills the bill. Nor does it make any difference that the House happens to be sitting at the end of six months, for that date is treated as a sort of Greek calends that never comes.[2]

Committee of the Whole.

After the second reading a bill, until 1907, went normally to the Committee of the Whole, with or without instructions,[3] and now it goes there if the House so decides. When the order of the day for the Committee of the Whole is reached the Speaker leaves the chair, and the House goes into committee without question put.[4] This is the stage for consideration of the bill in detail, and the clauses are taken up one after another, the amendments to each clause being dis-

[1] Until 1888 the form of the motion was "that that question be now put," and the mover voted in the negative; but after the closure was introduced with a motion in these same words, the previous question was changed, and put in the form "that that question be not now put." May, 269. If under either form the House decided in favour of putting the question, the vote upon the second reading was taken without further debate. May, *Ibid.* But as the previous question was itself subject to a discussion which might cover the principles of the bill, it did not have the effect of cutting off debate. (*Cf.* Report of Com. on Business of the House. Com. Papers, 1871, IX., 1, Qs. 54–55.)

[2] May, 446.

[3] By S.O. 34, committees of the whole are instructed to make such amendments, relevant to the bill, as they think fit. The object of a special instruction is merely to empower the committee to make amendments, within the general scope and framework of the bill, which it would not possess under the standing order. Ilbert, "Manual," §§ 175–76.

[4] S.O. 51. Adopted in 1888.

posed of in their order. Then new clauses may be proposed, and finally the bill is reported back to the House.

Reference to a Select Committee

Normally a bill goes either to the Committee of the Whole or to a standing committee, but after it has been read a second time a motion may be made to refer it to a select committee. Such a reference simply adds a step to the journey of the bill, for when reported it goes to a standing committee or to the Committee of the Whole. A standing committee, on the other hand, is, as already explained, a substitute for the Committee of the Whole. It deals with the bill in precisely the same way, reporting it back to the House amended or unchanged.

or Standing Committee.

Report.

When a bill has been reported from the Committee of the Whole with amendments,[1] and when it has been reported from a standing committee whether amended or not,[2] it is considered by the House in detail, upon what is known as the report stage. The object is to give the House an opportunity to review the work done in committee, and see whether it wishes to maintain the amendments there adopted. But the House is not restricted to confirming or reversing the changes made in the bill, and although the process of going through the measure clause by clause is not repeated, fresh amendments may be proposed and new clauses added.[3]

If the bill is reported from a Committee of the Whole without amendments, it is assumed that the details are satisfactory to the House, and there is no report stage.

Third Reading.

The next, and now the last, stage of a bill in the House of Commons is the third reading. Like the second reading, this raises only the question whether or not the House approves of the measure as a whole, and the moves for compassing its defeat are the same. Verbal amendments alone are in order, and any substantial alteration can be brought about only by moving to recommit.

[1] S.O. 39. [2] S. O 50.

[3] *Cf.* S.O. 38–41. Unless a motion is made to recommit, the bill is considered on report, when reached, without question put. S.O. 40.

Usually the several steps in the enactment of a bill are taken on different days,[1] but there is nothing in the rules of the House of Commons to require this, and urgent measures have at times passed through all their stages in both Houses in one day. The last case was that of the Explosive Substances Bill passed in 1883 under the pressure of the dynamite scare.[2]

Lords' Amendments.

When a bill passed by one House is amended by the other, it is sent back for the consideration of those amendments. If they are agreed to, the bill is ready for the royal assent. If not, the bill is returned, and a committee is appointed to frame a message to the other House, stating the reasons for disagreement.[3] The other House may, of course, waive its amendments, insist upon them or modify them, and the bill might thus, with new changes, go back and forth between the Houses indefinitely. Formerly it was the habit, when the Houses failed to agree, to appoint managers to hold a conference, but this practice has fallen into disuse,[4] and in the case of government bills — almost all important bills to-day are government bills — negotiations are carried on between the ministers and the leading peers who oppose them.

Summary of the Procedure

Leaving out of account the first reading, which rarely involves a real debate, the ordinary course of a public bill through the House of Commons gives, therefore, an opportunity for two debates upon its general merits, and between them two discussions of its details, or one debate upon the details if that one results in no changes, or if the bill has been referred to a standing committee. When the House desires

[1] Except that the third reading often follows immediately upon the report stage. May, 472.

[2] May, 487. In the Lords this requires a suspension of the rules. Some kinds of bills are subject to special forms of procedure which it seems hardly necessary to mention. A bill for the restitution of honours begins in the Lords, and in the Commons is referred to a select committee which takes the place of a Committee of the Whole. A bill for a general pardon originates with the Crown, and is read only once in each House. May, 435–36.

[3] May, 479; Ilbert, "Manual," § 209.

[4] May, 412–16; Ilbert, § 250 note.

to collect evidence it does so after approving of the general principle, and before taking up the details. Stated in this way the whole matter is plain and rational enough. It is, in fact, one of the many striking examples of adaptation in the English political system. A collection of rules that appear cumbrous and antiquated, and that even now are well-nigh incomprehensible when described in all their involved technicality, have been pruned away until they furnish a procedure almost as simple, direct and appropriate as any one could devise. Many old forms remain, but they have been shorn of their meaning, and often amount to nothing but entries in the journal. Even the first reading, which seems anomalous, has its use. A real debate at that stage occurs only in the case of great party measures, where both sides of the House want to be familiar with the scope of the bill, the objections that may be made to it, and the way it strikes the public, before the first effective debate upon its merits opens. The procedure upon money bills, which appears at first sight still more arbitrary and complex, is perfectly rational also, and the differences from the method of passing ordinary measures arise from the nature of the case. There can be no doubt about the general principle of the annual appropriation bill. Supplies must be voted to carry on the government, and the only questions arise over particular grants. Hence there is no object in opening with a first or second reading, and the procedure begins in committee. But in order to understand how this works out one must again go back to the technical rules.

CHAPTER XIV

PROCEDURE IN THE HOUSE OF COMMONS

Money Bills and Accounts

THE procedure in the case of financial measures differs in important respects from that followed in passing other bills. It will be remembered that, with some exceptions already described, all the national revenues are first paid into the Consolidated Fund, and then drawn out of it to meet the expenditures of the government. The financial work of Parliament, like that of the administration, turns, therefore, upon the processes of getting money into and out of that fund. The second process comes first in the order of parliamentary business, and its nature is fixed by two standing orders, which date from the early years of the eighteenth century. One of them, adopted in 1707, provides that the House will not proceed upon any petition or motion for granting money but in Committee of the Whole House;[1] the other, that it will not receive any petition, or proceed upon any motion, for a grant or charge upon the public revenue unless recommended from the Crown.[2]

The Rule that Appropriations Require Consent of the Crown.

This last rule, first adopted by a resolution in 1706, and made a standing order in 1713,[3] was designed to prevent improvident expenditure on private initiative. It has proved not only an invaluable protection to the Treasury, but a bul-

[1] S O. 67.

[2] S O. 66 May (527) points out that these two rules, together with S.O. 68, adopted in 1715, that the House will receive no petition for compounding a revenue debt due to the Crown without a certificate from the proper officer stating the facts, were for more than a century the only standing orders of the House.

[3] Todd, "Parl. Govt. in England," 2 Ed., I., 691.

wark for the authority of the ministry.[1] Its importance has been so well recognised that it has been embodied in the fundamental laws of the self-governing colonies;[2] while some foreign countries, like France and Italy, that have copied the forms of parliamentary government, without always perceiving the foundation on which they rest, have suffered not a little from its absence.[3]

Even in England the rule has been at times evaded. About the middle of the last century, it was the habit to bring in bills involving the expenditure of public funds, and avoid a violation of the rule by inserting a clause that the expenses incurred should be "defrayed out of moneys to be hereafter voted by Parliament." But a vote in favour of such a bill was clearly an expression of opinion that well-nigh compelled the ministers to include the expense in their next estimates. This practice was stopped in 1866 by changing the standing order so as to provide that the House will not "proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund, or out of moneys to be provided by Parliament, unless recommended from the Crown."[4] The change, however,

[1] As an illustration of the fact that the rise of the authority exerted by ministers over Parliament was contemporary with the loss by the King of personal legislative power, Todd (II., 390) remarks that this rule was first adopted in 1706, and the last royal veto was given in 1707.

[2] British North Amer. Act, § 54. Commonwealth of Australia Constitution Act, § 56.

After the government of India was transferred from the East India Company to the Crown, in 1856, the rule was extended to motions for a charge upon the Indian revenue. S.O 70.

[3] For France, *cf.* Dupriez, *Les Ministres*, II., 416–17, 421–30; Lowell, "Govts. and Parties," I, 116–17; for Italy, Dupriez, I., 316–19; Lowell, 207–9. Owing to the greater cohesion of parties, and to the fact that the expenditures are contained in a series of separate acts which can hardly be changed without disturbing the financial equilibrium, Belgium has suffered little from this cause. Dupriez, I., 249–52.

[4] Todd, I., 692–96. When the main object of a bill is the creation of a public charge, a resolution for that charge must be passed in Committee of the Whole upon a recommendation from the Crown before the bill is introduced. But when the charge is merely subsidiary or incidental, the bill can be brought in previously, the clauses or provisions creating the charge being printed in italics The words so printed are regarded as mere blanks with an indication of the way they are eventually intended to be filled, and they

does not absolutely prevent the House from forcing the hands of the government. A resolution can be passed in abstract and general terms in favour of a certain kind of expenditure, the construction of harbours of refuge, for example; or an address to the Crown can be adopted asking for an expenditure, and promising "that this House will make good the same," a procedure followed in erecting statues on the death of great leaders of the House.[1]

As late as 1877 Mr. Gladstone lamented the loss of financial control by the Crown, complaining that, by addresses, resolutions, and even bills, the House pledged itself to expenditure for local claims or the interests of classes and individuals, and that the government was morally bound to redeem the pledges. This he thought was carried so far as to be a great public mischief.[2] Whether such a statement was an exaggeration at that time or not, it would hardly be repeated now; for on the one hand the control of the cabinet over the House, and on the other the obstacles encountered by private members in passing measures, have increased so much that it is very difficult, without the help of the Treasury Bench, to get the House to adopt anything to which there is serious opposition.

The Rule Prevents Increase of the Estimates.

Although in terms the rule applies only to a motion for making a grant, it has been construed to cover any amendment for increasing a grant beyond the amount recommended from the Crown,[3] — an extension certainly needed to protect both the Treasury and the authority of the ministers. When, therefore, the minister moves that a sum of money be granted for a definite purpose, no amendment is in order either to increase that sum or to alter its destination.[4] But the rule does not forbid a reduction. It follows that if any member deems the sum named too small, his only course is

cannot be considered by the House until a Committee of the Whole has passed the necessary resolutions on a recommendation from the Crown. May, 528–29, 539.

[1] May, 538–40; Todd, I., 699–701. By S.O. 69 an address of this kind must be adopted in Committee of the Whole.

[2] "Gleanings of Past Years," I., 81.

[3] May, 532, 580.

[4] *Ibid.*, 580–81. Todd, I., 753.

to move to reduce it in order to draw attention to its insufficiency. Reductions of one hundred pounds are, in fact, constantly moved to make an occasion for discussing some grievance connected with the service in question, and they afford a ready means of protest, free from peril to the Treasury.[1]

The Rule is Applied to Taxes.

A still greater extension of the rule is made in its application to taxes; but this depends not upon the standing order, but upon a general constitutional principle which has gradually been evolved therefrom. The principle has, in fact, been expanded until it may be stated in the general form that no motion can be made to raise or expend national revenue without a recommendation from the Crown, or to increase the sum asked for by the Crown. The government has accordingly the exclusive right to propose fresh national taxation, whether in the form of new taxes or of higher rates for existing ones,[2] and no private member can move to augment the taxes so proposed.[3] He can, however, move to

[1] Such reductions are sometimes carried. There was the famous case in 1895 when a motion was made to reduce the salary of the Secretary of State for War to draw attention to the alleged lack of supply of cordite. The defeat of the government in this case furnished the occasion for the resignation of Lord Rosebery's cabinet. (Hans 4 Ser. XXXIV., 1685–1711, 1742)

In 1904 Mr Redmond, the leader of the Irish Nationalists, moved to reduce by £100 the appropriation for education in Ireland, and obtained a majority of 141 to 130. Mr. Balfour, declining to treat the matter seriously, remarked that the Irish leader had succeeded in reducing the grant to Ireland by £100; to which the latter replied that defeating the government at a cost of £100 was money well spent. (Hans. 4 Ser. CXXXI , 1141–47)

Again in 1905 a motion to reduce by £100 the appropriation for the Irish Land Commission was carried by a vote of 199 to 196 (Hans. 4 Ser. CXLIX., 1459–86) After some reflection the government decided that it was not a sufficient cause either for resignation or dissolution, although the ministry was undoubtedly losing its hold upon the country. In each of these three cases the defeat of the government was an accident, the result of a "snap vote."

[2] May, 532–33, 589. Todd, I , 709–12 But this does not apply to local taxation for local purposes. May, 565–67; Todd, I., 710.

[3] May, 533, 589; Todd (I , 711) says that a motion can be made to increase a tax proposed by the government, but of the two precedents he cites, one (Hans. 3 Ser LXXV , 1020) was a motion by the minister to restore in a sugar duties bill the rate of duty which had been proposed, but reduced in Committee of Ways and Means; the other (Hans. 3 Ser CCXVIII., 1041) was a motion to renew the existing rate of 3*d*. for the income tax, the government having proposed to reduce it to 2*d*.

reduce them, and he is even free to bring in a bill to repeal or reduce taxes which the government has not proposed to touch.[1] Moreover, as the principle merely forbids him to urge an increase of the burdens upon the people beyond the point at which they stand, or the point at which the ministers propose to place them, he can, when the government suggests a reduction of a tax, move an amendment to reduce it less,[2] and when the government brings in a plan for a revision of taxation, he can move to substitute a somewhat different tax for the one proposed, provided the amount of revenue yielded will not be greater.[3] But these rights are seldom used, and almost never with success; otherwise they would, no doubt, be found objectionable and swept away.

The House of Commons, at the present day, certainly stimulates extravagance, rather than economy; but this is done by opinions expressed in debate, not by specific proposals made by the members. It is done by criticising the administration, by complaints, for example, that the Army and Navy are insufficient for the defence of the empire. The result is a growth in the budgets prepared by the ministry; but this is a very different thing from expenditure directly caused by the irresponsible action of private members. The former is deliberate and reflects public opinion, the latter may originate in personal or local feelings, and then be adopted through heedless good nature or skilful log-rolling.

Committee of Supply.

As grants of money can be taken up only in Committee of the Whole, and only on the recommendation of the Crown, — that is, of a minister — the House resolves itself, early in the session, into Committee of the Whole on Supply, to consider the estimates submitted by the government.[4]

[1] May, 540, 567; Todd, I., 713 *et seq.* Provided the bill does not incidentally increase some other tax. May, 533.

[2] May, 533–35.

[3] *Ibid.*, 589; Todd, I., 711.

[4] S O. 14 provides that the Committees of Supply and Ways and Means shall be set up as soon as the address in reply to the King's speech has been agreed to.

Consolidated Fund Charges.

Now it will be remembered that certain charges, such as the interest on the national debt, the royal civil list, and the salaries of the judges, are payable by statute out of the Consolidated Fund, and hence do not require an annual vote of Parliament, or come before the Committee of Supply. The

Estimates for the Supply Services.

estimates for the rest of the expenditures for the coming year, known as the supply services, are divided into three parts, relating to the Army, the Navy, and the civil services. The last of the three is divided into classes, and all of them are divided into grants or votes, which are in turn subdivided into subheads and items. Each grant is the subject of a separate vote in Committee of Supply, and amendments may be moved to omit or reduce any item therein.

Votes on Account.

The English financial system aims at precision. It is deemed of great importance that the estimates should be as accurate as they can be made, and hence they must be prepared as short a time as possible before going into effect. They are made up in the several departments late in the autumn, then submitted for revision to the Treasury, and laid before Parliament shortly after it meets about the middle of February. But as the financial year begins on April 1, it is manifest that the Committee of Supply cannot finish its discussion of them by that time. With the work it must do in passing upon supplementary estimates for the current year, it can, in fact, make little progress with those of the coming year during March, and yet money must be spent, and there must be legal authority to spend it, especially as the unspent balances of appropriations lapse at the close of the financial year in which they are voted. The committee, therefore, passes votes on account to cover the time until the regular appropriations are made. The reader will, perhaps, recall the fact that in the military and naval services an excess on one grant may, with the approval of the Treasury, be used to cover deficiencies on other grants, and hence it is the habit in the case of those services to vote in March the grant for the pay and wages of the men for the whole year, and use the money so obtained for

all purposes until the appropriations have been completed. In the civil services, where this is not allowed, votes on account are passed for all the grants, large enough to carry on the government for four or five months.

Supplementary Grants.

With the utmost effort at accuracy in the estimates they will always prove to be insufficient in some branch of the service, or an unexpected need for expenditure will arise; and to provide funds in such cases supplementary estimates must be presented and voted before the close of the financial year.

Excess Grants.

There may also be other expenses outside the estimates, which have, by the authority vested in the Treasury, been temporarily met by advances from the Civil Contingencies Fund or the Treasury Chest Fund, or from extra receipts of the department. These do not require an immediate appropriation; but they are reported to the Committee on Public Accounts at the next regular session after the close of the financial year, and then presented to the Committee of Supply to be covered at once by an excess grant.

Before the end of March, therefore, the Committee of Supply must pass the supplementary grants for the year then coming to a close, the excess grants for the preceding year, the votes on account for the coming year, and make such progress as it can with the regular estimates for that year.

Consolidated Fund Acts.

But the committee merely passes and reports to the House resolutions in favour of those grants, and the money cannot be paid out of the Consolidated Fund without the authority of a statute. The next step is taken in the Committee of the Whole on Ways and Means, where on the motion of a minister another resolution is passed, that to make good the supply already voted, the sum required be granted out of the Consolidated Fund. This in turn must be reported to and confirmed by the House.[1] A bill called a Consolidated Fund Bill is then brought in to give effect to the resolution. The bill, with the separate grants annexed in a schedule, goes

[1] On the procedure in the Committee of Ways and Means, and on Report from Committee of Supply and of Ways and Means, see May, 588 *et seq.*

through the ordinary stages; but the time spent upon it is short, because its only object being to authorise the issue of money to cover the supply already voted, no amendment can be moved to reduce the amount, or change the destination, of the grants.[1]

The Appropriation Act.

The first Consolidated Fund Act must be passed in time to receive the royal assent before April 1. One or two more follow from time to time as the Committee of Supply makes its way slowly through the estimates.[2] Finally, after the whole supply for the year has been voted, the Appropriation Bill is brought in, which sums up and embodies all the grants for the services of the year, prescribes their application by means of the schedules annexed, and authorises their payment out of the Consolidated Fund. This is usually passed on the last day of the session.

The Budget.

So much for the process of getting money out of the Consolidated Fund. That of getting money into the fund goes on at the same time, but independently. It is usually early in April that the Chancellor introduces his budget in the Committee of Ways and Means. In an elaborate speech he reviews the finances of the past year, comparing the results with the estimates, and dealing with the state of trade and the national debt. He then refers to the estimates already submitted, and coming to the gist of his speech, and the part of it that is awaited with curiosity, he explains how he proposes to raise the revenue required to meet the expenditures. As he could have no right to take the floor without a motion before the House, he concludes by moving one or more of a series of resolutions containing the changes in taxation, or the continuation of temporary taxes, that he desires.

About three quarters of the revenue is derived from permanent taxes, which are rarely changed, and require no action by Parliament from year to year. But in order to

[1] May, 526; Ilbert, "Manual," § 245, note

[2] In order to provide money enough in the Consolidated Fund in anticipation of receipts from taxation, each of these bills authorises the Bank of England to advance the sums required, and the Treasury to borrow on Treasury bills. May, 558, n. 3; Ilbert, § 244.

adjust the income closely to expenses, certain taxes are voted for a year at a time, their rates being raised or lowered as may be required to balance the budget. For many years the only imposts so treated were the income tax and the duty on tea; one of them being regarded as a direct tax levied upon property, and the other as an indirect tax resting upon the mass of the people. Recently, however, the duties on tobacco, beer and spirits, and the corresponding excises on beer and spirits, have been increased, and the additions so made have been voted from year to year.

The budget speech of the Chancellor of the Exchequer is followed by a general discussion of the questions he has raised, and either at once, or on subsequent days, by debates and votes upon the resolutions he has brought in. The resolutions when adopted are reported to the House for ratification, but as in the case of supply, they have no legal effect until enacted in the form of a statute. Perhaps it would be more correct to say that they have no legal validity; because in order to prevent large importations made to avoid a projected increase in a duty, it is customary to prescribe in the resolution a date near at hand when the tax shall take effect, and to collect it from that date if the resolution has been agreed to by the House on report. The collection is quite unauthorised by law at the time, but it is afterward ratified by a statute which fixes the same date for the operation of the tax; and this gives the transaction complete legal validity, because Parliament has power to pass a retroactive law. If for any reason the provision for the tax fails of enactment, the duties that have been collected are, of course, refunded.

The Finance Act.

It was formerly the habit to include in the fiscal resolutions based upon the budget, and in the act to give them effect, the annual and temporary taxes alone; the permanent taxes, and especially those imposed rather for economic reasons than for the purpose of revenue, being dealt with by special acts.[1] But the use of taxation for revenue

[1] May, 556–57; Todd, I., 791.

only, and still more a quarrel with the House of Lords, brought about a change of system. In 1860 the government determined to repeal the paper duties, which hindered the publication of cheap newspapers, and were decried as a tax on knowledge. The loss of revenue was taken into account in the financial plans of the year; but according to custom the repeal of the duties was contained in a separate bill by itself. The Lords, after passing the act to give effect to the rest of the budget, rejected this bill. At the moment the Commons could do nothing save express their opinions; but the next year they included the repeal of the paper duties in the annual tax bill, and the Lords were constrained to pass it; for although the Peers do not formally admit the claim of the Commons that they must accept or reject money bills without alteration, they never venture to amend them. The policy of including all the taxes in one bill has developed into a permanent practice, and under the name of the Finance Bill this now includes all fiscal regulations relating both to the revenue and to the national debt.[1]

The Public Accounts.

The whole initiative, as regards both revenue and expenditure, lies with the government alone. The House has merely power to reject or reduce the amounts asked for, and it uses that power very little. Financially, its work is rather supervision than direction; and its real usefulness consists in securing publicity and criticism rather than in controlling expenditure. It is the tribunal where at the opening of the financial year the ministers must explain and justify every detail of their fiscal policy, and where at its close they must render an account of their stewardship. This last duty is highly important. The House receives every year reports of the administration of the finances from three independent bodies, or to be more accurate, it receives two distinct sets of accounts and one report.

[1] The name Customs and Inland Revenue Act was changed to Finance Act in 1894 when the death duties were included in it. In 1899 the provisions for the sinking-fund were also included. Courtney, "The Working Constitution of the United Kingdom," 26–28; and see the recent Finance Acts.

The Finance Accounts.

As soon as possible after the close of the financial year, the Treasury submits the Finance Accounts, which cover all receipts paid into, and all issues out of, the Consolidated Fund, giving the sources from which the revenue was derived and the purpose for which the issues were made.[1] As these accounts are based, not upon the sums expended by the different branches of the government, but upon the amounts transferred to their credit at the Banks of England and Ireland, they can be compiled quickly; and, in fact, they are laid before Parliament near the end of June, about three months after the close of the financial year to which they relate.

The Appropriation Accounts.

Meanwhile the Comptroller and Auditor General — who holds his office during good behaviour, with a salary paid by statute directly out of the Consolidated Fund, and who considers himself in no sense a servant of the Treasury, but an officer responsible to the House of Commons[2] — examines the accounts of the several departments. This is a matter requiring much time, and it is not until the opening of the next regular session that he presents what are known as the Appropriation Accounts,[3] covering in great detail the actual expenditures in all the supply services, with his reports and comments thereon.[4]

The Committee of Public Accounts.

His accounts and reports are referred to the Committee of Public Accounts, which consists of eleven members of the House chosen at the beginning of the session,[5] and includes

[1] In the case of the consolidated fund services the separate items, *e g.* the individual salaries, are given. In the case of the supply services only the amounts issued on account of each grant are given for the civil service; and for the Army and Navy only the total amounts

[2] See his evidence before the Com on Nat. Expend , Com. Papers, 1902, VII , 15, Qs 764–69, 831.

[3] Thus the Parliamentary Papers for 1903 contain the Finance Accounts for the financial year ending March 31, 1903, and the far more elaborate Appropriation Accounts for the year ending March 31, 1902.

[4] He presents also separate accounts of the consolidated fund services, and other matters, with reports upon them.

[5] S.O 75 For a brief history of the system of audit, and the laying of accounts before Parliament, see the memorandum by Lord Welby. Rep. Com. on Nat. Expend., Com Papers, 1902, VII , 15, App. 13. See also the description by Hatschek, in his *Englisches Staatsrecht* (495–500), of the introduction into England of double entry and the French system of keeping the national accounts.

the Financial Secretary of the Treasury, some one who has held a similar office under the opposite party, and other men interested in the subject. It inspects the accounts and the Comptroller and Auditor General's notes of the reason why more or less than the estimate was spent on each item. It inquires into the items that need further explanation, examining for the purpose the auditing officers of the departments, and other persons; and it makes a series of reports to the House, which refer in detail to the cases where an excess grant must be made by Parliament, or a transfer between grants in the military departments must be approved.[1]

The Committee of Public Accounts has undoubtedly great influence in keeping the expenditures very strictly within the appropriations, and from time to time it expresses its opinions strongly about any laxity in that respect — remarks that are not forgotten by the officials. But there has been much complaint that the House itself, while criticising the administrative conduct of the government freely in the discussion of the estimates, takes little interest in their financial aspect; and, therefore, the recent Committee on National Expenditure has suggested that one day, at least, should be set apart for the discussion of the report of the Committee on Public Accounts.[2]

Indian Revenue Accounts.

There are a couple of anomalous cases where, by statute, the estimates for a service are not voted by Parliament, but the accounts are afterward submitted to it for approval. This is true of India; and the provision is a wise one, for it allows the government of that country to be conducted by the authorities on the spot, who are alone competent to do it, and yet it reserves to the House of Commons an oppor-

[1] All the reports of the Committees on Public Accounts from 1857 to 1900, with the minutes made in consequence by the Treasury, have been collected and printed together from time to time in blue books. There are now three of these published in 1888, 1893, and 1901, the last containing an index of all three (Com. Papers, 1888, LXXIX., 331; 1893, LXX., 281; 1901, LVIII, 161).

[2] Rep. Com. on Nat. Expend., Com. Papers, 1903, VII., 483, p. v.

tunity for supervision and criticism. On one of the last days of the session a motion is made to go into Committee of the Whole to consider these accounts, and on that motion a general debate on Indian affairs is in order. In the committee itself only a formal motion is made certifying the total revenue and expenditure, and debate is confined to the economic and financial condition of the dependency.[1] In the same way the expenses of Greenwich Hospital are, by statute, defrayed out of its revenues, but the accounts are submitted to the House annually, with a resolution for their approval.[2]

[1] May, 564. On July 20, 1906, an amendment to the motion that the Speaker leave the chair was proposed, to the effect that the salary of the Secretary of State for India ought to be placed among the regular Treasury estimates, in order to give a better chance to discuss the government of India. One of the chief objections made to this was that it would tend to bring the Indian administration into party politics, and the amendment was rejected by a large majority. (Hans. 4 Ser. CLXI., 589–610.)

[2] May, 565.

CHAPTER XV

PROCEDURE IN THE HOUSE OF COMMONS

Closure

The Need of Closure.

ALMOST all great legislative bodies at the present day have been forced to adopt some method of cutting off debate, and bringing matters under discussion to a decisive vote. They have been driven to do so partly as a defence against wilful obstruction by minorities, and partly as a means of getting through their work. Although following the path with great reluctance, the House of Commons has been no exception to the rule. With the evolution of popular government it has become more representative and less self-contained. Formerly an important public measure gave rise to one great debate, conducted mainly by the leading men, and the vote that followed was deemed to settle the question. The case had been argued, Parliament had rendered its verdict, and that ended the matter. But now every one has his eye upon the country outside. The ordinary member is not satisfied to have the case argued well; he wants to take part in the argument himself. He wants the public, and especially his own constituents, to see that he is active, capable, and to some extent prominent.[1] He watches, therefore, his chance to express his views at some stage in the proceedings.

[1] Lecky attributed what he called "the enormous and portentous development of parliamentary speaking" partly to the scenes of violence and obstruction, which have weakened both the respect for the House and the timidity that imposed a restraint on idle speech; partly to the growth of the provincial press which reports members in full in their own constituencies; and partly to the vast increase in stump oratory which has given nearly all members a fatal facility. ("Democracy and Liberty," I., 146–47.) A traveller is struck both by the universal fluency, and by the ephemeral character, of public speaking in England, at the present day.

Moreover, the strategy of the leaders of the Opposition has changed. They are not trying merely to persuade the House, or to register their protests there. They are speaking to the nation, striving to convince the voters of the righteousness of their cause, and of the earnestness, devotion, and tenacity with which they are urging it. Hence they take every opportunity for resistance offered by the rules, and fight doggedly at every step. Just as in war the great battle that settled a campaign has been replaced by a long series of stubborn contests behind intrenchments; so in the important issues of parliamentary warfare, the single conclusive debate has given way to many struggles that take place whenever the rules afford a means of resistance. This may not be done for the sake of obstruction or delay, but it consumes time, and it has made some process of cutting off debate and reaching a vote an absolute necessity.

First Used in 1881.

The first resort to such a process was brought about by deliberate obstruction. This had been felt to be an evil for a dozen years,[1] and was made intolerable by the tactics of the Irish members in opposing the introduction of the coercion bill of 1881. Several nights of debate were followed by a continuous session of forty-one hours; when the Speaker, on his return to the chair, of which he had been for a time relieved by his deputy, interrupting the discussion, said that the dignity, the credit and the authority of the House were threatened, and that he was satisfied he should but carry out its will by putting the question forthwith.[2] His action was not authorised by standing order or by precedent, but whether justifiable or not, it marked an epoch in parliamentary history.

The Urgency Resolution of 1881.

Brand, the Speaker, had not come to his decision without consulting Gladstone, then Prime Minister; and had made his action conditional upon the introduction of some regular process for coping with obstruction.[3] Gladstone at once gave notice of an urgency resolution, which was speedily

[1] Hans. 3 Ser CCLVII., 1141–42. [2] Hans 3 Ser. CCLXVI , 2032–33
[3] Morley, "Life of Gladstone," III., 52–53.

adopted, thanks to the suspension of all the Irish members for interrupting debate contrary to the orders of the chair. The resolution enabled a minister to move that the state of public business with regard to any pending measure was urgent. This motion was to be put forthwith without debate, and if carried by a majority of three to one in a House of not less than three hundred members, was to vest in the Speaker, for the purpose of proceeding with such measure, all the powers of the House for the regulation of its business.[1]

Urgency Rules.

The language was vague, but the intent was clear. The urgency resolution sanctioned for the future the authority recently assumed by the chair. The Speaker, however, not wishing to make what might appear to be an arbitrary use of his new powers, laid before the House a number of rules by which he should be guided;[2] and these have furnished the suggestions for much of the later procedure for curtailing debate.[3] The one dealing with the primary object of the resolution provided that when it appeared to the Speaker, or to the Chairman in Committee of Supply or Ways and Means, to be the general sense of the House that the question should be put, he might so inform the House, and then a motion made to that effect should be voted upon without debate, and if carried by a majority of three to one, the original question should be put forthwith. The urgency motion was used at once to push through a couple of bills relating to Ireland; but the resolution expired with the session, and after being revived for a short time the next year, it was replaced in the autumn of 1882 by a standing order

[1] Hans. 3 Ser. CCLVIII., 155–56.

[2] *Ibid.*, 435–38, 1070–71, 1343–44; CCLIX., 888–90; also published in Com. Papers, 1881, LXXIV., 1–9.

[3] Such as that debate on dilatory motions should be confined to the motion; that the House should go in and out of committee without question put; that divisions frivolously claimed, and dilatory motions made for delay might be refused by the chair; and most striking of all, a provision for stopping debate altogether upon a certain stage of a bill by putting all outstanding amendments and clauses at a fixed time — a shadow of the future guillotine. This process was, indeed, employed by Mr. Gladstone to pass two Irish bills in that very session.

based upon the Speaker's rules.[1] The new order made, however, two changes in the procedure. Instead of being applicable only after urgency had been voted, on a motion by a minister, in regard to some particular measure, it could be used at any time; and instead of requiring a vote of three to one, it required either a bare majority, if two hundred affirmative votes were cast, or one hundred affirmative votes, if there were less than forty votes against it. Instead, therefore, of being a weapon that could be used only in cases of exceptional obstruction by a small group, it became a process applicable at any time to limit debate by the minority. But although apparently a regular part of the procedure of the House, the motion to cut off further debate could be made only on the suggestion of the Speaker, and this vested in him an arbitrary initiative which he was loth to exercise. The standing order was, in fact, put into operation on two occasions only, on Feb. 24, 1885, and on Feb. 17, 1887.

Closure Rule of 1882.

The difficulty that had been felt in using the procedure was avoided by the adoption in 1887 of a new standing order[2] transferring the initiative to the members of the House, while securing fair play to minorities by leaving with the Speaker a power of veto. The rule provides that any member may claim to move that the question pending be now put, "and unless it shall appear to the chair that such motion is an abuse of the rules of the House, or an infringement of the rights of the minority," it shall be put forthwith. If carried, the pending question, and following it the main question before the House, with all others depending upon it, must be put without further amendment or debate,[3] The process, now entitled for the first time "closure," was

Closure Rule of 1887.

[1] A number of new rules were added at this time, and the standing orders were rearranged and put into their present sequence. Com Papers, 1882, LII., 139, 243 The standing order on this subject became No. 14.

[2] The Standing Order of 1882 was not repealed until 1888.

[3] In the same way a motion may be made to put forthwith the question that certain words stand part of a clause, or that a clause stand part of the bill, and this cuts off summarily all amendments to those words or that clause. These standing orders are now Nos. 26 and 27.

modified in 1888, so that the only requirement about the size of the majority was that one hundred votes must be cast in the affirmative. In this form it has ever since remained, and it has been freely used, having been actually applied from one score to four score times each year.[1]

The Speaker's Consent.

The requirement of the Speaker's assent has proved to be no mere formality. This is especially true where closure has been moved by private members, for his consent, or that of the Chairman of Committees, has been refused in one third of such cases.[2] Largely for that reason, no doubt, the use of closure by private members has become far less common than it was formerly. During the first ten years after 1887 it was moved by private members on the average about forty times a year, but since that period the average has been only twelve. Even in the case of motions made by a minister, consent has often been withheld. It happened very frequently during the earlier years, but of late has been much less common.[3] Evidently the Treasury Bench and the Speaker have come to adopt very nearly the same standard for determining when a matter has been sufficiently debated. To a spectator in the gallery the discussion seems to proceed until the House must be thoroughly weary of it before closure is moved; and, indeed, the House itself very rarely rejects the motion when it gets a chance to vote upon it — a fact which shows that if the Speaker had not power to withhold his consent, the majority would cut short debate more drastically than it does now. But although debate may have gone on until the House is weary, and the benches are nearly empty, until the speeches consist mainly

[1] Owing partly to the extension of an automatic form of closure, to be explained hereafter, the applications in 1903 fell to thirteen.

[2] From 1887 to 1905, inclusive, the closure was moved by private members 517 times, and consent was refused in 178 of these cases. The proportion of refusals is almost uniform throughout the period, rather increasing during the last few years.

Closure has failed for lack of 100 affirmative votes only once in the last ten years. That was in 1905.

[3] From 1887 to 1896, inclusive, the closure was moved by the government 313 times, and consent was withheld in 52 of these cases. From 1897 to 1905 it was so moved 338 times, but consent was withheld only 23 times.

of the reiteration of arguments in less incisive form, yet there are almost always members who are longing in vain for a chance to make a few remarks. In great debates the order of the chief speakers on each side is commonly arranged between the whips, and given to the presiding officer; who usually follows it, though not without occasional exceptions. For the rest he gives the preference, among the members who try to catch his eye, to those who have the ear of the House, or who are likely to say something worth hearing, not forgetting to call on a new man who rises to make his maiden speech. By seizing on the dull hours, when the House is not full, an undistinguished member can often get his chance. Still, there are many men who sit impatiently with what they believe to be effective little speeches ready to be fired off upon an appreciative public, and see their chance slipping away.[1] Perhaps they are bores, but on them the closure falls as a blight, and they raise the bitter cry of the curtailment of the rights of private members.

Closure at the End of a Sitting

The closure can be moved at any time, even when a member is speaking, but perhaps its most effective use is at the close of the sitting. A standing order adopted in 1888 provides[2] that when the hour arrives for the cessation of debate — technically known as the interruption of business, — the closure may be moved upon the main question under consideration, with all others dependent upon it. This gives an opportunity of finishing a bit of work without appearing to cut off discussion arbitrarily, and it was especially valuable during the time when the rules of 1902 provided on four days of the week[3] two regular sittings with an interruption at the end of each.

[1] *Cf.* Palgrave, "The House of Commons," Ed. of 1878, 41–42.

[2] Now S.O. 1 (4).

[3] It is commonly stated that closure cannot be used in a standing committee, (Ilbert, "Manual," §§ 80, note, 135 note); but it was done on July 12, 1901, in the Standing Committee on Law; and although the persons aggrieved stated that they should bring the matter to the attention of the House, they did not feel confidence enough in their case to do so. (See *The*

The Guillotine.

While the closure is effective in bringing to an end debate on a single question, or in getting past some one particularly difficult point in the career of a bill, it is quite inadequate for passing a great, complicated government measure that provokes relentless opposition. Here it is as useless as the sword of Hercules against the Hydra. Amendments bristle by the score at every clause, and spring up faster than they can be cut off. The motion that certain words "stand part of a clause," or that a "clause stand part of the bill," wa intended to work like the hero's hot iron, because if the motion is adopted no amendment can afterward be moved to that word or that clause. But in practice such motions cannot be used ruthlessly. The government discovered the insufficiency of the closure under the Standing Order of 1887, during the debates on the very bill whose enactment it had been adopted to secure, and resorted to a procedure which had already been used by Mr. Gladstone on a couple of Irish coercion bills in 1881.[1] Five days had been consumed on the first reading of the Irish Crimes Act of 1887, seven on the second reading, and fifteen days more had been spent in Committee of the Whole on four out of the twenty clauses of the bill; when the government moved that at ten o'clock on June 17, being the end of the next week, the Chairman should, without further debate, put all questions necessary to bring the committee stage to an end.[2] The motion was

Times, July 17, 1901, and the Political Notes in the number for July 13. Curiously enough the incident is not mentioned in the report of the meeting of the committee in that number.) For other statements of its use in a standing committee, *cf.* 2d Rep. of Sel. Com. on House of Commons (Procedure), May 25, 1906, Qs. 418, 420.

Since this was written closure in standing committees has been sanctioned by a change in the standing orders; twenty affirmative votes being required.

[1] After giving notice of his intention to do so, he moved, on Feb. 21, 1881, that all clauses and amendments of the Protection of Life and Property (Ireland) Bill should be put to vote in Committee of the Whole at twelve o'clock that night. This was done, and repeated upon the report stage of the bill (Hans. 3 Ser. CCLVIII., 1092, 1344, 1392, 1472, 1608, 1665, 1672–75). The same process was adopted a few days later for the Peace Preservation (Ireland) Bill. (Hans. 3 Ser. CCLIX., 657, 659, 691–95, 697, 740, 762–65.)

[2] Hans. 3 Ser. CCCXV., 1594.

adopted, and from its trenchant operation the process was known as the "guillotine." It served its purpose, but from the point of view of parliamentary deliberation it was a very imperfect instrument, for all the clauses after the sixth were put to vote without amendment or debate.[1]

Closure by Compartments.

The defect of the guillotine, that it resulted in needlessly long discussions on a few early clauses, to the entire neglect of the rest, was largely remedied in the case of the Home Rule Bill of 1893. After twenty-eight nights had been spent in committee on the first four clauses, the House, on June 30, adopted a resolution that debate on clauses five to eight should close on July 6, on clauses nine to twenty-six on July 13, on clauses twenty-seven to forty on July 20, and on the postponed and new clauses on July 27.[2] This form of procedure, sometimes called closure by compartments, has the merit of distributing the discussion over different parts of the measure, and of affording at least a probability that any provision exciting general interest will receive some measure of attention. It was used again on the Evicted Tenants Bill in 1894,[3] and the Education Bill in 1902;[4] and may now be said to have become a regular, because a necessary, practice in the case of difficult and hotly contested measures. But save in the case of supply, it has been the subject of a special resolution passed for a particular bill, under what have been treated as exceptional conditions, and it has found no mention in the standing orders.[5]

Closure of Supply.

The guillotine has been applied more systematically to supply. Formerly the estimates were taken in their order, with the result that much time was wasted early in the session over trivial matters, like the repairs of royal palaces in

[1] Hans. 3 Ser. CCCXVI., 484–88. [2] Hans. 4 Ser. XIV., 590.

[3] Hans. 4 Ser. XXVII., 1410–46. In this case, for the first time, the report stage was included in the original motion.

[4] Hans. 4 Ser. CXIV., 735–38.

[5] One of the latest and most elaborate examples of its use was on the Territorial and Reserve Forces Bill of 1907. Hans. 4 Ser. CLXXIII., 1367–70, 1463–66.

Class I.; while great appropriations of important departments were rushed through at the fag end of the session.[1] But at the instance of Mr. Balfour a sessional order was passed in 1896 allowing in that session twenty days for supply, with a provision for taking a vote, without further debate, on every grant left when the days expired, the time allowed being, he thought, about the average amount heretofore devoted to the subject.[2] As the grants in supply, unlike the clauses of a bill, can be brought before the House in any order that the minister may choose, there was not the same need of a closure by compartments; but in order to remove any fear that the government might hold back certain appropriations, Mr. Balfour said that the important grants, and those which any group of members wanted to discuss, would be taken first.[3] The resolution was renewed from year to year[4] until by the new rules of 1902 it was permanently embodied in the standing orders.[5]

As the rule now stands, twenty days,[6] all to come before Aug. 5, are allotted for the consideration of the estimates,[7] and on the days so allotted no other business can be taken before midnight.[8] At ten o'clock on the last day but one the Chairman must put to vote every question needed to dis-

[1] *Cf.* Hans. 4 Ser. XXXVII., 727. [2] *Ibid.*, 732. [3] *Ibid.*, 728–730.

[4] It may be assumed that the House will never reject any of the outstanding grants, but a useless number of divisions might be forced in voting upon them. As the number of such grants is usually little short of one hundred, the time wasted in walking through the lobbies on the last night might be monstrous. To avoid this a rule was adopted in 1901 that when the allotted time expired, all the remaining grants in any one class should be put to vote together. Hans. 4 Ser. XCVIII., 1619–20.

[5] S.O. 15. [6] Three more days may be added by special order.

[7] These include the votes on account, but only one day can be given to each of the three votes on account, and only one sitting, or half a day, to the report of such a vote. Days devoted to supplementary estimates or votes of credit are not included; nor are those days on which the question must be put that the Speaker leave the chair, because those days are really occupied not by the votes of supply, but by general criticism of the government. (See Chap. XVIII., *infra*.) The short sitting of Friday counts as half a day.

[8] This does not apply to private bills, questions, and the other matters that are taken up in the first hour, before the regular orders of the day are reached.

pose of the grant under consideration; and then put in succession all the outstanding grants by classes, those in each class being taken together and put as a single question. At ten o'clock on the last day the Speaker follows the same process for closing the report stage of the estimates.

The real object of the debates in supply at the present day is not financial discussion, but criticism of the administration of the departments, their work being brought under review as their estimates are considered.[1] In that light the new procedure has worked very well. Complaint has been made that the government no longer cares what grants are brought forward for debate — leaving that to the Opposition, — or how long the discussion upon them may take, or whether it ends with a vote upon them or not, knowing very well that all these grants must be adopted under closure when the twenty days expire.[2] This is perfectly true; but on the other hand the procedure gives the fullest opportunity for criticising the administration, and forcing a discussion of grievances, the matters to be criticised being selected by the critics themselves. Although the Opposition, as in duty bound, resisted the adoption of some portions of the rule, it may be safely said that the rule itself will not be repealed by any government that may come to power.

[1] Mr. Balfour said this frankly in the debate on the rule in 1896. (Hans. 4 Ser. XXXVII., 724–26.)

[2] Hans. 4 Ser. XCVIII., 1548.

CHAPTER XVI

PROCEDURE IN THE HOUSE OF COMMONS

Sittings and Order of Business

Sittings of the House.

AFTER describing the processes of legislation, a word must be said about the order of business for each day and for the session as a whole. On Monday, Tuesday, Wednesday, and Thursday the House now meets at a quarter before three, and sits until half-past eleven, when it is automatically adjourned unless business specially exempted is under consideration. But the sitting is divided by the mystic hour of a quarter past eight into two parts which are reserved on certain days for quite different kinds of business. On Friday the House sits from noon till half-past five, and on Saturday it does not meet at all unless by special vote on very rare occasions.[1]

[1] Until 1888 the regular hour of meeting on Monday, Tuesday, Thursday, and Friday was a quarter before four o'clock; but as there was no provision for adjournment at any fixed hour, debate on a subject might go on indefinitely; and, in fact, all-night sittings were common. In 1879 a standing order had been adopted that no opposed business, not specially exempted, should be taken up after half-past twelve; but this did not put a stop to a business in hand at that hour. Owing to the fatigue caused by late sittings (Temple, "Life in Parliament," 184–85), a standing order was adopted in 1888 changing the hour of meeting on those four days to three o'clock, and providing that at midnight the business under consideration should, unless specially exempted, be interrupted; that no other opposed business should thereafter be taken up; and that the House should adjourn not later than one o'clock. The hours of sitting on Wednesday were left as before at from noon to six o'clock.

For some time it had been the habit, especially in the latter part of the session, to break the day occasionally into two sittings, the earlier one beginning at two o'clock, and being called a morning sitting. After 1888 these two sittings were held from two until seven, and from nine until twelve (S.O. of March 7, 1888), the days being commonly Tuesdays and Fridays.

Interruption of Business.

With the exception to be noted in a moment, all business upon which the House may be engaged is interrupted at five o'clock on Friday afternoon, and eleven on other days; but unopposed business may still be taken up until the hour arrives for adjournment. During that interval the orders of the day are read, and each of them may in turn be debated and even voted upon, unless a division is challenged, or some member objects.[1] In short, work can be done after the time for interruption only by universal consent, a single member having power to prevent the consideration of any measure to which he is opposed. Yet a certain amount of business is transacted at these times; and, in fact, a private member's bill would stand little chance, even if no one had any serious objection to it, unless it could pass through some of its stages in this way.

Exceptions Thereto.

To the rule that no opposed business can be taken after eleven o'clock there is an important exception. A minister may move at the beginning of the afternoon sitting that any

Now although the system of two sittings a day, with a considerable interval for dinner, involved beginning at an hour in the afternoon inconveniently early for men in the active work of a business or profession, it had certain manifest advantages, and was made the universal practice in 1902. At that time the standing orders were extensively revised, and in particular the subject of the sittings, with the order of business thereat, was remodelled. For the sake of giving members a chance to pass what is known as the week-end in the country, the short day was transferred from Wednesday to Friday, the House meeting on that day at twelve, and adjourning automatically at six (S.O. 2); while each of the other four working days was divided into afternoon and evening sittings, the first from two until half-past seven, and the other from nine until one (S.O. 1). Finally in 1906 another change of hours was made, without, however, any essential alteration in the method of doing business. The inconvenience of early attendance at the House was avoided by changing the hour of meeting on Monday, Tuesday, Wednesday, and Thursday to quarter before three, while the hour for the adjournment was changed to half-past eleven, and a part of the time then lost was made up by abolishing the formal interval of an hour and a half for dinner. But although there is now one continuous sitting on each of these days, the order of business arranged for the two sittings has been retained, the break coming at a quarter past eight. The hour of adjournment on Friday was changed at the same time to half-past five.

[1] May, 209. Business which is merely formal, or which follows as of course from action already taken by the House, may be transacted in spite of objection. May, 210.

specified business shall not be interrupted at that hour, and the question must be put without amendment or debate. This is often done toward the close of the session, and results in sittings that run far into the night. Bills originating in Committee of Ways and Means, and proceedings taken in pursuance of a statute[1] or standing order, are also exempted from the rules about interruption, about taking up no opposed business after eleven o'clock, and about adjournment at half-past eleven o'clock.[2] It must be remembered also that closure may be moved after the hour for interruption has struck.[3]

Order of Business for the Day.

The first sitting of each day is opened with prayer. The Speaker then takes the chair, and certain formal or routine business that occupies little time is taken up in the following order.

1. Private business, that is, bills relating to private or local matters. Private business, which is unopposed, and therefore takes no appreciable time, is taken up first. Opposed private business is not taken up at all on Friday, and if not finished by three o'clock on other days is postponed to a quarter past eight on such day as the Chairman of Ways and Means may determine.[4]

2. Presentation of public petitions (if presented orally instead of being dropped silently into a bag behind the Speaker's chair). As a rule no debate is in order, and hence this process is also short,[5] and must be finished by three o'clock.[6]

[1] Under this head is included action upon statutory orders, where the act provides, as it usually does, that the order shall be laid before Parliament, and shall not go into effect if either House adopts an address with that object. Without this exception to the rule the House would have no real opportunity to adopt such an address, unless the government chose to give part of its time for the purpose. Ilbert, "Manual," § 36 note.

[2] S.O. 1 (2), (3), (5), (7), (8). Ilbert, §§ 35–39. The Annual Army Bill has always been treated as exempted business. *Ibid.*, § 36 note.

[3] S.O. 1 (4). A division in progress is not interrupted. Ilbert, § 35 note.

[4] Such postponed private business must be distributed as equally as may be between the days allotted to the government and to private members. S.O. 8; Ilbert, § 50. The procedure on private bills will be described in Chap. xx. *infra*.

[5] Ilbert, §§ 51–54, 47 n. S.Os. 76–80.

[6] Except in the rare cases where debate is allowed on the ground that an urgent personal grievance is involved. Ilbert, § 53 (6).

3. At that hour, on the afternoon sittings, the important business of putting questions to ministers begins.[1] The character and political effect of these questions will be examined in Chapter XVIII, but from the point of view of parliamentary time it may be noted that the practice has grown so much during the last thirty years as to require some limitation. In 1901 the questions asked numbered 7180, and consumed 119 hours, or the equivalent of fifteen parliamentary days of eight hours each.[2] The new rules of 1902 sought to check the tendency in two ways; by giving the option of requiring an oral or a written answer, the question in the former case being marked in the notice paper with an asterisk; and by fixing a strict limit to the time consumed. Forty minutes are allowed for putting questions, the answers to those not reached by a quarter before four, like the answers to questions not starred, being printed with the votes of the day.[3]

4. If there is a vacant moment before three o'clock, or between the time questions come to an end and a quarter before four o'clock, it may be used by motions for unopposed returns, for leave of absence, or for similar unopposed matters that would otherwise have to be taken up after the interruption of business.[4]

5. Immediately after questions, a member rising in his place may make the portentous motion "for the adjournment of the House for the purpose of discussing a definite matter of urgent public importance."[5] This is usually, but not necessarily, made in consequence of a highly unsatisfactory answer that has just been given to a question. It may seem strange to move to adjourn before serious business has begun, but as such a motion has not been carried for nearly a score of years that feature is unimportant, and its

[1] S.O. 9. Ilbert, §§ 55–60. It is not usual to ask on Friday questions requiring an oral answer.' Ilbert, § 56 note. [2] Hans. 4 Ser. CI., 1353.

[3] Unless the minister was not present to answer, or the question did not appear on the notice paper, and is of an urgent character. S.O. 9 (3).

[4] In practice a motion for a new writ of election is usually made before questions, and the introduction of a new member follows them. Ilbert, § 47 note. [5] S.O. 10.

real significance in giving a chance to discuss at short notice some action of the government will be explained in Chapter XVIII. Formerly the debate upon the motion took place immediately; but now the member merely obtains — by the support of forty members, or by vote of the House — leave to make his motion, while the debate itself is postponed to a quarter past eight o'clock.

6. Then come what are called "matters taken at the commencement of public business." These are the presentation of bills without an order of the House or under the ten-minute rule, and motions by a minister relating to the conduct of business to be decided without amendment or debate.

7. Finally comes the regular business of the sitting, in the form of notices of motions or orders of the day. The distinction between these two classes of business is not easy to explain with precision;[1] but for our purpose it is unimportant, except so far as one class has precedence over the other. Now the government has authority to arrange the order of its own business as it pleases;[2] and in relation to private members, orders of the day practically mean bills, and notices of motion mean resolutions and other matters that are not bills. The application of the distinction comes, therefore, to this, that of the sittings set apart for private members, Friday is reserved for their bills, and Tuesdays and Wednesdays after a quarter past eight o'clock for their other motions.[3]

Order at Evening Sittings.

At a quarter past eight o'clock the first business is a motion for adjournment on an urgent matter of public business, in the occasional instances where leave has been obtained at the afternoon sitting to make it. Next follows any postponed private business that may have been assigned

[1] Ilbert, § 41 note. Technically an order of the day is a matter which is set down for a particular day by an order of the House; a notice of motion is a motion set down for the day by notice given by a member without any order of the House; but under the present rules an order of the House is made in many cases without any actual vote, or even the opportunity for a vote, the proceedings being in fact much the same as in the case of a notice of motion. The distinction remains, however, as a means of classifying different kinds of business. [2] S.O. 5. [3] S.O. 4.

to that evening; and then come the notices of motions and orders of the day.

By the new arrangement with its definite time for certain business, the work of the House is better distributed. There is no longer the same danger that the discussion of a private bill or of a motion to adjourn, or an interminable series of questions, will unexpectedly cut a great piece out of the hours when the House is most crowded, and the leading men are waiting to debate a great public measure. At the afternoon sitting the regular business of the day is reached at a quarter before four, or very little later, and it proceeds without interruption until a quarter before eight. After that hour — unless there is an opposed private bill, which does not often take long, or by chance a motion to adjourn — the regular business, which may not be the same as at the afternoon sitting, begins again, and goes on until eleven. With the habits of slack attendance when nothing is expected, and the necessity for a presence in force when a division that touches the Treasury Bench may be taken, it is a matter of no small import to be able to forecast the business of a sitting.

The severe pressure for time has thus brought about a minute allotment of the hours at each sitting for definite kinds of business, and the same cause has produced a similar, although less exact, distribution in the work of the session as a whole.

Order of Business for the Session.

The regular session of Parliament opens about the beginning of February, and the first business is the address in reply to the King's speech. Formerly it was an elaborate affair, which referred to the clauses of the speech in succession, but since 1890 it has taken the form of a single resolution expressing simply the thanks of the Commons for his Majesty's most gracious speech. Amendments are moved by the various sections of the Opposition in the shape of additions thereto, pointing out how the government has done things it ought not to have done, and left undone things it ought to have done; and even members of the

majority, who are disgruntled because their pet hobbies have been left unnoticed, follow the same course. The debates on the address take practically the whole time of the House for two or three weeks.[1] As soon as they are over, the Committee of Supply is set up, and sits one or two days each week, the rest of the sittings being taken up with government measures, and with business introduced by private members.

Hope springs eternal in the legislative breast, and every assembly undertakes more work than it can accomplish thoroughly. In some legislatures this results in a headlong rushing through of measures almost without discussion at the end of the session. But while, under closure by compartments and the supply rule, this may be true in England of certain clauses of bills and of large parts of the appropriations, it is not true of bills as a whole. Parliament is, primarily, a forum for debate, rather than a machine for legislation, and bills that cannot be discussed at some length are dropped. After the Whitsuntide recess every year, the leader of the House announces that owing to lack of time the government has found it necessary to abandon such and such measures, a proceeding familiarly known as the slaughter of the innocents. But it is not their own bills alone that the ministers are obliged to slay. In order to get through their own remaining work they have long been in the habit of taking by special order, after the Easter recess, a part of the sittings reserved for private members, and of seizing all the rest soon after Whitsuntide. The practice was regulated and made systematic by the new rules of 1902; but this brings us to the relation of the cabinet and of private members to the work of the House, which forms the subject of the following chapter.

[1] As Redlich remarks (*Recht und Technik*, 315–16), the speech having a general political character, debate and amendment are not limited by any rule of relevancy, but stray over every kind of political grievance or aspiration and the whole foreign and domestic policy of the government. He points out that until 1880 the debate rarely took more than a couple of days, but since that time the number of sittings devoted to it has run from six to sixteen.

CHAPTER XVII

THE CABINET'S CONTROL OF THE COMMONS

A Body of Men can say only Yes or No.

FOR the purpose of collective action every body of men is in the plight of M. Noirtier de Villefort in "Monte Cristo," who was completely paralysed except for his eyes. Like him it has only a single faculty, that of saying Yes or No. Individually the members may express the most involved opinions, the most complex and divergent sentiments, but when it comes to voting, the body can vote only Yes or No. Some one makes a motion, some one else moves an amendment, perhaps other amendments are superimposed, but on each amendment in turn, and finally on the main question, the body simply votes for or against. Where a body acts by plurality it can, of course, choose which of several propositions it will adopt, which of several persons, for example, it will elect.[1] But this depends upon the same general principle, that the body can act collectively only on propositions laid before it by an individual, or a group of men acting together as an individual. Ordinarily it can only answer Yes or No to questions laid before it one at a time in that way.

Framing the Question.

Obviously, therefore, it is of vital importance to know who has power to ask the question; and, in fact, one of the great arts in managing bodies of men consists in so framing questions as to get the best possible chance of a favourable

[1] Curiously enough, such a procedure is unknown in the House of Commons, and the term itself is unfamiliar. It means in the case of an election, for example, that a candidate to be successful need only have more votes than any one else, whereas election by majority means that he must have more than half of the votes cast. The proposal for a second ballot in elections to Parliament involves requiring a majority instead of a plurality on the first ballot.

reply. In small bodies that have limited functions and an abundance of time, the members are free to propose any questions they please; but in large assemblies, all of whose proceedings are of necessity slower, this freedom is curtailed by lack of time, especially if the range of activities is wide. Hence the legislatures of all great states have been constrained to adopt some process for restricting or sifting the proposals or bills of their members. The most common device is that of referring the bills to committees, which can practically eliminate those that have no serious chance of success, and can amend others, putting them into a more acceptable form. In such cases the committees enjoy, if not the exclusive privilege of proposing questions to the legislature, at least the primary right of framing the questions that are to be submitted, and this gives them a momentous power. An organisation by committees is the most natural evolution of a legislative body, if there is nothing to obstruct it. Now in Parliament there has been something to obstruct it, and that is the system of a responsible ministry.

The Cabinet.

The cabinet has been said to be a committee, and the most important committee of the House; but it is really far more. Unlike an ordinary committee, it does not have the bills of members referred to it. On the contrary it has the sole right to initiate, as well as to frame, the measures it submits to the House; and these comprise, in fact, almost all the important bills that are enacted. By far the greater part of legislation originates, therefore, exclusively with the ministers. The system of a responsible ministry has obstructed the growth of committees; because, in the case of government measures, the chief function of such committees, that of sifting bills and putting them into proper shape, is performed by the cabinet itself; and also because, as will be shown hereafter, the authority of the cabinet would be weakened if other bodies, not necessarily in accord with it, had power to modify its proposals. In this connection it may be observed that in the domain of private and local

bills, where the responsibility of the cabinet does not extend, there has developed a most elaborate and complete set of committees, to which all such bills are referred.

Subjects Treated in this Chapter.

The relation of the cabinet to the House of Commons may be conveniently treated under three heads: the initiative left to private members; the direct control of the cabinet over legislation with its effects; and the control of the House over the administration and the general policy of the government.

Private Members' Bills.

It may appear strange that the existence of a responsible ministry should obstruct the growth of committees on public bills brought in by private members. Nevertheless it has done so; partly by reducing those bills to a position of secondary importance; and partly because if the committees were under the control of the government the private member would be even more helpless than he is now, and if they were not they might be at times inconvenient rivals to the ministry. As the House of Commons is organised, therefore, the committees play a minor part. The most important legislation of a public nature originates with the ministers, and is entirely in their charge, save for an occasional reference to a committee under exceptional circumstances; while private members are free to bring their public bills before the House, unfettered by any committee, provided they can find a chance to do so in the extremely meagre allowance of time at their disposal. In short the Commons have solved the question of time by giving most of it to the government to use as it pleases, and leaving the private members to scramble for the rest.

Time Allotted to Private Members.

Under the new rules of 1902 and 1906 government business has precedence, from the opening of the session until Easter, at every sitting, except after a quarter past eight o'clock on Tuesday and Wednesday and at the sitting on Friday. Until Easter, therefore, these three periods in the week are reserved for the private members. Between Easter and Whitsuntide the government is given the whole of Tuesday for its own use, and after Whitsuntide it has all the time

except the third and fourth Fridays next following.[1] As the private members have no time reserved for them until the close of the debate on the address, the arrangement gives them in a normal year about thirty parts of the session out of a couple of hundred. It must be remembered also that the part of a sitting after quarter past eight is shorter than that which goes before; is never, on private members' nights, prolonged beyond the hour of interruption; and is liable to be broken into by opposed private bills, and motions to adjourn on a matter of urgent public importance.[2] It is clear, therefore, that the share of time reserved for private members is small. But although their lamentations over confiscation of their sittings by the government have been constant, the actual time at their disposal has not, in fact, been seriously diminished of late years. An examination of the parliamentary papers shows that in the ten years from 1878 to 1887 government business actually had precedence on the average in eighty-three per cent. of the sittings, and during the following decade in about eighty-four and a half per cent.[3] This is very little less than the proportion that now prevails. The recent rules have merely sanctioned by permanent standing order a practice that had long been followed in an irregular way by special resolutions adopted during the course of the session.

[1] S.O. 4. In his account of the evolution of procedure in the House of Commons (*Recht und Technik des Englischen Parlamentarismus, Buch I., Abs. 2*), Redlich traces the history of the practice of reserving particular days for the government, which began in 1811.

[2] It is a mistake to lay too much stress upon the exact proportion of time allotted to private members and to the government; because much of the time of each is devoted to the same purpose. One of the uses to which private members' evenings are put is criticism of the conduct of the ministry, but this is also the principal object of the debates upon the address, upon the estimates in Committee of Supply, upon motions to adjourn and on other occasions.

[3] These figures are taken from the return made for ten years in 1888, and the subsequent annual returns, making due allowance for the cases of two short sittings instead of a long one in a day. An exact computation by hours would be difficult. The evening sittings are shorter than the average sittings, but so were the old Wednesday sittings reserved for private members.

Ballot for Days.

When, as Hobbes remarked, there is not enough of any article to satisfy everybody, and no one has authority to apportion it, the most obvious means of distribution is the lot. This primitive method is still employed for dividing among the private members the time reserved for their use. Their sittings are devoted to two different objects. On Tuesday and Wednesday evenings notices of motions have precedence, while Friday is the day for bills. At the beginning of a session members who want to introduce bills send in their names, and in the order in which the lots are drawn they set down their bills for second reading on a Friday, selecting, of course, the earliest unoccupied day. In this way every Friday before Whitsuntide is taken, and although there will probably not be time to deal with more than one bill in a day, less successful. competitors place their measures second or third on the lists, hoping that they may be reached.

The first bill on the list usually comes to a vote on the second reading, but when that point has been passed it is difficult to find an opportunity for any of its subsequent steps. A reference to a standing committee affords the best chance, because it avoids the committee stage in the House. If a bill is not so referred, it is almost certainly doomed, unless it can pass some of its stages, unopposed, after the hour for the interruption of business; and, in fact, any bill is well-nigh hopeless that does not take at least one step in this way.[1] On the two Fridays remaining after Whitsuntide private members' bills are given precedence in the order of their progress,[2] the most advanced obtaining the right of way. The leader of the House may, however, star any bill, that is, give to it a fraction of the government time, but this is very rarely done, and never till near the close of a session.

As there are only about a dozen Fridays before Whitsun-

[1] As Redlich observes (*Recht und Technik*, 206) the introduction of the twelve-o'clock rule for the interruption of business brought in the habit of talking out a bill before midnight, and blocking bills after midnight, two of the great obstacles to legislation by private members.

[2] S.O. 6.

Insignificance of Private Members' Legislation.

tide, a private member must be very fortunate in the ballot, or he must have a number of friends interested in the same bill, to get it started with any prospect of success; and even then there is scarcely a hope of carrying it through if a single member opposes it persistently at every point. Ten or fifteen such bills are enacted a year, and of these only a couple provoke enough difference of opinion to lead to a division during their course in the House.[1] But while many private members loudly bewail their wrongs, they make no organised effort for mutual protection. These men are, in fact, separate units without a basis for combination. They have not even that spirit of the golden rule, which does much harm in legislation. They show neither the good nature, nor the instinct for log-rolling, which prompts men to vote for one another's bills, hoping for like favours in return. Hence their labours produce little fruit, either sweet or bitter. In short, the public legislation initiated by private members is neither large in amount, nor important in character, and it cannot be passed against serious opposition, — a condition that tends to become more marked as time goes on.

Private Members' Motions.

The privilege on the part of private members of bringing forward motions on Tuesday or Wednesday evenings is, like that of having bills considered on Friday, determined by lot; with this difference, that a notice of motion cannot be given more than four motion days ahead, and hence the first ballot covers only two weeks, and is followed by fresh balloting every week until Easter.[2] In order to improve the chance of getting a hearing, a number of members interested in the same question will often send in their names, with the understanding that any one of them who is lucky enough to be drawn shall set down the motion. This practice was introduced by the Irishmen; but it has

[1] Although the time at the disposal of private members has not changed much of late years, the number of these bills enacted, and especially of those enacted against opposition, has diminished sensibly. In the decade from 1878 to 1887 about twenty-three such bills were passed a year, and on four or five of these divisions took place.

[2] S.O. 7. Ilbert, "Manual," §§ 45, 119.

now become common among members of all kinds who take, or wish to appear to take, an interest in a subject. It is called "syndicating," and has resulted in making the motions not infrequently reflect the views of a considerable section of the House.

Their Nature and Effect.

The motions on these nights take the form of resolutions, and are of every kind. Some of them express aspirations of an abstract nature, such as that the government ought to encourage cotton-growing in the British colonies, or that the greater part of the cost of training teachers ought to be borne by the national exchequer.[1] Others demand more definite legislation about matters on which the parties are not prepared to take sides. A motion, for example, was carried in 1904 that the franchise for members of Parliament ought to be extended to women. But a resolution adopted in that way, without opposition from the government, is commonly regarded as a mere aspiration, and has hardly a perceptible effect. Others again deal with the hobbies of individuals, and in that case the members are apt to go home, so that after an hour or two of desultory talk the House is counted out for lack of a quorum; the frequency with which that occurs depending, of course, upon the amount of general interest attaching to the motions that happen to appear on the list.[2] Finally there are motions which attack the cabinet or its policy, motions, for example, condemning preferential tariffs on food, or the control by the central government of the police in Ireland. Motions of that sort are, of course, strenuously resisted by the Treasury Bench, and they will be discussed hereafter when we come to the methods of criticising the action of the ministry.[3] Apart from cases of this last class, the motions

[1] The following examples are all taken from the session of 1904.

[2] In 1903, for example, the House was counted out for want of a quorum on seven out of the seventeen private members' nights; while in 1904 this happened only once, and then after the first motion had been voted down.

[3] On March 22 and 28, 1905, the ministers, with their followers, took no part in the debates or divisions on the motions of private members condemning their attitude on the fiscal question, and they paid no attention to the votes. This event, which was unprecedented, will be discussed later.

of private members have even less practical importance than their bills. Occasionally a real popular demand may find expression in that way, but it is uncommon, and the chief value of the Tuesday and Wednesday evening sittings would seem to lie in helping to keep alive the salutary fiction that members of Parliament still possess a substantial power of independent action.

Control of the Cabinet over Legislation.

All the sittings not reserved for private members are at the disposal of the government, and it can arrange the order of its business as it thinks best.[1] The responsibility of the ministers for legislation is a comparatively recent matter.[2] Before the Reform Act of 1832 their functions were chiefly executive; but the rapid demand for great remedial measures, and later the complexity of legislation due to the extended control and supervision by the administrative departments, and not least the concentration of power in the cabinet by the growth of the parliamentary system, brought about a change. By the middle of the century that change was recognised, and at the present day the ministers would treat the rejection of any of their important measures as equivalent to a vote of want of confidence.[3]

Moreover, the government is responsible not only for introducing a bill, but also for failing to do so. At a meeting in the autumn the cabinet decides upon the measures it intends to bring forward, and announces them in the King's speech at the opening of the session. Amendments to the address in reply are moved expressing regret that His Majesty has not referred to some measure that is desired, and if such an amendment were carried it would almost certainly cause the downfall of the ministry. This happened, indeed, in 1886, when the resignation of Lord Salisbury's

[1] S.O. 5.

[2] *Cf.* Todd, "Parl. Govt. in England," II., 368. Ilbert, "Legislative Methods and Forms," 82, 216.

[3] The only cases where a government bill has been rejected by the House of Commons for more than a score of years are those of the Home Rule Bill in 1886, on which the cabinet dissolved Parliament, and an insignificant bill on church buildings in the Isle of Man, which was defeated in a thin House in 1897.

cabinet was brought about by the adoption of an amendment regretting that the speech announced no measure for providing agricultural labourers with land.

Amendments to Government Bills.

Following upon the responsibility for the introduction and passage of all important measures has come an increasing control by the ministers over the details of their measures. It was formerly maintained that the House could exercise a great deal of freedom in amending bills, without implying a loss of general confidence in the cabinet.[1] But of late amendments carried against the opposition of the Treasury Bench have been extremely rare.[2] In fact only four such cases have occurred in the last ten years. This does not mean that the debates on the details of bills are fruitless. On the contrary, it often happens that the discussion exposes defects of which the government was not aware, or reveals an unsuspected but widespread hostility to some provision; and when this happens the minister in charge of the bill often declares that he will accept an amendment, or undertakes to prepare a clause to meet the objection which has been pointed out.[3] But it does mean that the

[1] *Cf.* Todd, "Parl. Govt. in England," II., 370–72.

[2] The number of amendments to government bills (not including the estimates) carried against the government whips acting as tellers in each year since 1850, has been as follows:—

1851 . .	9	1865 . .	4	1879 . .	1	1893 . .	1
1852 . .	2	1866 . .	2	1880 . .	0	1894 . .	0
1853 . .	6	1867 . .	8	1881 . .	0	1895 . .	0
1854 . .	7	1868 . .	7	1882 . .	1	1896 . .	1
1855 . .	5	1869 . .	2	1883 . .	3	1897 . .	0
1856 . .	7	1870 . .	2	1884 . .	3	1898 . .	0
1857 . .	4	1871 . .	4	1885 . .	4	1899 . .	0
1858 . .	2	1872 . .	8	1886 . .	2	1900 . .	0
1859 . .	1	1873 . .	4	1887 . .	1	1901 . .	1
1860 . .	4	1874 . .	0	1888 . .	1	1902 . .	0
1861 . .	6	1875 . .	0	1889 . .	0	1903 . .	0
1862 . .	6	1876 . .	0	1890 . .	0	1904 . .	2
1863 . .	4	1877 . .	0	1891 . .	1	1905 . .	1
1864 . .	2	1878 . .	0	1892 . .	0	1906 . .	0

[3] The minister often says that he will consider whether he can meet the views that have been expressed; and then on the report stage he brings up a compromise clause. An interesting example of this occurred on July 23, 1906, when the Opposition complained that sufficient time had not been

changes in their bills are made by the ministers themselves after hearing the debate, and that an amendment, even of small consequence, can seldom be carried without their consent. This is the natural outcome of the principle that the cabinet is completely responsible for the principal public measures, and hence must be able to control all their provisions so long as it remains in office.

Relation of the Cabinet to the Committees.

From the same point of view the relation of the government to the various committees of the House is a matter of great importance. If the cabinet is to be responsible for the policy of the state, and must resign when defeated, it is manifestly entitled to frame the policy on which it stands. But if, as in some countries that have copied the parliamentary form of government, and notably in France, the bills of the cabinet are referred for consideration and amendment to committees not under its control, then it may have to face the alternative of opposing its own bill on account of the amendments made therein, or of standing upon a measure of which it can no longer wholly approve. It may be put in the awkward position of defending a policy that has been forced upon it, instead of one of its own selection. Such a condition of things has sapped the authority of the ministry, and weakened the government in more than one nation of continental Europe.[1] This danger has been avoided in England by the very limited use of committees on public bills, and by the influence of the Treasury Bench over those that exist.

given for debating the educational council for Wales, the provisions proposed having been profoundly changed since it had been last before the House. The government replied that the changes had been made to meet objections raised by the Opposition itself. Hans. 4 Ser. CLXI., 741 *et seq.*

[1] For France, see Dupriez, *Les Ministres*, II., 406–8, 410–13. Lowell, "Governments and Parties," I., 111–17. For Italy, Dupriez, I., 309, 312. Lowell, I., 207–10. For Belgium, where the evil is diminished by greater party discipline, and by the fact that the changes proposed by the committee must be moved as amendments to the government bill, see Dupriez, I., 243–45. In France permanent standing committees have been very extensively substituted during the last few years for temporary ones appointed to consider particular bills; but while this may do good in other ways, it cannot entirely remove the evil described in the text.

Controversial Bills not Referred to Committees.

The most important government bills, and especially those of a highly controversial nature, are not referred to committees at all. They are debated only in the House itself; and in Committee of the Whole, which is merely the House sitting with slightly different rules, and not a committee in the sense in which the word is used in this chapter. To select committees few public bills are referred, and those as a rule are certainly not of a controversial character.[1] The only difficulty arises in the case of the standing committees. When he first proposed these in 1882, Mr. Gladstone said that they were not intended to consider measures of a partisan character;[2] and it has been generally recognised ever since that very contentious bills ought not to be referred to them.[3] A long debate on the subject took place recently, on the occasion when the bill to restrict alien immigration was sent to the Standing Committee on Law in 1904.[4] All the members who took part in the discussions, except Mr. Chamberlain,[5] agreed on the general principle; but they did not agree upon any test of contentiousness, and were sharply divided on the question whether the Aliens Bill was contentious or not. Mr. Balfour himself took the ground that the controversial character of a bill is a matter of degree, and that this bill was near the border line. The obstacles in its path proved in the end so serious that it had to be dropped for the session.

That a bill is non-contentious clearly does not mean that it is unopposed, or even that the opposition has no connection with party. Every one of the six government bills referred to standing committees in 1899, for example, had a

[1] In each of the years 1894 and 1899, for example, — years for which I have analysed the divisions in Parliament, — only one government bill, that was enacted, was referred to a select committee, and neither of these bills had a division on party lines in the course of its progress through the House.

[2] Hans. 3 Ser. CCLXXV., 149.

[3] See, for example, Hans. 4 Ser. IV., 1461, XXII., 1151, XXIII., 713–14, 1012, XXXIII., 851–54, CII., 345.

[4] Hans. 4 Ser. CXXXV., 1086 *et seq.* Another debate has since occurred on March 20–21, 1907.

[5] Mr. Chamberlain's views seem to have undergone some modification. *Cf.* Hans. 4 Ser. XXIII., 1012, and CXXXV., 1113–14.

party vote at some stage in its passage through the House.[1] These committees are expected to deal, not with questions of political principle, but with details that require technical skill or careful consideration, in bills where the general principle is either non-contentious, or may be regarded as settled by the House itself. They were intended to be used for measures on which the committee stage is not likely to raise any important questions of policy. The original intention, however, has not been wholly carried out. Highly contentious bills have not infrequently been "sent upstairs,"[2] as the expression goes, although this has never been done in the case of the most important government measures. Many people feel that the departure is unfortunate, and hence there was no little opposition in 1907 to raising the number of standing committees to four, and providing that all bills should be referred to them unless the House ordered otherwise. An amendment, to the report of the committee, that the provision should not apply to bills containing general controversial matter was rejected by a strict party vote,[3] and the change in procedure was put through the House itself by the use of closure.[4] If the standing committees were confined to non-contentious measures, they could create no serious embarrassment for the ministry, even if quite free from its control.

Party Complexion of Committees.

But in fact the committees are a good deal under the influence of the government. In the first place the government party is always given a majority of the members. Formerly it had on select committees a majority of one only,[5] but now it has become a general rule that both select and standing committees shall reflect as nearly as may be the party complexion of the House itself. Thus in 1894, when

[1] I define a party vote arbitrarily as one where more than nine tenths of the members of the party in power, who take part in the division, vote together on one side, and nine tenths of the Opposition who take part vote together on the other side.

[2] Second Rep. of Com. on House of Commons (Procedure), May 25, 1906, Qs. 96, 113, 142, 381 (p. 41). The rooms of the standing committees are on the upper floor.

[3] *Ibid.*, p. viii.

[4] Hans. 4 Ser. CLXXII., 873–919.

[5] Hans. 3 Ser. CCLXXV., 306–7.

the parties were nearly evenly balanced in the House, the government majority on the committees was usually very small, but after the Conservatives came into power with a much larger majority, their share of members in the committees was correspondingly great.[1] The standing committees, and often the select committees also, are appointed by the Committee of Selection, which contains usually six adherents of the party in power, and five from the other side of the House. But they are members of great experience. They know the principles they are expected to apply, and with their discretion in the choice of individuals the ministers make no attempt to interfere.[2]

Influence of the Government in Committees.

The mere possession of a majority upon a committee is not always enough, unless the government can bring pressure to bear upon its followers. In select committees on bills this is not a matter of much consequence, because, as we have seen, they rarely have charge of important, or at least of contentious, measures. In select committees of inquiry one hears nothing of pressure — to the credit of statesmen be it said — and although the report of an English committee or commission of inquiry is often a variation on the theme that "no one did anything wrong, but they had

[1] This does not, of course, apply to the ordinary committees on private and local bills, and it cannot always be strictly applied to all select committees. But in the case of standing committees the apportionment is decidedly accurate. In fact one of the chief objections to a standing committee for Scotland, composed mainly of Scotch members, was that it would not reflect the proportion of parties in the House. In the debate Mr. Balfour remarked that this "is not merely the traditional practice, but a practice absolutely necessary if we are to maintain Governmental responsibility in matters of legislation." He asked what would be the position of the government with standing committees of which they did not happen to possess the confidence. The committee would send back a bill changed, and then the minister must either drop the bill, or accept it as it is, or reverse the changes on the report stage. Such a position would, as he said, be intolerable, and would make legislation by a responsible ministry an absurdity. (Hans. 4 Ser. XXII., 1132, 1135–36.) *Cf.* Second Rep. Com. on House of Commons (Procedure), May 25, 1906, Q. 100.

[2] Hans. 3 Ser. CCCXXXIX., 126. The chairmen of the standing committees are intended, like the Speaker, to be strictly impartial. They are selected by and from the Chairman's Panel, which contains three members from each side of the House; and a member of the Opposition often presides when a government bill is discussed.

better not do it again," still there are reports that contain severe criticism on the public administration.[1] In the standing committees the influence of the government is palpable. In fact these committees, when dealing with government bills, are miniatures of the House in arrangement as well as in composition. There are the same rows of benches facing each other; and the minister in charge of the bill sits in the corner seat at the chairman's right hand, accepting, or refusing to accept, amendments on behalf of the government.[2] Absent members are fetched in the same way to take part in divisions;[3] and when the Conservatives were in power, whips were sometimes issued imploring them to be present on the morrow, because an important vote was expected. The Liberals do not do this, and often have trouble in getting their partisans to attend. Moreover, a difficulty sometimes arises from the fact that the members who are most strongly interested in a bill and hence least under the control of the minister — the Labour men or the Irish Nationalists, for example, in the case of bills affecting their constituents — attend far more regularly than the rest. But although the influence of the government over a standing committee is distinctly less than over the House itself,[4] it is certainly very considerable.

Few Party Votes in Committees.

Nevertheless the voting in both select and standing committees runs little on party lines, decidedly less than it does in the House itself. Taking two recent years, 1894 and 1899, for which the writer has had statistics prepared, it appears that in 1894 there were in the select committees twenty-three party votes out of eighty-four divisions; and

[1] Notably in recent years that of 1903 on the War in South Africa, Com. Papers, 1904, XL., 1 *et seq.*; and that of 1904 on the Beck case, Com. Papers, 1905, LXII., 465 *et seq.*

[2] "The very structure and furniture . . . of the Chamber in which the Grand Committee would sit, were designed to carry out the idea of government by Party." Hans. 4 Ser. XXII., 1162.

[3] Hans. 4 Ser. XCII., 570.

[4] Second Rep. of Com. on House of Commons (Procedure), 1906, Qs. 100, 280, 341.

in the Standing Committees on Law and Trade[1] there were only seven divisions in all, of which only two were on party lines; whereas in the House itself there were one hundred and eighty-four party votes out of a total of two hundred and forty-six divisions. Moreover, the party votes in committees were mainly confined to a very few subjects. Thus seventeen of the twenty-three party votes in the select committees were given in the committee on the work of the Charity Commission, and four of the remainder were in that on Scotch Feus and Building Leases.[2] For 1899 the comparison is even more striking. In the select committees there was one party vote out of sixty-three divisions; in the standing committees six out of fifty-three — and those six were all on one bill[3] — while in the House there were two hundred and forty-two party votes out of three hundred and fifty-seven divisions.[4]

The reasons why the votes run on party lines less in the committees than in the House itself are self-evident. First there is the fact that the most contentious measures, those where party feeling runs highest, are not referred to com-

[1] In the anomalous standing committee for Scotch business the condition of things was very different. It reported upon only one bill, that on Local Government for Scotland, and on this there were no less than sixty-three divisions, of which twenty-one were party votes.

[2] Both of the party votes in the standing committees of Law and Trade in 1894 were on the Church Patronage Bill, which was not a government bill.

[3] The Agriculture and Technical Education (Ireland) Bill.

[4] The method of making these computations is the same as that described in the chapter on "The Strength of Party Ties," and the divisions in the committees are taken from their reports in the blue books for the year.

The figures may be presented in other ways which give much the same result. It we take only the party in power, to see in what proportion of divisions it cast a party vote — paying no attention to the votes of the members of the Opposition — we find it as follows: —

1894: House 81%; Select Coms. 49%; Stand. Coms. Law & Trade 43%
1899: House 91%; Select Coms. 34%; Stand. Coms. Law & Trade 59%
1900: House Select Coms. 18%; Stand. Coms. Law & Trade 43%

The proportion of divisions where neither party cast a party vote were as follows: —

1894: House 4.13%; Select Coms. 25%; Stand. Coms. Law & Trade 14%
1899: House 2.28%; Select Coms. 43%; Stand. Coms. Law & Trade 26%
1900: House Select Coms. 45%; Stand. Coms. Law & Trade 41%

The number of party votes in 1900 was in Select Coms. 4 out of 51, and in Stand. Coms. 6 out of 74.

mittees. Another reason, not less important, is that a defeat of the government, even in a standing committee, cannot directly imperil the life of the ministry, and hence the final means of pressure is lacking. In fact an amendment is occasionally carried against the government in a standing committee, and in that case the minister either makes up his mind to accept the change or tries to get it reversed in the House on report. But this very condition, which is embarrassing for the minister, shows that there is a limit to the work standing committees can be set to do, without imperilling the authority of the cabinet.

Suggestion of a Committee on the Estimates.

A similar danger would attend the use of committees on the estimates. The creation of such committees has often been suggested,[1] and for a very good reason. The debates on the estimates in the House of Commons have become an opportunity for criticising the conduct of the administration, while the financial aspect of the matter, the question whether the grants are excessive and ought to be reduced or not, has largely fallen out of sight. It has not unnaturally been felt that this function, which the House itself is disinclined to discharge, might be effectively performed by a select or standing committee. But if the committee were really to revise the estimates, it would, like the committees on the budget in continental parliaments, encroach upon the power of the government to frame its own budget. It would imperil the exclusive initiative in money matters, which is the corner-stone both of sound finance, and of the authority of a responsible ministry. That the Committee on Accounts should scrutinise the disbursements with care, to see that they correspond with the votes, is most salutary; and that special committees should be appointed from time to time, to review the expenditures, and suggest possible lines of saving, is also excellent. These are in the nature of criticism of past actions, with suggestions of a general character

[1] Todd, "Parl. Govt. in England," I., 744–46. May, 564. Rep. of Com. on Estimates Procedure, Com. Papers, 1888, XII., 27, p. iv. Report Com. on Nat. Exp., Com. Papers, 1903, VII., 483.

for the future, and they do not affect the freedom of the cabinet to lay down its own policy and prepare its own budget.

The last committee on national expenditure reported in 1903 in favour of having a select committee examine each year one class or portion of the estimates; but there was a sharp difference of opinion on the question whether such a committee would or would not interfere with the responsibility of ministers, and the recommendation was adopted only by a vote of seven to five.[1] In view of the experience in other countries, one cannot help feeling that the minority was right; that while the proposed committee would be far less of a thorn in the side of the Treasury Bench than one on the estimates as a whole, yet that if it really exerted any authority, and ventured to report reductions, it would stand to just that extent in a position of antagonism and rivalry with the ministers.

Legislative Capacity of Parliament has been Reached.

One of Mr. Gladstone's objects in proposing the standing committees was to increase the legislative capacity of the House, by enabling it to do a part of its work by sections sitting at the same time.[2] Such a process of making one worm into two by cutting it in halves is well enough with an organism whose nervous system is not too highly centralised; and in England it seems to have been carried about as far as is consistent with a responsible ministry. The standing committees have to some extent fulfilled this purpose, but it is extremely doubtful whether they can wisely be charged with bills of a more contentious nature than are sent to them now. In order to increase the legislative output the number of standing committees was raised to four, on April 16, 1907, with a provision that bills should be regularly referred to them unless the House directed the contrary. How far this change will result in placing in their hands more controversial bills, and how far it will increase the power of the House to pass laws, remains to be

[1] Rep. Com. on Nat. Exp., Com. Papers, 1903, VII., 483.
[2] Hans. 3 Ser. CCLXXV., 145–46.

seen. There can be no doubt, however, that the legislative capacity of Parliament is limited; and the limit would appear to be well-nigh reached, unless private members are to lose their remnant of time, or debate is to be still further restricted, so that the members will no longer be free, until closure is moved, to speak at such length as they please, and to discuss every conceivable detail, great or small, often several times over. But upon the preservation of these things the position of the House of Commons largely depends.

To say that at present the cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration; and it is only the right of private members to bring in a few motions and bills of their own, and to criticise government measures, or propose amendments to them, freely, that prevents legislation from being the work of a mere automatic majority. It does not follow that the action of the cabinet is arbitrary; that it springs from personal judgment divorced from all dependence on popular or parliamentary opinion. The cabinet has its finger always on the pulse of the House of Commons, and especially of its own majority there; and it is ever on the watch for expressions of public feeling outside. Its function is in large part to sum up and formulate the desires of its supporters, but the majority must accept its conclusions, and in carrying them out becomes well-nigh automatic.

CHAPTER XVIII

THE COMMONS' CONTROL OF THE CABINET

Control of the House over Administration.

If the relations between the cabinet and the House of Commons in legislative matters have changed, their relations in executive matters have been modified also. If the cabinet to-day legislates with the advice and consent of the House, it administers subject to its constant supervision and criticism. In both cases the relation is fundamentally the same. In both the English system seems to be approximating more and more to a condition where the cabinet initiates everything, frames its own policy, submits that policy to a searching criticism in the House, and adopts such suggestions as it deems best; but where the House, after all this has been done, must accept the acts and proposals of the government as they stand, or pass a vote of censure, and take the chances of a change of ministry or a dissolution.

It Rarely directs Administrative Action.

There is nothing to prevent the House of Commons from adopting an address or resolution calling upon the government for specific administrative action; and it has been occasionally, though not often, done.[1] Under the present rules of procedure there are few opportunities for a direct vote of this kind, the chief occasions when it is in order being the evening sittings reserved for private members' motions. On these and other occasions resolutions asking for executive action are sometimes brought forward,[2] but they

[1] For a collection of instances from 1807 to 1874 see Todd, "Parl. Govt. in England," I., 422–28, 449–50.

[2] In the year 1904, for example, there were three motions clearly of this character. The first two (in favour of paying unskilled government workmen the standard rate of wages, and against granting permits for the vivisection of dogs) did not come to a vote; while the third (calling upon the government to encourage cotton-growing in Africa) was agreed to without a division.

are rarely carried against the opposition of the cabinet. In fact it does not seem to have occurred at all in the last ten years, while in the preceding ten years it occurred only four times; and it so happened that in the last three of those cases, at least, the government did not carry out the wishes of the House.[1] Such votes are not likely to be common in the future, because the modern principle of responsibility requires that the ministers should be free to act and be held to account for what they do, rather than that they should be given explicit directions in regard to their duties.

It Criticises Freely the Conduct of the Government.

If the House of Commons does not often pass votes asking for executive action in the future, its members criticise the conduct of the government in the past freely and constantly. The opportunities for doing so are, indeed, manifold. There is first the address in answer to the King's speech at the opening of the session; then the questions day by day give a chance, if not for direct criticism, at least for calling the ministers to account; then there are the motions to adjourn; the private members' motions; the debates on going into the Committees of Supply and Ways and Means; the discussions in the Committee of

[1] It is sometimes difficult to distinguish between censure of past action, and a direction for the future; but, if we exclude votes indirectly implying censure, by a reduction of an appropriation, or an adjournment of the House, the only instances since 1886 where a vote relating in express terms to either of these things has been carried against the opposition of the government, have been as follows: On June 12, 1888, a resolution was adopted that redundant officials ought to be transferred to other departments, although a Royal Commission was already considering the subject. On April 30, 1889, a vote was passed condemning the Indian fiscal system for encouraging the opium trade; and another vote to the same effect was carried, on going into the Committee of Supply on April 10, 1891. A commission appointed by the government reported in favour of the existing system which was thereupon maintained. (Com. Papers, 1894, LX., 583; LXI.; LXII.; 1895, XLII., 31 *et seq.*; *cf.* 1892, LVIII.; and 1893, LXVI.) Finally, on June 3, 1893, it was voted that the examinations for the Indian Civil Service ought to be held in India as well as in England; but, after collecting the opinions of Indian officials, which were almost wholly adverse to the change, the government decided not to make it (Com. Papers, 1893, LXIV., 869; 1894, LX., 1), and so informed the House, Hans. 4 Ser. XXIV., 1537.

Supply itself; the debates on the Consolidated Fund Resolutions, on the Appropriation Bill, on the Budget, and on the motions to adjourn for the holidays; and, finally, the formal motions of want of confidence. The way in which these various occasions are used to bring the acts of the ministers to the attention of Parliament needs explanation.

Individual Criticism and Collective Censure.

But first it is important to distinguish between individual criticism by members, and collective censure by vote of the House. The former, whether coming from the seats behind the Treasury Bench, or from the opposite side of the floor, is in the nature of a caution to the ministers, an expression of personal opinion that is likely to find more or less of an echo outside of Parliament. It does not in itself imperil the position of the government at the moment, although the errors of the ministers pointed out in this way go into the great balance of account on which the nation renders its verdict at the next general election. But a collective censure by vote of the House may mean immediate resignation. Now the system of a responsible ministry implies the alternation in power of two parties holding different views upon the questions of the day. If it does not imply this; if the fall of one cabinet is followed by the appointment of another with a similar policy; then public life will revolve about the personal ambitions and intrigues of leading politicians, — a condition that has caused much of the discredit now attached to the parliamentary system in some continental states. But if a change of ministry involves the transfer of power to an Opposition with quite a different programme, it is clear that the change ought not to take place until the nation has declared, either at the polls, or through its representatives in the House of Commons, that it wishes that result. The ministers ought, therefore, to stand or fall upon their general policy, upon their whole record, or upon some one question that in permanent consequence outweighs everything else, not upon a particular act of secondary importance. Moreover the judgment ought to be

given after mature deliberation, not in the heat of a debate upon some political blunder brought suddenly to the notice of the House. Exactly the reverse of this occurs under the French system of interpellations. By that procedure a single act of the government can be made the subject of a debate ending with motions condemning or justifying the occurrence; and great ingenuity is sometimes displayed in so framing the motions as to catch the votes of members, who, although supporters of the cabinet, cannot approve of the act in question.[1] How a resort to similar tactics in the House of Commons has been more and more barred out, will be seen in the following pages, which describe the different methods of bringing the conduct of the ministers before the House.

Address in Reply to the King's Speech.

The first two or three weeks of an ordinary session are taken up with a debate on the address in reply to the King's speech. The address provides a field for a series of political battles, fought over the amendments that are brought forward. There are a dozen or more of these every year; many of them urging the need of legislation that is not foreshadowed in the speech; others relating to purely administrative matters arising in foreign or domestic affairs. Sometimes they deal with large questions of public policy, like the extension of the frontier of India, or the maintenance of the integrity of China. But this is by no means always true; and amendments are moved, for example, drawing attention to the grievances of the postal and telegraph clerks, or complaining of the government for failure to prosecute the directors of a blasted financial scheme or for the releasing or refusing to release persons convicted of crimes connected with political agitation in Ireland. In some of these cases particular acts are brought before the bar of the House; and it is usually impossible to avoid a direct vote upon them. But they are not recent events, or unexpectedly sprung upon Parliament. They have almost always

[1] *Cf.* Dupriez, *Les Ministres*, II., 440–45. Lowell, "Governments and Parties," I., 117–26.

aroused a good deal of public attention, and formed the subject of no little discussion. The government has, therefore, plenty of time to prepare its defence, to sound and marshal its followers; and it does not, in fact, suffer defeats on administrative questions brought forward in this way. Twice in more than twenty years the government tellers have found themselves in a minority on an amendment to the address, but neither case involved an executive act. The first, in 1886, was an amendment expressing regret that the speech had announced no measure for the relief of agricultural labourers. Under the peculiar state of parties Lord Salisbury's cabinet took the defeat as a vote of want of confidence and resigned. The other case occurred in 1894, when an amendment aimed at the power of the Lords to reject bills passed by the Commons was carried against the government on the motion of some of its own followers; but it was clearly not the kind of vote that involves the downfall of a ministry.

While, therefore, the address is essentially a time for the discussion of questions of general policy, it is, no doubt, an occasion when particular acts may be brought up for judgment, and a direct vote forced upon them, although not in the way that is most embarrassing for a cabinet.

Questions to Ministers.

Isolated examples of questions addressed to ministers can be found far back in the eighteenth century, but the habit did not become common until about sixty years ago. At that period one hundred or more questions were asked in the course of a session, and the first regulations were made regarding the time and method of putting them.[1] Thereafter the practice grew so fast that in the seventies over one thousand were asked in a session, and by the end of the century it had increased to about five thousand. In form questions are simply requests for information. They must contain no argument, no statement of fact not needed to make their purport clear, and they must be addressed to that minister in the House in whose province the subject-

[1] May, 206, note 1, 236, note 1. Todd, II., 421–22.

matter of the inquiry falls.[1] They cover almost every conceivable field; the intentions of ministers in the conduct of the business of the House; acts done by officials of all grades in every department of the public service; and even events that might be expected to give rise to action by the government. The process of answering questions gives to the Treasury Bench an air of omniscience not wholly deserved, for notice of the question to be asked is sent in a day or two in advance so as to give time for the permanent subordinates to hunt up the matter, and supply their chief with the facts required.

Motives for Asking Them.

Questions are asked from various motives; sometimes simply to obtain information; sometimes to show to constituents the assiduity of their member, or to exhibit his opinions; sometimes to draw public attention to a grievance; sometimes to embarrass the government, or make a telling point; and at times a question is asked by a supporter of the minister in order to give him a chance to bring out a fact effectively. But whatever the personal motive may be, the system provides a method of dragging before the House any act or omission by the departments of state, and of turning a searchlight upon every corner of the public service. The privilege is easily abused, but it helps very much to keep the administration of the country up to the mark, and it is a great safeguard against negligent or arbitrary conduct, or the growth of that bureaucratic arrogance which is quite unknown in England. The minister is not, of course, obliged to answer, but unless he can plead an obvious reason of public policy why he should not do so, as is often the case in foreign affairs, a refusal would look like an attempt to conceal, and would have a bad effect.

Not followed by Debate or Vote.

Now while questions furnish a most effective means of bringing administrative errors to the notice of the House

[1] May, 237–38. Questions may also be addressed to the Speaker, or to private members in regard to bills or motions in their charge, but questions of this kind are few, and do not concern us here.

they afford no opportunity for passing judgment upon them; and thereby they avoid the dangers of the French custom of interpellations. A question in England is not even followed by a debate. Often, indeed, the member says that his inquiry has not been fully answered, or interjects a remark, objection or further question; but this is never allowed to grow into a discussion, and when the habit of asking supplementary questions becomes too common the ministers refuse to answer them altogether, to the temporary exasperation of the Opposition, or the Speaker himself checks them, enforcing the rule against introducing matter of argument. If no debate is in order, neither is a vote; and hence questions furnish a means of drawing public attention to an act, but not for collective censure of it by the House.

Motions to Adjourn.

Although a question cannot give rise directly to a discussion or a vote, yet a motion, followed both by a debate and a division, may result from a question. This is the "motion to adjourn for the purpose of discussing a definite matter of urgent public importance," which is commonly, but by no means always, provoked by an answer to a question. It has had a curious history. There is in the House of Commons no principle of universal application requiring debate to be confined to the subject of the motion before the House, and great latitude was formerly permitted in the discussion of motions to adjourn.[1] Taking advantage of this fact it became the habit to create an opportunity for debating some matter that could not be brought forward in the ordinary course of procedure, by moving the adjournment before the orders of the day had been taken up; and the object being merely debate, the motion was almost always withdrawn after it had served its purpose. In 1877 motions of this kind began to be used, much against the inclination of the Speaker, to bring on a debate where the answer to a question had been unsatisfactory; and about the same time they ceased to be regularly

Their History.

[1] May, 301.

withdrawn.[1] A few years later, indeed, it became common to push these motions to a division. Before 1881 this seems to have been done in only two instances,[2] but in that year it was done seven times, and the motions themselves rose to the unprecedented number of nineteen. Members were beginning to regard the motion to adjourn as a privilege, while the freedom with which it could be used opened a door for abuse. The government, however, speedily restricted the practice by regulations that dealt with different kinds of motions to adjourn in different ways. The motion to adjourn for the Easter or Whitsuntide recess was left untouched, and still gives rise, as we shall see, to a miscellaneous discussion of many things. Upon a motion to adjourn, made, on the other hand, while the House is engaged upon the business of the day, debate was, by a standing order of 1882, confined strictly to the question of adjournment;[3] and, finally, the motion to adjourn, made before the orders of the day have been taken up, was hedged about by limitations peculiar to itself.

Motion to Adjourn to Discuss an Urgent Public Matter.

Mr. Gladstone's Urgency Resolution of 1881 gave to the Speaker control over the business of the House so long as the matter declared urgent was under consideration; and in framing rules for the exercise of his power the Speaker laid down a principle that was embodied in a standing order in the autumn of 1882.[4] The order, which is still in

[1] In the five years from 1873 to 1877 thirty-one such motions were made, of which all but three were withdrawn. Those three were negatived by an oral vote, and were not pushed to an actual division. In the next five years, up to the adoption of the Standing Order of 1882, the motions numbered sixty-four, and only eighteen of them were withdrawn, while twelve (one in 1878, seven in 1881, and four in 1882) were pushed to a division. For these and many other facts relating to these motions to adjourn I am indebted to my students at Harvard, Messrs. O. M. Dickerson and E. Takasugi.

[2] In 1871 and 1878.

[3] Now S.O. 22.

[4] The rules framed by the Speaker on Feb. 9, 1881, provided, in regard to motions to adjourn, that no adjournment should be moved before the business of the day was taken up, except by leave of the House; and that debate on a motion to adjourn made after business had been taken up, should be confined to the question of adjournment. Com. Papers, 1881, LXXIV., 1.

force to-day, provides that a motion to adjourn shall not be made before taking up the business of the day, except by leave of the House, unless forty members rise in their places to support it, or ten members rise, and the House, on a division, decides that the motion shall be made. It provides, also, that the motion can be made only "for the purpose of discussing a definite matter of urgent public importance." [1] The standing order of 1882 prevented waste of time by a frivolous or eccentric use of the motion to adjourn, but did not prevent any considerable body of opponents from using it to bring the ministers to account. This may be seen from the fact that in the twenty years following the adoption of the order the motion was made one hundred and forty-six times, and in just one half of those cases it was pushed to a division.

Object of the Motion

Although the motion is almost invariably made by an opponent of the ministry, the object is not always censure. Sometimes it is made in order to obtain fuller information than can be given by an answer to a question; sometimes in order to rivet attention on a subject; and, as we have seen, it is often withdrawn or negatived without a division. Yet it does furnish a method by which, without notice, a debate can be precipitated and a vote taken upon a specific act or omission of the government; and this is after all its chief importance. The motion bears, therefore, a certain resemblance to the French interpellation, but the difference in form is of the utmost consequence. There is in England no chance to frame the motion, as in France, to express subtle shades of meaning. It cannot be so drafted that conscientious members of the dominant party may feel obliged to vote for it, although it implies a condemnation of the government. The motion to adjourn does not, indeed, express in terms any judgment upon the subject-matter of the debate, and a supporter of the cabinet can, without inconsistency, state his opinion that the ministers have blundered,

[1] Now S.O. 10. The changes made in 1902 did not affect these provisions, but merely the time when the debate on the motion should take place.

and then vote against the adjournment. The motion has, in fact, been carried only twice; once on May 10, 1881, before the Standing Order of 1882, in a very thin House, when the government did not oppose it;[1] and a second time on July 5, 1887, after the debate over the arrest of Miss Cass. In neither case did any minister resign.

Its Danger. Still the motion to adjourn is a source of danger to the cabinet. Cool as English public men are, and strong as the bonds of party have become, it would be rash to predict that the House of Commons will not be carried away again as it was in the case of Miss Cass, and that the cabinet would not regard a vote to adjourn as a censure implying lack of confidence. The danger has been slightly reduced by the

Under the Rules of 1902 and 1906. rules of 1902. By a change in the standing orders adopted in that year, and slightly modified in 1906, the motion can be made only when the putting of questions is finished at a quarter before four, and then stands over for debate until a quarter past eight of the same day. By this arrangement the government escapes the risk of surprise. It has five hours, after notice of the debate, in which to prepare its case, ascertain the opinion of its followers, persuade the doubtful, and rally the faithful. Then the debate comes on at an hour when the attendance is habitually small, instead of a time when the House is always full.[2]

Blocking Orders. Moreover a motion to adjourn for the purpose of discussing a matter of urgent public importance can, in the case of any particular subject, be prevented altogether, if neces-

[1] The debate was over the arrest of Mr. Dillon, M.P. Mr. Gladstone, not thinking it a proper way to bring the question before the House, declined to resist the motion, which was carried without a division. Hans. 3 Ser. CCLXI., 183–216.

[2] In the twenty years that the Standing Order of 1882 remained unchanged, the number of motions to adjourn, before public business began averaged seven a year. In 1903 there were only three of them, and in 1904 seven; but in 1905, when Mr. Balfour's cabinet was manifestly losing its hold upon the country, the number rose to nine. Incidentally the change of rule has tended to shift the debates on those motions into the time reserved for private members, for the debate must occur at the evening sitting, and in the earlier part of the session two of the four evening sittings belong to the private members.

sary, by a very simple device. There is a general principle of parliamentary law in England that no question on which the House has rendered a decision shall be brought before it a second time in the same session; and in the Commons — although not in the Lords — the principle has been extended by rulings of the Speakers to forbid the anticipation of questions of which notice has already been given. Nor is it necessary that a definite time for taking the matter up should have been fixed.[1] It is enough that the notice of a motion should have been given, no matter how remote may be the chance that the member who gave the notice will ever be able to bring his motion before the House. By merely giving notice of a motion, which he has no intention of calling up, any member can, therefore, prevent a subject from being brought forward either by a motion to adjourn, or by a subsequent private member's motion, or in the course of the debate on adjournment for the Easter or Whitsuntide recess. A "blocking motion" of this kind is thus an effectual barrier against a motion to adjourn which might place the government in an awkward position.

Complaints of the use of blocking motions have been often made, and in 1904 there was no little discussion of the subject.[2] There were said to be on the notice paper, without any day assigned for their consideration, thirty-four notices of motion, relating among other things to fiscal reform, Macedonia, the Congo State, Thibet, the reorganisation of the War Office, Chinese labour in South Africa, public health, military training, local and other taxation, and the system of blocking motions itself.[3] It was asserted that motions of this kind were set down by supporters of the Treasury Bench after consultation with the government

[1] May, 264–65, 286.

[2] *E.g.* Hans. 4 Ser. CXXV., 379–80, 382–83, 386–87, 397–98, 415, 629–30, 1229–32; *Ibid.*, CXXXVI., 836–40. *Cf.* remarks by Mr. Swift MacNeill in 1906. *Ibid.*, CLII., 1178–79.

[3] Hans. 4 Ser. CXXXV., 1229. Since this was written a report has been made by a select committee on the subject; and appended thereto is a memorandum by Sir Courtenay Ilbert on the history of the rule against anticipation.

whip. Mr. Balfour did not deny the charge, but said that he never inquired into consultations of that kind.[1] He thought that "there ought to be no limitation of the powers of the House to discuss anything upon a motion for adjournment for the holidays"; but he was more cautious in giving an opinion about motions to adjourn to discuss a matter of urgent public importance. The government dislikes these motions, because they consume precious time, and because they can be used on all occasions to raise awkward questions on which the cabinet may be unwilling to show its hand or supply facts. There is, however, another serious objection to them. The House ought to be at liberty to criticise the ministry freely at all times, but that the discussion should be followed by a vote, expressing, however indirectly, a judgment on the matter, involves a possible danger to the parliamentary form of government.

Private Members' Motions.

The most direct method by which the acts of the ministers can be brought before Parliament, and a vote taken upon them, is that of private members' motions. These may, and often do, contain an explicit condemnation of some part of the policy or administrative conduct of the government. But the effectiveness of such motions as a means of passing judgment upon the Treasury Bench is not in reality great, and that for several reasons. There are in all only about seventeen evenings reserved for the purpose, and it is rare that more than one motion reaches a vote in an evening. Nor are those few occasions all used to take the government to task. The right to make a motion is determined by the ballot, and the fortunate member is free to raise any question he pleases. Being one of the rare chances for private initiative, he often uses it to bring forward some favourite project of his own. Several of these evenings are thus devoted every year to discussing aspirations that lie outside the field of party politics, and do not affect the position of the cabinet. The number of motions aimed at the government is, therefore, not large, and unless many mem-

[1] *Ibid.*, 1232. *Cf.* CXXXVI., 840.

bers are interested in criticising the same thing, it is a mere chance what is brought forward for discussion. Then all the private members' evenings come in the early part of the year, and notices of the motions must be given four evenings in advance. It follows that they can hardly deal with current questions that arise after the session is well under way, and this is in itself a very serious limitation upon their importance as a means of bringing the ministers to account.

Means of Avoiding Them.

In case of necessity a hostile vote on a private member's motion can usually be avoided. The member has but one evening, and the ministers could no doubt prolong the debate until the moment of interruption, and then defeat an attempt at closure. But this does not appear to be done, and might be regarded as showing too much fear of the result. Sometimes, also, a motion can be blocked, although that is not so easy as in the case of a motion to adjourn, because the private member has as early an opportunity as the blocker to give notice of his motion.

There are, however, other means of defence; and, in fact, the possibility of escaping a disastrous vote on a private member's motion has been recently illustrated in the case of the fiscal question in a very striking way, for during the sessions of 1904 and 1905 such motions were used persistently in a vain attempt to get a decisive expression of opinion on that question. On May 18, 1904, a motion was made against any protective tax on food, which the government met by an amendment that it was not necessary to discuss the question. As there were a number of Unionists who objected to a tax on food, but did not want to upset the government, the amendment was carried. Early in the next session another inconvenient motion of a similar kind was shelved by the previous question; and, finally, Mr. Balfour decided that he could avoid the consequences of a wager of battle by simply refusing to fight. On March 22 and 28, 1905, followed by most of his supporters, he absented himself from the debates and divisions on private members'

motions touching this subject, although on the second occasion the motion condemned in direct terms the policy of the government. He explained that he took this course because the subject ought not to be discussed on party lines, and could not be dealt with by the existing Parliament, which had no mandate from the nation for the purpose. He added that if the House was allowed on private members' nights to act without the ordinary machinery of party management, the conclusions at which it might arrive would be treated as expressions of opinion which do not govern policy.[1] In other words, he claimed that the ministers might decline to take part in the proceedings on private members' motions, and disregard the votes passed. His attitude was severely criticised, and may have damaged the ministry in the eyes of the public, but that he should have been able to assume it shows the impotence of motions of that kind.

Rarely Carried Against the Ministers.

As lately as twenty years ago motions made by private members were not infrequently carried against the opposition of the government — on the average nearly once a year. Like all other votes hostile to the ministers, however, they have become more rare, and in fact the last case of the kind occurred in 1893. But if private members' motions have not of late proved effectual, as a means of bringing some special part of the conduct of the government before the judgment of the House, and obtaining a test vote upon it, this may not hereafter be true in every case. They certainly furnish possible exception to the principle that in its relations with the government the House of Commons passes judgment only upon the measures which the ministers choose to bring forward, or upon their policy and administrative record as a whole.

Debate on Going into Supply.

Amendments to the address, motions to adjourn and private members' motions, are almost the only occasions at the present time when criticism of the government's action can be followed by a vote upon the act criticised. Formerly

[1] Hans. 4 Ser. CXLIII., 886–95.

there was another opportunity as constant and prolific as any of them. This came when the House resolved itself into Committee of the Whole on Supply. Before taking up supply on any day a motion had to be made that the Speaker do leave the chair; and in accordance, it was said, with the ancient doctrine that redress of grievances should be considered before supply, any subject not requiring a substantive motion, or not a matter of detail properly discussed in the committee itself, could be debated either on the principal motion, or on an amendment framed for the purpose.[1] This gave frequent opportunities, throughout the greater part of the session, not only for finding fault with the conduct of the government, but also for taking the sense of the House thereon by means of amendments to the motion that the Speaker do leave the chair.

How Limited in 1882.

The practice opened the door to a vexatious waste of time, and in 1882 it was limited by a standing order, which provided that on Monday or Thursday the Speaker should leave the chair without question put (and therefore without amendment or debate) unless on first going into supply on the estimates for the Army, Navy, or civil service, or on a vote of credit, an amendment should be moved, or question raised, relating to the estimates proposed to be taken in supply.[2] Tuesdays and Wednesdays were at that time private members' days, and whenever they were seized by the government, and used for supply, it was the habit to extend the order to them by special vote.[3] This left Friday as the only day on which the motion that the Speaker do leave the chair was open to amendment and debate.[4]

In 1896 and 1902.

Finally, in 1896, when a fixed number of days were allotted to supply, the standing order was extended to Friday also.

[1] Anson, "Law and Custom of the Const." I., 270; May, 571–72. Redlich (*Recht und Technik*, 116–17) points out that these amendments began in 1811 at the very moment when special days were first reserved for the government.

[2] Old S.O. 56.

[3] May, 573–74.

[4] Friday was especially reserved for this purpose by old S.O. 11, *cf.* Old S.O. 51.

It was done at first by a sessional order; but this was renewed from year to year, until it was made permanent by the rules of 1902.[1]

Effect of the Present Practice.

At present the Speaker leaves the chair without putting any question, except on going into supply for the first time on the Army, Navy and civil service estimates; and on these three occasions the rule that discussion and amendment must relate to the estimates in that branch of supply about to be taken up is very strictly applied.[2] Moreover, only a single amendment to the motion that the Speaker do leave the chair can be moved, because the amendment takes the form that certain words in the motion be left out in order to substitute others, and the question is put to the House whether the words proposed to be left out shall stand. If, therefore, the amendment is negatived, the House has decided that those words shall stand part of the question, and no other amendment to omit them can afterward be proposed.[3] Debate, however, may and usually does continue upon the main question. But the House can hardly reject the motion that the Speaker do leave the chair; and, in fact, such a vote, although perhaps a general reflection upon the ministry, could not, after a miscellaneous debate upon many topics, be regarded as expressing an opinion upon any particular subject.

It follows that (besides the extraordinary case of a vote of credit) there are every year three occasions set apart for general discussion of all matters germane to the three great branches of supply, on each of which a single vote can be taken upon some special grievance or question of policy. Formerly the amendment that obtained the right of way depended largely upon the accident of catching the Speaker's eye,[4] but now, like the motions on private members' nights, it is determined by the blinder justice of the lot.[5] The amendments relate to all manner of things, such as the

[1] S.O. 17.
[2] May, 573.
[3] May, 574; Ilbert, "Manual," § 231.
[4] May, 574.
[5] Ilbert, "Manual," § 45.

system of enlistment for the Army, the number of artillery horses, the insufficient manning of the fleet, the desirability of an international agreement for a reduction in ship-building, the refusal of the Post Office to grant telephone licenses to municipalities, the inequitable fiscal treatment of Scotland, and the defective state of primary education in Ireland.

The three general debates upon the motions to go into Committee of Supply upon the estimates still afford an excellent chance for criticising the government, but the limitations upon amendments, and the conditions under which they are proposed, have reduced the opportunity for a decisive condemnation of any part of its conduct almost to nothing. Until a score of years ago the ministers were, indeed, beaten nearly every session upon some amendment on going into supply, but since 1891 this has not happened once.

Amendments on Going into Ways and Means.

After the general rule forbidding debate and amendment on going into Committee of Supply had been extended to Friday, it occurred to Mr. Gibson Bowles, an enterprising mentor of the government, that a similar use might be made of the motion to go into Committee of Ways and Means. Accordingly in the regular session of 1900, and in the special session in December of that year, he moved amendments to the motion, but the practice grieved the Treasury Bench and was stopped by a change in the standing orders made in 1901.[1]

Debate in the Committee of Supply as a Means of Criticism.

In proposing his new procedure for supply in 1896, Mr. Balfour spoke of the belief that the object of debating the appropriations is to secure economical administration, as an ancient superstition no longer at all true. Members, he said, now move reductions in order to get from ministers

[1] The change consisted in leaving the Committee of Ways and Means out of the exceptions, in S.O. 51, to the general rule that the House goes into committee without question put.

The Committee on Indian Accounts.

Debate on the motion to go into committee on the East Indian Accounts is still allowed, in order to provide an opportunity for general debate on the questions that may arise on these accounts. (S.O. 51, *cf.* Ilbert, "Manual," § 64.) An amendment can also be moved (*Ibid.*, § 117), but in practice this has no serious effect.

a promise of future increase; and the danger is that the House will urge too much extravagance. He insisted that the real object of the Committee of Supply is the chance it affords to private members of criticising the executive and administrative action of the government; that it is an open platform for members, where the ministers, for the sake of getting their appropriations passed, are bound to keep a quorum.[1] This is, indeed, manifest to any one familiar with the debates upon the estimates. They are not to any great extent discussions of financial questions, of what the nation can, or cannot, afford to do. They are a long series of criticisms upon the policy of the ministers, and the conduct of the departments under their control. From this point of view Mr. Balfour suggested a method of making the debates more valuable. He described the futility of the old system of taking up the estimates in their numerical order, pointing out how much time was wasted every year in discussing the earlier votes in Class I., — repairs of royal palaces, etc., — while some of the largest appropriations were always hurried through with little comment at the fag end of the session. He promised in future to bring forward the important votes in the earlier part of the year, and in fact to give precedence to estimates that any group of members might wish to discuss.[2]

Adding together the days regularly allotted to supply under the standing order, the additional sittings used for the purpose, and those devoted to supplementary estimates,[3] the better part of more than thirty days are spent every

[1] Hans. 4 Ser. XXXVII., 724–26. With this may be contrasted the Report of the Select Committee on Procedure in Supply in 1888 (Com. Papers, 1888, XII., 27), which said that the debates on the estimates were an effective means, both of criticising the administration and of controlling expenditure. It expressed the opinion that although the estimates were not often actually reduced, the discussion prevented future extravagance. For the condition at the present day see the Report of the Committee on National Expenditure, and the evidence thereto annexed (Com. Papers, 1902, VII., 15; 1903, VII., 483).

[2] Hans. 4 Ser. XXXVII., 727–30.

[3] Debate on supplementary and excess grants is limited to those particular grants. May, 585–86.

year in Committee of Supply. This would appear to give time enough for a thorough overhauling of many branches of the administration; and under Mr. Balfour's practice, which will, no doubt, be followed by future cabinets, the question what departments shall be examined is determined by the critics themselves.

The debates in the Committee of Supply must be relevant to the estimates under consideration, that is, they must be confined to the particular vote then before the House, and the conduct of the government connected therewith. The greater part of the time is therefore taken up with a discussion of small details of administration. But there are certain votes that give a chance to review the broader questions of policy. As the grants made to the Army and Navy for one purpose can, with the consent of the Treasury, be used for another, the debate on the great votes for the pay of the men is allowed to range over the general policy and management of the service concerned.[1] The items for the salaries of the ministers give a similar, though less comprehensive, chance to examine the policy pursued in their several departments; and in order to raise a debate of that kind it is common to move to reduce the salary of a minister by one hundred pounds. If an excessive proportion of the time devoted to supply is consumed in the ventilation of small grievances, that is due to the fact that the criticism is conducted, in the main, by individual members of the House, and not by an organised opposition; but at least it has the merit of keeping the administration in all its details highly sensitive to public opinion.

Amendments in Supply as an Expression of Opinion.

The debates in supply afford an excellent opportunity for criticising the acts of the government, but the divisions in supply are not an effective means of expressing the judgment of the House upon those acts. The items of appropriation are grouped into votes, each of which, as its name implies, is passed as a single vote; and every vote contains so many items that the House cannot reject it entirely.

[1] May, 584–85.

Moreover, the only amendment in order is a motion to reduce the vote, by omitting a particular item or otherwise. Now a reduction may be moved either because the House really objects to the appropriation, or as a means of expressing condemnation of some act of the government connected with the item in question. Even in these days of extravagance the House occasionally objects to an appropriation on the ground that it is unnecessary or excessive, or because it disapproves of the purpose altogether. In such cases the Chancellor of the Exchequer is apt to withdraw the estimate or consent to the reduction. In fact, there have been only two instances in the last twenty years where a reduction was made for this reason without the consent of the government, and only one where it was carried against their opposition.[1]

Reductions used as a Protest.

A reduction is often moved, on the other hand, to emphasise some grievance, some act of the administration that is the subject of complaint. But such a motion is not an effective means of testing the opinion of the House upon the matter in debate. When, for example, a reduction of a

[1] Since the reduction of the vote for royal parks on March 11, 1886, the only two instances have been a reduction of the salaries of the officers of the House of Lords, carried against the government in 1893 on the ground that they were excessive, and in 1895 a rejection of the appropriation for a statue of Cromwell.

A list of all the reductions in the estimates from 1868 to 1887 may be found in Appendix 5 to the Report of the Committee on Estimates Procedure (Com. Papers, 1888, XII., 27). A list of those from 1887 through 1901 in Appendix 1, of the first report of the Committee on National Expenditure (Com. Papers, 1902, VII., 15. *Cf.* Return of Divisions in Supply, 1891–1901. Com. Papers, 1902, LXXXII., 139). There were eighteen reductions in the twenty years covered by the earlier report, eleven in the fourteen years next following. Of those eleven, four were cases where estimates were withdrawn by the government (two of them supplementary estimates, afterward voted as regular estimates for the next year), three were reductions moved by the government because the expenditure had become unnecessary, another was a reduction accepted by the government, two more were the two cases mentioned in the text, and the remaining one was moved to call attention to a grievance, *i.e.* the number of rooms in the Parliament buildings occupied by officers of the House. This last case, together with the reduction of the salary of the Secretary of State for War (which occurred in 1895, but is not mentioned in the list), is described hereafter in the text.

minister's salary is proposed in order to draw attention to a shortcoming in his department, the supporters of the cabinet almost invariably vote against the reduction without regard to their opinion upon the shortcoming in question; and they are perfectly right in so doing. They would be quite justified, and quite logical, in refusing to vote the reduction in salary, while saying that the act complained of had been a mistake and ought not to occur again. An amendment of that kind is, therefore, seldom carried; and then usually by accident. It has happened only four times in a score of years. On June 14, 1895, when Lord Rosebery's cabinet was struggling for its life, with only a majority of a dozen in the Commons, it was beaten on an amendment reducing the appropriation for the Parliament buildings by five hundred pounds to call attention to the quantity of rooms occupied by officials of the House. The number of members who took part in the division was so small — the vote being sixty-three to forty-three — that the result must be regarded as a fluke, rather than as an expression of opinion by the House. A week later the government was defeated again on an amendment to reduce the salary of the Secretary of State for War by one hundred pounds to draw attention to an alleged lack of supply of cordite. This was done by a trick. Enough Conservatives to turn the scale were brought into the House, by way of the terrace, without the knowledge of the whips on either side. Under ordinary circumstances the ministers would not have paid much attention to such a division, but their position in this case was so precarious and so uncomfortable, that they took advantage of the occurrence to resign. The third instance happened in 1904 when the grant for the Commissioners of National Education in Ireland was reduced by one hundred pounds as a protest against a circular they had issued which limited the teaching of the Irish language in the schools. It was a "snap" vote, coming suddenly after a very short debate. Had the ministers foreseen the division they could easily have called in enough of their followers to change the

majority;[1] and, in fact, they seem to have disregarded the vote altogether, save that they expended for Irish education one hundred pounds less than they had intended. The last case was in 1905, when the appropriation for the Irish Land Commission was reduced by one hundred pounds as a protest against the administration of the Land Act of 1903. This was serious, and the government considered its position for a couple of days, but decided for the moment neither to resign nor dissolve.[2]

Manifestly the debates in Committee of Supply offer a very wide field for individual criticism, while they give little chance for collective condemnation of the matters criticised. This is even more obvious in certain other forms of procedure that are yet to be considered.

Debates on the Finance Bill;

The debates upon the resolutions embodying the proposals of the budget, and upon the Finance Bill that carries them into effect, are governed by the ordinary rules of debate upon bills, and are confined to the questions immediately before the House.[3]

on the Budget;

But in introducing his budget the Chancellor of the Exchequer makes a statement covering the income and expenditure of the current and coming years, and incidentally reviewing the economic condition of the country and the state of trade. The debate that ensues may wander as far as the statement itself, regardless of the particular resolution on which it is nominally based. This gives a chance to examine fully the financial policy — but only the financial policy — of the government; without, however, any corresponding means of expressing the judgment of the House thereon.

on the Consolidated Fund Bills.

In his treatise on parliamentary practice, Sir Thomas Erskine May states that debate and amendment on the stages of Consolidated Fund Bills "must be relevant to the

[1] The vote was 141 to 130. (Hans. 4 Ser. CXXXI., 1141–50.)

[2] The vote was 199 to 196. (Hans. 4 Ser. CIL., 1486 *et seq.*) Mr. Balfour's cabinet resigned three months later when Parliament was not in session.

[3] *Cf.* May, 588.

bill, and must be confined to the conduct or action of those who receive or administer the grants specified in the bill." [1] The first part of this statement is true of the committee stage. Debate and amendment must then be strictly relevant; and as the object of the bills is simply to authorise the issue out of the Consolidated Fund of the sums required to meet the grants already voted, and to provide that those grants must be used for the purposes for which they are made, no criticism of administrative conduct is in order.[2] The proceedings in committee are, therefore, brief. The latter part of May's statement applies to the second and third readings, but as the bills cover the grants that support practically every branch of the government, except the India Office,[3] the acts of almost any department can be discussed at those stages. The occasions are, as a rule, freely used for the purpose. Sometimes the debate is of a miscellaneous character, and runs off into small details, but more commonly it turns upon a few large questions of domestic, colonial or foreign policy that have aroused general interest.[4] Amendments can, indeed, be moved, and they may range as far as the debate itself. The procedure would appear, therefore, to resemble that of going into Committee of Supply. But the House is aware that it must pass the bills, and although a division on the reading is often taken, the negative votes are usually confined to the Irish members, who are more anxious to impede than to make use of the parliamentary system. In the rare cases where amendments have been

[1] May, 561. He speaks here only of the Appropriation Bill, but what he says is equally true of all the Consolidated Fund Bills, of which the Appropriation Bill is merely the last, completing the process for the year.

[2] *Ibid.*, 562.

[3] The India Office is maintained out of the revenues of India, but, as already explained, an opportunity to criticise the administration of that country is provided every year when the Indian accounts are laid before Parliament.

[4] The debate must relate to the administrative conduct of those who receive the grants (May, 561–62), and therefore the Speaker, in 1903, ruled out of order a discussion of the fiscal question on which the cabinet had taken no action, and had refused to announce a policy. (Hans. 4 Ser. CXXVII., 867–70.)

moved the object is simply to concentrate discussion upon some particular question,[1] and they have seldom, if ever, been carried.

Debates on Adjournment for Easter and Whitsuntide.

Perhaps the most striking case of an opportunity for criticising the government, without any means of condemning its action, is furnished by the motion to adjourn over Easter or Whitsuntide. According to the old practice about adjournment, the rule of relevancy does not apply in these cases, and hence the discussion may, and in fact does, wander wherever the members please. It is of a heterogeneous nature, touching upon many subjects. But as the Speakers have ruled that no amendment is in order, except on the time of adjournment,[2] the motion which provides the excuse for a debate is always adopted as it stands.

Motion of Want of Confidence.

The foregoing comprise all the ordinary means of criticising the conduct of the government. The leader of the Opposition has one more. He can at any time claim to move a vote of want of confidence, and within reasonable limits the leader of the House will always assign a day for the purpose. But this is quite a different matter from the criticism of particular acts of which we have been speaking. Whatever the precise form of the motion may be, the object is to turn the ministry out, and every member goes into one or the other lobby, according to his desire that the cabinet shall stand or fall. The judgment of the House is passed not upon any one act or question of policy, but distinctly upon the record of the ministry as a whole; and a defeat must be immediately followed by resignation or dissolution.

Freedom of Criticism.

From this survey of the various methods by which the ministers can be called to account in the House of Commons, it is clear that the opportunities to air grievances, to suggest reforms, and to criticise the government for both large matters and small, for their general policy and their

[1] This was true of the latest example, that of an amendment relating to native labour in South Africa, moved on the second reading of the Consolidated Fund (No. 1) Bill of 1903. It was withdrawn when it had served the purpose. (Hans. 4 Ser. CXX., 72.)

[2] May, 581.

least administrative acts, are many and constant. If less numerous than formerly, they are in practice quite as useful. For the object they serve, that of turning a searchlight upon the government, and keeping the public informed of its conduct, they are abundant. On the other hand, the opportunities to pass judgment upon particular acts of the ministers have diminished very much, and there is a marked tendency to make a definite expression of opinion on such matters by vote of the House more and more difficult. Such a tendency is entirely in accord with the true principle of parliamentary government. There ought to be the fullest opportunity for criticism; but the cabinet must be free not only to frame its own policy, but also to carry that policy out, and it ought not to be shackled, or thrust out, so long as its conduct of affairs is on the whole satisfactory to the nation.

Difficulty in Passing Judgment.

So far we have considered primarily the functions of the House in relation to administrative matters, but, except for the bills brought in by the government, what has been said applies equally to its control over the general policy of the cabinet, for its means of criticising and passing judgment are the same. How far the ministers are free to-day to frame the programme on which they will take their stand, and how hard it is to force an issue on a question that they do not choose to bring forward, may be seen from the recent history of the debates on the fiscal question. A considerable number of Unionists were strongly opposed to a return to protective duties in any form, and especially to a taxation of food. There were enough of them to turn the scale, so that if a division could have been taken at any time on the fiscal question alone, the House would in all probability have voted in favour of maintaining the existing system. On the other hand, most of the free-food Unionists, being heartily in accord with the cabinet on other matters, desired to keep it in power so long as it adopted no fiscal policy hostile to their principles; and therefore they were anxious not to vote against the government if they could conscientiously

Illustrated by the Debates on Fiscal Policy.

abstain from doing so. Under these circumstances the Liberals sought by every means to force a direct vote upon the fiscal question, while Mr. Balfour cautiously avoided any definite statement of policy himself, and strove to prevent the House from expressing a distinct opinion on the subject. He took the ground that until the cabinet announced a fiscal programme the only form in which the attitude of the ministers on the question could properly come before Parliament was that of a general motion of want of confidence in them.

In 1903. Mr. Chamberlain broached his plan of preferential tariffs in a speech at Birmingham on May 15, 1903. By that time it was just too late in the year to bring forward a private member's motion on the subject; so that the first debate upon it took place on the motion to adjourn over Whitsuntide,[1] when no amendment or vote expressing the opinion of the House was in order. This was May 28. The next opportunity for extensive discussion came on June 9 over the Finance Bill; but the Speaker ruled, that as the government had made no proposals for a change of fiscal policy, such changes could not be brought into the debate on that bill.[2] The Opposition then resorted to a motion to adjourn. But it was not easy to treat as an urgent matter the question of adopting a policy, which the ministers declared the existing Parliament incompetent to adopt, and the Opposition insisted ought never to be adopted at all. The Liberals solved the difficulty by taking advantage of a recent occurrence, and on June 17 moved to adjourn to discuss a misunderstanding of the tariff speeches of Mr. Balfour and Mr. Chamberlain by the premier of New South Wales. The Speaker, however, ruled that a general debate of the fiscal question did not come within the terms of the motion, although a motion of wider scope might have been made. The adjournment was, of course, rejected, and by a vote of 252 to 132.[3] Both on this and on later occasions, Mr. Balfour, while refusing to give any of the government's

[1] Hans. 4 Ser. CXXIII., 142. [2] *Ibid.*, 327.
[3] *Ibid.*, 1241, 1245, 1274.

time for the discussion of fiscal policy as such, expressed his entire readiness to assign a day for a formal motion of lack of confidence;[1] but the Liberals did not accept the offer. They said, and with truth, that a vote of censure would not test the opinion of the House on the fiscal question; and they knew that it would result in an overwhelming defeat for them. Finally, on Aug. 11, the Speaker ruled that, as no official act of any minister was involved, the question could not be debated on the second reading of the Appropriation Bill.[2] And thus, although there were many questions put on the subject, and some incidental discussion during the debates on other matters, the session of 1903 came to an end without any vote on fiscal policy.

In 1904.

When the House met again great changes had taken place in the ministry. Both Mr. Chamberlain and his strongest opponents had resigned, and it was certain that the cabinet would take no positive attitude on the fiscal question during the life of the Parliament. Yet the Liberals had several means of extracting a vote on the subject, which they had lacked in the second half of the preceding session. They began at once with the debate on the address, by moving that the removal of protective duties has conduced to the welfare of the population, and that any return to them would be injurious. The wording was not well adapted to drive a wedge into the government majority, for the ministers repudiated the charge that they contemplated protection. Only twenty-one Unionists voted for the amendment, which was rejected by 327 to 276.[3] Then came, on March 9, a private member's motion to the effect that the House expresses its condemnation of the continual agitation in favour of a protective tariff encouraged by the ministers. This also was not well conceived, and was rejected by 289

[1] Hans. 4 Ser. CXXIII., 1250, 1323; CXXV., 571–74.

[2] *Ibid.* CXXVII, 867.

[3] Hans. 4 Ser. CXXIX., 623, 1446. There was on March 7 a motion to adjourn to call attention to the failure of Mr. Balfour to explain the resignations of ministers in the autumn. This involved the fiscal question only indirectly, and was rejected 237 to 172.

to 243, nineteen Unionists voting against the government. On May 18 another private member's motion came on; which stated that the House, believing a protective tariff on food burdensome to the people, welcomes the declaration that the government is opposed to it. It was a more dangerous attack, which the ministers met by moving an amendment that it was unnecessary to discuss the question. They succeeded by about the same majority as on the other occasions, for the amendment was carried by a vote of 306 to 251, seventeen Unionists in the minority.[1]

At last the Liberals asked for a day to move a vote of censure, and Aug. 1 was set apart for the purpose. The motion expressed regret that certain ministers had accepted official positions in the Liberal Unionist Association, which had recently declared its adhesion to the policy of preferential duties, involving the taxation of food. But the form of the motion was unimportant, and the result illustrates the nature of a vote of want of confidence, and the futility of using it to test the opinion of the House on any particular question of policy. No one voted against the ministers who was not prepared to turn them out, and the motion was rejected by a vote of 288 to 210.[2] Only one member classed as a Unionist voted for it, while of those who had gone into the Opposition lobby on previous occasions one voted with the government, and the rest absented themselves. Although the fiscal question had been debated several times,[3] the Opposition had again been baffled throughout the session in their efforts to get a vote upon its merits.

In 1905. The result in the following year was the same, but the tactics were different. The first private member's motion on the subject was shelved by the previous question, and the government dealt with the subsequent ones by the novel device, already described, of staying away from the division altogether. Mr. Balfour virtually took the ground that a vote on which the government exerted no pressure could not

[1] Hans. 4 Ser. CXXXV., 253 *et seq.* [2] *Ibid.*, CXXXIX., 284 *et seq.*
[3] It had also been discussed on the adjournment for Easter.

be regarded as a true expression of the opinion of the House, and might therefore be ignored — an extension, although by no means an illogical extension, of the accepted doctrines of the constitution.

Parliament the Great Inquest of the Nation.

The system of a responsible ministry can develop in a normal and healthy way only in case the legislative body is divided into two parties, and under those conditions it is the inevitable consequence of the system that Parliament cannot support the cabinet on one question and oppose it on another. The programme of the ministers must be accepted or rejected as a whole, and hence the power of initiative, both legislative and executive, must rest entirely with them. This is clearly the tendency in Parliament at the present day.[1] The House of Commons is finding more and more difficulty in passing any effective vote, except a vote of censure. It tends to lose all powers except the power to criticise and the power to sentence to death. Parliament has been called the great inquest of the nation, and for that purpose its functions have of late been rather enlarged than impaired. Nor are the inquisitors confined to any one section of the House, for while that part is played chiefly by the Opposition, the government often receives a caution from its own supporters also. If the parliamentary system has made the cabinet of the day autocratic, it is an autocracy exerted with the utmost publicity, under a constant fire of criticism; and tempered by the force of public opinion, the risk of a vote of want of confidence, and the prospects of the next election.

[1] Redlich ends his book on the procedure of the House of Commons with the remark (p. 800), that the rules of a legislative body are the political manometer, which measures the strain of forces in the parliamentary machine, and thereby in the whole organism of the state.

CHAPTER XIX

THE FORM AND CONTENTS OF STATUTES

Difficulty of Passing Laws.

WE have seen that the legislative capacity of the House of Commons has nearly reached its limit. What is more, it is small, and markedly smaller than in the past. In the decade beginning with 1868, ninety-four government bills on the average became law each year, but of late the number has not been half so large, and private members' bills have fallen off in about the same proportion. The fact is that a growth in the number of members who want to take part in debate, a more minute criticism, and a more systematic opposition, have made the process of passing a bill through the House increasingly difficult. This is particularly true of measures that are long or complicated, for the greater the length the more the pegs on which to hang amendments.[1] Now the difficulty of passing laws has had an effect both on the form of the statutes and on the content of legislation.

Drafting of Bills.

A public bill introduced by a private member may be drafted by him, or by counsel he has employed for the purpose. There is no systematic supervision over such bills,[2] no stage at which their drafting is reviewed, and whether well or ill drawn, they are not likely to be much improved in their passage through Parliament. Government bills, on the other hand, which relate to England, and are not of a purely formal and routine character,[3] are now all drafted by

[1] *Cf.* Ilbert, "Legislative Methods and Forms," 217.

[2] Ilbert, *Ibid.*, 90–91. Private bills are, of course, drafted by the counsel for the petitioners, and provisional order bills by the department that grants the provisional order.

[3] Ilbert, "Leg. Methods and Forms," 86 note. The Scotch and Irish bills, and almost all the most important Indian bills, are drawn by draftsmen attached to the offices for those countries.

the Parliamentary Counsel to the Treasury, or by his assistants under his direction.[1] They are prepared under instructions from, and after consultations with, the departments concerned, and are sometimes recast several times before they are introduced into Parliament. They are then assailed by a host of critics, both in and out of the Houses; some of them trying to pick flaws in a measure which they want to destroy; while others, who are not opposed to the general principle involved, discover provisions that affect their interests, based, perhaps, on local custom or privilege. The objections raised may not have been entirely foreseen, or may prove of greater political importance than was supposed, and hence amendments and new clauses are adopted during the debates in committee. These changes are usually made with the consent of the minister in charge of the bill, and the Parliamentary Counsel, as well as the permanent head of the department concerned, is often present under the gallery to give his advice; but still the amendments mar the fair handicraft of the draftsman, and an effort has to be made to improve the text either on the report stage or in the House of Lords.

Defects of Form.

Sir Courtenay Ilbert attributes the defects of form in the English statutes of the present day chiefly to the battering that a bill must almost necessarily encounter in passing through the House of Commons, and to the fact that an Act of Parliament is essentially a creature of compromise.[2] Yet there would seem to be other difficulties arising from the conditions under which legislation is conducted.

The Parliamentary Counsel's office has certainly improved the statutes very much by making them more concise, uniform and orderly; but their form is far from perfect. Two objects must be aimed at in drafting an act; one that it shall be intelligible to the persons who are compelled to

[1] Sir Courtenay Ilbert, himself Parliamentary Counsel at the time he wrote his work on "Legislative Methods and Forms," has given therein an excellent description of the history (67–69, 80–85) and the work (85–97, 218–19, 227–31) of the office.

[2] "Leg. Methods and Forms," 229–31.

obey it; and the other that the courts which interpret it, or the counsel who are called upon to advise upon it, shall be able to ascertain its precise meaning with certainty. Now to a layman, and even to a foreign lawyer, an English act is often difficult to understand, and sometimes misleading. To penetrate its intent one must frequently be familiar with all previous legislation on the subject. It is no doubt true that "No statute is completely intelligible as an isolated enactment. Every statute is a chapter, or a fragment of a chapter, of a body of law." [1] Still it does not seem necessary that English acts should be quite so obscure as they often are. Nor, judging from the amount of litigation that sometimes occurs over their interpretation, does this defect appear to be always counterbalanced by remarkable legal certainty. The most celebrated case is that of the Education Act of 1902. After the provision for the payment of religious instruction in the church schools out of local rates had provoked dogged resistance, and the magistrates had enforced it against recalcitrant rate-payers for a couple of years, the matter was brought before the higher courts by the refusal of the County Council for the West Riding of Yorkshire to make the payment; and the majority of the Court of Appeal was of opinion that the statute did not oblige it to do so.[2] The House of Lords reversed the decision;[3] but for Parliament to pass the Act in such a form that the Court of Appeal could regard it as failing to effect what everybody knew to be one of its main objects is surely an amazing example of bad drafting. Nor was this the result of amendments in the House of Commons, for the provision in question went through unchanged; and although in this case the fault is said not to lie at the door of the Parliamentary Counsel, it shows none the less the defects of the system.

The Defects Arise;

It has already been remarked that the limited capacity

[1] "Leg. Methods and Forms," 254.
[2] Rex *vs.* West Riding of Yorkshire, (1906) 2 K.B., 676.
[3] Atty. Gen. *vs.* West Riding of Yorkshire, (1907) App. Cas., 29.

of Parliament for law-making affects both the form and the content of its acts; and this is one of many elements in a complex problem. The lack of time for comprehensive legislation, the political temperament of the nation, and the exigencies of a responsible ministry have each a marked influence on the form and the substance of the statutes; and, indeed, all these factors act and react upon one another.

from Difficulty of Legislating;

The difficulty of passing long or complicated measures makes the minister insist that his bill shall be as short as possible,[1] and hence it must include no clauses not absolutely necessary for the object he has in view. The draftsman, therefore, disturbs existing statutes as little as he can, either in the way of revising or incorporating their provisions. If he must embody earlier enactments in his draft, he does so by referring to them, rather than by repeating them.[2] The practice of legislation by reference, which is a source of no small inconvenience in using the statutes, has been carried very far. In fact there is a long series of "Clauses Acts" on various subjects, not enacted with an independent legislative force of their own, but placed on the statute book as standard provisions to be embodied in subsequent acts by reference express or implied.[3] The desire to have the bill short has also given a strong impulse to the practice of removing details from the body of the act, and massing them in schedules at its close.[4] This is an advantage to the minister who has charge of the bill, because while it does not withdraw the matters in the schedules from the control of the House, it does make them less conspicuous and concentrates the attention of the members on the principal questions of policy.

from Political Temperament;

A similar result, although one that concerns more directly the substance than the form of the statutes, may be traced

[1] Ilbert, "Leg. Methods and Forms," 217, 241.

[2] *Ibid.*, 217–18. *Cf.* 254–66.

[3] This is particularly true in the case of local and private bills, where the provisions of "Clauses Acts" must often be incorporated, either by the terms of those acts, or in consequence of the standing orders on private business. *Ibid.*, 261.

[4] *Cf. Ibid.*, 266–68.

to a conservative tradition in legislation. It is commonly said that in industrial matters Englishmen do not appreciate the value of the scrap-heap, that they tend to use old-fashioned machinery when it would be better to discard it altogether. If they dislike to abandon a machine, they have a still greater aversion to repealing an Act of Parliament. Every Briton happily believes that it is better to readjust the institutions of a country slowly, than to pull them down and build anew; and there being no line between the institutions that are fundamental, and those that are not, a fragment of the veneration for the British Constitution attaches to every statute; and, indeed, to custom also. This helps to make the legislator cautious, and his work tentative. Moreover, there is a great respect for vested rights, and for that matter for vested habits, and sometimes vested abuses. Sir Courtenay Ilbert tells us how much solicitude is aroused by the probable effect of a bill on the peculiar circumstances of the parish of Ockley-cum-Withypool, or the emoluments of the beadle of Little Peddlington.[1] Too much attention seems to be paid at times to such interests when they conflict with those of the public; and this brings up the third factor in the problem, that of cabinet responsibility, which has a marked influence on both the form and the content of legislation.

from Responsibility of Ministers.

If the parliamentary system, as it has developed in England, intrusts the active conduct of legislation and administration to the ministry of the day, and thereby concentrates enormous political power in the hands of a few men, it does so among a highly individualistic people. The ministers wield their great authority on two conditions. One is that they must retain an absolute hold upon their own majority, and the other is that their rule must be tempered by liberty of criticism. They must explain everything they do, they must defend it against the attacks of the whole House, and justify it to the satisfaction of almost all their followers. The result is that they try to bring into their

[1] Ilbert, "Leg. Methods and Forms," 230.

measures nothing that might furnish a needless target for critics, or prove a cause of offence to any of their supporters.

Restraint, in some form, is the price paid for power; and great strength in one direction is apt to conceal weakness in another. An English ministry with a good majority at its back appears omnipotent. It announces its policy, forces through its bills against the protests of the Opposition, and even against appeals from members on its own side not to put pressure upon them. But the power it exerts is in large part the resultant of other forces less openly displayed. If, on pain of disloyalty, and for fear of handing the government over to the adversary, the private adherent of the party in power must follow the whips in critical divisions, the ministers, on their part, are sometimes compelled by an insistent group of their supporters to adopt one measure, or to mutilate or abandon another. They cannot disregard the serious objections of any considerable section of their own followers, and this has become more and more true with the evolution of the parliamentary system. Half a century ago they might win as many votes from the other side of the House as they lost on their own, but that is rarely possible to-day. They must now carry with them on every question substantially the whole of their party.[1] Their omnipotence is therefore a very limited and cautious omnipotence, and this has shown itself, especially under the late Conservative government, in the meagre annual production of statutes.

Revision and Codification of Statutes.

If the legislation of a country is to consist, not in passing comprehensive laws dealing with a whole subject, but in making progressive changes by tinkering and patching the existing acts, it would seem an obvious convenience to issue from time to time new editions of those acts compiled in a more compact and intelligible form. It would be a great

[1] The extent to which this is done, and the amount it has increased, is shown by statistics in the chapter on "The Strength of Party Ties." The difficulty to-day comes, not from the opinions or interests of individual members, but from groups of members acting on public grounds, or at least, on grounds which affect a great part of their constituents.

advantage to have frequent revisions or codification of the statutes on a subject, not involving a change of substance, but merely a simplification of form. But such a process of consolidation has not been common in England. A great deal of labour was expended on this object by several commissions during the nineteenth century; but the only positive results have been the production of two editions of revised statutes — being simply the statutes at large rearranged with the parts no longer in force omitted — and the passage of a limited number of acts consolidating the statutes on certain subjects.[1] Such acts are not easy to pass, because, as Sir Courtenay Ilbert remarks, "It is difficult to disabuse the average member of Parliament of the notion that the introduction of a consolidation bill affords a suitable opportunity for proposing amendments, to satisfy him that reënactment does not mean approval or perpetuation of the existing law, or to convince him that attempts to combine substantial amendment with consolidation almost inevitably spell failure in both." [2] The process has neither been extended to so many subjects, nor repeated at such short intervals, as might be wished.

Temporary Laws.

Another curious result of the difficulty of enacting laws may be seen in the long list of temporary statutes, continued in force from time to time, sometimes for many years. Some of these are acts of a transitory nature, designed to cover an emergency, or to deal with an ephemeral state of things. Laws of that kind expire with the conditions that called them forth. But the English temporary acts often relate to permanent matters. That a statute of an experimental character should be enacted at the outset for a limited period is natural enough, but when the period has come to an end, and the experiment has proved a success, one would expect to see the law reënacted in an enduring form. In England, however, there is passed every year an Expiring Laws Continuance Act, giving another twelvemonth's lease of life to a list of acts appended in a schedule,

[1] Ilbert, "Leg. Methods and Forms," Chs. iv., vii. [2] *Ibid.*, 113.

many of which are already old. One or two have already reached the age of threescore years and ten; and among the list are still found the Ballot Act of 1872, with most of the statutes of the last half century that regulate the conduct of elections. The reason for the existence of perpetual temporary laws is to be found, no doubt, in the fact that in this form they can be continued almost without opposition, while an attempt to enact them as permanent statutes would give rise to great debates with a host of amendments, and consume a vast deal of the one thing whereof the ministry has never enough — that is time.

Delegation of Legislative Power.

The limited capacity of Parliament to pass statutes is not felt as a crying evil, because the pressure for great remedial legislation has lessened. The transition from the political and industrial conditions of the eighteenth century has been accomplished, and the consequent change in laws and institutions has been, in the main, effected. The demand for radical legislation is, therefore, comparatively small, and for the time at least the process of making law can afford to run slow. Yet it may be doubted whether, with the great extension in the sphere of government, Parliament could be suffered to move at its present pace were it not for the growing practice of delegating legislative power. We hear much talk about the need for a devolution of the power of Parliament on subordinate representative bodies, but the tendency is not mainly in that direction. The authority of this kind vested in the county councils by recent statutes is small, too small to affect the question. The real delegation has been in favour of the administrative departments of the central government, and this involves a striking departure from Anglo-Saxon traditions, with a distinct approach to the practice of continental countries.[1]

Statutory Orders.

Formerly an English statute went into great detail, attempting to provide expressly for every question that could possibly arise. Its interpretation, or its applicability to a

[1] *Cf.* Ilbert, "Leg. Methods and Forms," Chap. iii., and pp. 220–21, 224.

special case, could be determined only by the courts, while its defects could be remedied, or its omissions filled up, only by another statute. It contained in itself the complete expression of the legislative will. But of late it has become more and more common for Parliament to embody in a statute only general provisions, and give to some public department a power to make regulations for completing the details, and applying the act to particular cases. These regulations — known as statutory orders — cover a great variety of subjects, and govern not only the duties of officials, and the administration of public affairs, both national and local, but also the conduct of individuals in the management of their own concerns. They prescribe, for example, how many persons can live on canal-boats, the number of cubic feet of air in factories, the precautions that must be taken for cleanliness in dairies, what per cent of water may be contained in genuine butter, and under an authority of this kind a general order was issued in 1900 for muzzling all the dogs in the country.

Control of Parliament over Provisional Orders.

Parliament usually attempts to retain a control, or at least an oversight, of the orders made by the public departments under the authority delegated to them in this way. Sometimes the order is issued under a power that is provisional only, and does not become operative until confirmed by a statute. This is usually, though not invariably,[1] true of rights granted to private companies or local authorities to construct works of public utility, such as waterworks, gas-works, tramways, and the like.[2] Provisional orders of that kind do not involve any true delegation of legislative power, because they derive their validity, not from the act of the department, but from the statutes by which they are

[1] Authority, for example, to construct a light railway, which is legally distinct, but physically indistinguishable, from a tramway, does not require confirmation by Parliament, 59–60 Vic., c. 48, § 9.

[2] A change in the boundaries of a county or borough requires in the same way confirmation by Parliament; but an order altering an urban or rural district or parish, requires only to be laid upon the table of each House, 51–52 Vic., c. 41 (part 3).

confirmed; and they are included among the Acts of Parliament, and not the statutory orders of the year. Practically, however, they are almost always confirmed without amendment.

Over Statutory Orders

Parliamentary control over statutory orders strictly so called, which involve a real delegation of legislative power, is commonly maintained by requiring them to be reported to the two Houses; and in order to give an opportunity for preliminary criticism, the regulation, or a draft thereof, must sometimes be laid on the table for a certain time before it becomes operative.[1] Moreover, control by Parliament is often expressly reserved by providing that if, within forty days, either House presents an address to the Crown against a draft or order, then the order shall not be made, or in case it has already gone into effect it shall thenceforth be void.[2] An address under such a provision is exempted from the rule about the interruption of business in the House of Commons, and hence can be moved by a private member at the close of the sitting on any evening, without taking his chance in drawing lots, or appealing to the government for a part of its time.[3] As a matter of fact, motions of this kind are uncommon, and are rarely, if ever, successful; although the frequency with which the statutory orders are revised by the departments would seem to show that the officials who make them are highly sensitive to outside opinion.

Since 1893 the statutory orders of each year have been regularly published like the Acts of Parliament;[4] and an idea of their number may be derived from the fact that they always fill one, and often two, large volumes, each much thicker than the present emaciated book of the Public

[1] Drafts of orders that are not required to be laid before Parliament before they come into operation, must, by 56–57 Vic., c. 66, § 1, be open to criticism, by any public body interested, for forty days before they are finally settled and made. But this does not apply to rules made by the Local Government Board, the Board of Trade and some others (§ 1 (4)).

[2] *Cf.* Ilbert, "Leg. Methods and Forms," 41, *cf.* 310–14.

[3] Ilbert, "Manual," § 36.

[4] 56–57 Vic., c. 60, § 3.

General Acts.[1] In spite of the potential control retained by the Houses over statutory orders, the growing habit of delegating authority to make them involves a substantial transfer of power from Parliament to the executive branch of the government, a transfer due in part to the increasing difficulty in legislation.

The existing relation between the cabinet and the House of Commons has thus had a number of distinct, and at first sight contradictory, effects. While placing the initiative for almost all important legislation in the hands of the ministers, it has tended to reduce the number and completeness of the laws they can carry through; and on the other hand it has helped to invest them with a power of subordinate or secondary legislation quite foreign to English traditions. This is true of public matters, but in regard to private and local acts the relation of the cabinet to Parliament, and hence the effects of that relation, are wholly different.

[1] This last, however, does not contain the text, but only a list of titles, of local and private acts, although many of them are legally public general acts. On the other hand the published statutory orders for the year do not include by any means all the orders of a temporary nature.

CHAPTER XX

PRIVATE BILL LEGISLATION

If the direction of important legislation of a public character lies almost altogether in the hands of the ministers, special laws affecting private or local interests are not less completely outside of their province.

The Nature of Private Bills.

Private Acts of Parliament are of immemorial antiquity, but they seem to have first become numerous in connection with the building of turnpike roads and the enclosure of commons in the second half of the eighteenth century.[1] They were also the means used to authorise the construction of canals, and later of railways; and, in fact, it was the great number of railway bills, presented in 1844 and 1845 that gave rise to the modern private bill procedure in the House of Commons.

Apart from railway bills they have been used of late years chiefly to regulate local police and sanitary matters, or to grant powers to private companies or municipal corporations for the supply of public conveniences, such as water, gas, electric light, or tramways; for private bill procedure applies not only to bills that affect private persons or companies, but also to those that deal with the rights and duties of organs of local government in any particular place.[2]

[1] For the History of this subject see Clifford's "History of Private Bill Legislation."

[2] The distinction between public and private bills, and public and private acts is not the same. The former depends upon the nature of the procedure in Parliament; while acts are classified as (1) Public General Acts, (2) Local Acts, which have the same legal effect as public acts, but apply only to a particular locality, and may relate to an organ of local government or a company; (3) Private Acts — now few in number — which are of a personal nature, and are not taken notice of by courts unless specially pleaded. With some exceptions that will appear sufficiently in the text, the acts in classes (2) and (3) do, and those in class (1) do not, go through the procedure for private bills.

The line, however, between public and private bills is not altogether logical. Measures, for example, touching matters of general interest affecting the whole metropolis have been passed as public bills; and this has been true to a smaller extent of other places; while bills regulating affairs of less importance for those very areas have been treated as private. In fact the same subject has at different times been dealt with by public and private bills; the question which procedure should be followed depending upon the uncertain standard of the degree in which the public interest was involved.[1] With these exceptions it may be said that every bill introduced for the benefit of any person, company or locality, is, for the purposes of procedure, a private bill.

Procedure on Private Bills.

The standing orders that govern procedure upon private bills are much more elaborate and comprehensive than those relating to public bills. They fill in print five times as many pages; and although custom and precedent play an important part, still the printed rules approach very nearly to a code of private bill procedure.[2]

Before a private bill is introduced, a petition therefor is

Hybrid Bills.

[1] *Cf.* May, 634–43. Ilbert, "Leg. Methods and Forms," 29–32. Moreover, as measures intended primarily to affect particular places, may, on account of their far-reaching importance, be treated as public bills, so others designed for public objects may interfere in a peculiar way with private interests. Measures of either kind are sometimes, under the name of "Hybrid Bills," put through a mixed procedure. They are introduced as public bills, and then referred to a private bill committee, which is, however, larger than an ordinary committee of that kind, the members being appointed partly by the House and partly by the Committee of Selection. A procedure of this sort is required in the case of bills of the London County Council for raising loans (S.O.P.B. 194).

[2] To distinguish between the two classes of standing orders the numbers of those relating to public business are printed in the parliamentary papers in bold-faced type. But in the footnotes to this book those relating to private business are referred to as S.O.P.B. The references are to the standing orders as revised in 1903, because a number of changes were made in that year in pursuance of the recommendations of the Select Committee of 1902. The statements in this chapter relate to the procedure in the House of Commons; for the practice in the House of Lords is so nearly the same in almost all essential points, that it is enough to indicate the more important differences in the text or in the notes. A memorandum on the differences in detail may be found in the Report of the Committee on Private Business (Com. Papers, 1902, VII., 321, App. 15).

drawn up, and in order to give any one interested an opportunity to prepare his objections, notice of the petition must be given, in October or November, in *The Gazette*, in appropriate local newspapers, and in some cases by posters upon the roadside. Personal notice must also be served in December upon the owners of land directly affected, and if the petition is for leave to build a tramway, the consent of the local authority must be obtained.[1] Plans of the work proposed must also be deposited for inspection both at Westminster and with some local officer.[2] The petition, with the bill itself, must be filed on or before Dec. 17 in the Private Bill Office of the House, and a copy must be delivered to the Treasury, the Local Government Board, the Post Office, and to any other department whose duties relate to the subject involved.[3] The petitioner is also required to file estimates of cost, and to deposit a sum equal to four or five per cent. of the proposed expenditures as a guarantee fund for the benefit of persons who may be injured by a commencement, and failure to complete, the work.[4] Petition and Notice.

The next step is to make sure that these preliminary regulations have been obeyed. It is done by paid officers of the House called Examiners of Petitions for Private Bills,[5] and since 1855 the two Houses have appointed the same persons to that post, so that the process is gone through only once.[6] The petitioner must prove before the examiner that he has complied with the standing orders; and any person affected has a right to be heard on the question, if he has filed a memorial of his intention to appear. The examiner certifies that the standing orders have been followed, or reports in what respect they have been disregarded.[7] Examiners of Petitions.

[1] The rules about notice are contained in S.O.P.B. 3–22. See also May, 680–81. [2] S.O.P.B. 23–31. [3] *Ibid.*, 32–34.

[4] *Ibid.*, 35–37, 55–59. By the so-called Wharncliffe Order a special meeting of the members of any company must be held to authorise or ratify an application for a private bill. *Ibid.*, 62–68.

[5] S.O.P.B. 69–78. [6] May, 682; *cf.* Clifford, 788–95.

[7] S.O.P.B. 69–78, 230–32. May, 683–91.

Legislative and Judicial Aspects of the Procedure.

Private bill procedure has both a legislative and a judicial aspect. The final aim being the passage of an act, a private bill goes through all the stages of a public bill, and the records of its progress appear in the journals of the House. But the procedure is also regarded as a controversy between the promoters and opponents of the measure, and this involves an additional process of a judicial character. For that purpose the full records of the case are preserved in the Private Bill Office, where they are open to public inspection. The preliminary steps already described are intended chiefly to prepare the case for the judicial trial, and to give opponents a chance to make ready their defence. They correspond to the pleadings in the clerk's office of a court; and they are conducted by a parliamentary agent who performs the duties of a solicitor in a law suit.[1]

Introduction of the Bill.

The preliminaries over, the bill is ready to be introduced, and the first thing is to arrange in which House it shall begin its career. This is decided at a conference between the Chairmen of Committees of the two Houses, or in practice by the gentlemen who act as their legal advisers, the Counsel to Mr. Speaker and the Counsel to the Lord Chairman of Committees.[2] All these proceedings take place before the usual date for the meeting of Parliament, so that when it assembles the bills can be brought in at once.[3]

If the examiner reports that the standing orders have been complied with, the bill is presented forthwith by being laid

[1] The legislative procedure in the House is regulated by Part IV. (193–226) of the Standing Orders Relating to Private Business; the conduct of the Private Bill Office by Part V. (227–49); the judicial procedure before private bill committees, with the supervision thereof by the officers of the House, and the prescription of provisions that must, or must not, be inserted, by Part III. (69–162).

[2] Rep. of Sel. Com. on Priv. Business, Com. Papers, 1888, XVI., 1, Q. 340; Rep. of a similar Com., Com. Papers, 1902, VII., 321, Qs. 193, 1957–5. Formerly many more private bills began in the Commons than in the Lords, but now the numbers are not very far from the same. *Ibid.*, Q. 337, and App. 8.

[3] Until 1903 the division of bills between the two Houses was not made until after Parliament met. *Ibid.*, Qs. 166–68, 197. But the committee of 1902 recommended a change which was made (*Ibid.*, Report Sect. 18, S.O.P.B. 79).

upon the table of the House. If not, his report is referred to the Committee on Standing Orders, composed of eleven members chosen by the House itself at the opening of the session.[1] This committee reports whether the omission is of such a nature that under the circumstances it ought to be excused or not; and the report is almost always adopted by the House. In case the omission is excused the bill is presented by being laid upon the table; and every bill is deemed when presented to have been read a first time.[2]

Second Reading.

On the next stage, the second reading, a debate may take place upon the general principle involved, and a bill is sometimes rejected at this point, either because it is inconsistent with public policy, or because opponents whose interests are involved have been able to persuade a majority of the members to vote against it. Instructions to the committee about the provisions to be inserted in the bill can also be adopted at that time.

Private Bill Committees.

The committee stage of the bill, for the consideration of its provisions in detail, is devolved upon a private bill committee. Here takes place the judicial process, or trial of the controversy between conflicting interests, which presents the peculiar feature of the English procedure. Until near the middle of the nineteenth century the committees for private bills were made up on the same principle as select committees on other matters. They consisted in large part of supporters and opponents of the measure. But in 1837 the Lords began to form their private bill committee of a small number of wholly impartial members, — a practice which was adopted by the Commons for railway bills in 1844, and for all other private bills in 1855.[3] The system of committees

[1] S.O.P.B. 91–97. There is a committee with similar powers in the House of Lords, composed of forty peers, besides the Chairman of Committees who with any two other members forms a quorum. May, 796.

[2] S.O.P.B. 197. This is a change made in accordance with the report of the Select Committee of 1902. Before that time a vote, though a formal one, took place on the first reading.

[3] Clifford, I., 70–71, 256; II., 821–43. Rep. of Com. on Priv. Bill Leg., Com. Papers, 1888, XVI., 1, p. xix.

in the two Houses is now very much the same,[1] the order of proceeding in the Commons being as follows: All opposed private bills, except those relating to railways and canals, divorce, and police and sanitary matters, are referred under the rules to the Committee of Selection, which divides them into groups and refers each group to a separate committee, consisting of a chairman and three members not locally or otherwise interested, all of whom it appoints for the purpose.[2]

Railway and Canal Bills.

In order to secure greater uniformity in the private acts relating to railways, a general committee on railway and canal bills was created in 1854.[3] It is appointed every year by the Committee of Selection, and to it are referred all bills of that kind. But it does not take charge of them itself. It merely divides them into groups, and then acts as a chairman's panel; that is, it refers the bills to separate committees, the chairman of which it selects from its own ranks, the other three members being appointed by the Committee of Selection.[4]

Police and Sanitary Bills.

With the same object of obtaining uniformity, all bills promoted by local authorities for police and sanitary purposes were referred after 1881 to a single committee. In this case, however, the bills were not too numerous to be considered by the committee itself, although to relieve pressure it was, in 1892, enlarged to eleven members, and authorised to bisect itself for the more rapid despatch of business. Curiously enough the committee was discontinued for some years, but, after loud complaints about exceptional powers granted by private acts, it was revived by sessional order in 1903, and intrusted with all police and sanitary bills which

[1] In the Lords the committees on opposed bills consist of five members, and the chairman has no casting vote. In the Commons he has both an ordinary and a casting vote, S.O.P.B. 124. In the Lords there is no Committee on Railway and Canal Bills.

[2] S.O.P.B. 98, 103, 105–6, 108, 110–13, 116–17, 208. Until a few years ago there was a paid referee who could sit on the committee with an advisory voice but no vote. May, 728. There were formerly two paid referees, and later only one.

[3] Clifford, I., 117.

[4] S.O.P.B. 98–106, 115, 208.

contain powers "in conflict with, deviation from, or excess of, the general law." [1]

A committee on divorce bills is still provided for in the rules, but since the power of granting divorces in England and Scotland has been entirely transferred to the courts, bills of this kind have become rare. While the various private bill committees are thus formed in slightly different ways, their mode of dealing with the measures that come before them is the same.

Locus Standi.

The bills referred to these committees have been described as "opposed," but that implies an opponent, and means, not an objector in the House, but an outside contestant on the basis of interest, for the chief object of these committees is a judicial hearing of opposing parties. If there is no opponent, so that the question is solely whether the privileges sought are consistent with the public welfare, the bill is said to be unopposed, and goes through quite a different procedure to be described hereafter. Plainly, therefore, the question who may oppose a bill, and on what grounds, is of vital importance. A person who enjoys the right is said to have a *locus standi;* and the first question to be decided is whether an opponent does or does not have it.

Now, any one who wishes to oppose a bill must, on or before Feb. 12, file a petition in the Private Bill Office, stating the ground of his objection,[2] and if the promoters contest his right to appear,[3] the question of *locus standi* is decided by the Court of Referees, consisting of the Chairman of Ways and Means, the Deputy Chairman, and not less than seven members of the House appointed by the Speaker. The Counsel to Mr. Speaker assists the court, but sits now only as an assessor.[4] The principal divergence in the procedure

[1] May, 767. Ilbert, "Manual," § 92, and p. 294. It is appointed by the Committee of Selection.

[2] S.O.P.B. 127–28. If the bill is brought from the House of Lords, or delayed in any other way, the petition must be filed within ten days of the first reading.

[3] May, 733.

[4] S.O.P.B. 87–89. Until 1902 the Speaker's Counsel and the paid referee were members, and the important members, of the court.

of the two Houses arises at this point, for questions of *locus standi* are determined in the House of Lords by the committee that considers the bill; and there is some difference of opinion about the relative merits of the two systems.[1] In both Houses the decisions are governed partly by express provisions in the standing orders,[2] and partly by precedents that have hardened into rules.

Grounds of *Locus Standi.*

In order to have a *locus standi*, an opponent must, as a rule, show that the bill may affect his property or business. He must prove a personal interest distinct from that of the rest of the community. Moreover, it is a general principle that, except on the ground of some special injury to themselves, both individuals and public boards are precluded from opposing before a private bill committee a public body on which they are represented. If, for example, a borough proposes to construct and work a tramway, an omnibus company has a right to be heard in opposition, but a ratepayer who believes that the plan will be financially disastrous has not.[3]

It is, of course, unnecessary to describe here all the kinds of private interest that will furnish a *locus standi*.[4] But in general, it may be said that the right is enjoyed by all persons whose land is to be compulsorily taken; by the owners and occupiers of buildings along the line of a proposed tramway; by traders affected by the tolls, fares, or rates proposed;[5] by public authorities; and sometimes by

[1] Rep. Com. on Priv. Bill Leg., Com. Papers, 1888, XVI., 1, p. iv., and see the evidence before the Committee on Private Business, Com. Papers, 1902, VII., 321.

[2] S.O.P.B. 129–35. These precedents are collected in the reports of cases in the Court of Referees, by Rickards and Saunders, and Saunders and Austin.

[3] By the Borough Funds Act of 1872 the expense of promoting a private bill cannot be incurred by a local authority unless sanctioned by a meeting of the rate-payers. Glen, "Law of Public Health," 12 Ed., 483, 967–68. But this does not apply to matters for which provisional orders can be obtained. *Ibid.*, 970; *cf.* Rep. of Com. on Priv. Business, Com. Papers, 1902, VII., 321, Qs. 2242, 2290–92, 2329–31. By the Borough Funds Act, 1903, no such sanction is required for opposing a private bill.

[4] *Cf.* May, 734–52.

[5] But usually only in case they appear as a class. S.O.P.B. 133; May, 735.

inhabitants acting on behalf of a county, town, or district, that is or may be affected. Competition, also, is a ground for *locus standi*, although the right to appear is usually confined to monopolies, to organisations that represent the trade as a whole, or to individuals whose business is important enough to represent that trade;[1] moreover the privilege is extended by the standing orders to chambers of agriculture, commerce or shipping.[2] While, therefore, the rules of *locus standi* are not perfectly logical, they are distinctly based upon private interest, individual or collective, and not upon the general welfare.

Hearing before the Committee.

The hearing of the parties before the committee follows the pattern of a trial in a court of law, even to the standing of the counsel employed. Up to this point the parties have been represented by parliamentary agents, who, although not necessarily attorneys or solicitors, hold a similar position, and must be registered in the Private Bill Office.[3] The actual hearings, however, like trials in court, are conducted by barristers. The fees, which are large, attract a high order of talent, and in fact the practice before private bill committees has become almost a distinct branch of the profession, the counsel who pursue it being known as the parliamentary bar.[4] The proceedings are strictly judicial in form, the barristers examining and cross-examining the witnesses and making the arguments in the ordinary way. Moreover, if either party has vexatiously subjected the other to expense, the committee can award costs like a court of law, and this is occasionally done.[5]

The first thing taken up is the preamble, the hearing upon this involving the general merits of the bill, so that if the

[1] Rep. of Com. on Municipal Trading, Com. Papers, 1900, VII., 183, Qs. 576, 582, 2377.

[2] If the Court of Referees thinks fit. S.O.P.B. 133a. This provision is not restricted to cases of competition.

[3] May, 691–93.

[4] By custom, parliamentary counsel are never appointed to the bench, and as they cannot enter Parliament without giving up their practice, they are usually shut out from a political career.

[5] May, 781–82.

committee is of opinion that promoters have failed to prove that part of their case, it reports at once against the bill. Otherwise the clauses are taken up in order, and the committee reports the bill with or without amendments.

The Committes and Public Policy.

Although the peculiar function of the committee consists in passing upon the conflicting claims of the parties that appear before it, the question whether the public welfare will be promoted by the enactment of the bill must be considered also. This is, of course, one of the chief things that the promoters must prove; but the committee seeks no evidence on its own account, nor can it permit a private person who has no *locus standi* to address it on the subject. In the interest of public policy, however, some safeguards have been devised. In the first place the standing orders direct that in various classes of measures certain provisions must be inserted. These relate to such matters as the level of roads, grade crossings, the amount of mortgages, the time for completing works, deposits to secure completion, minimum rates of fare, the application of general railway acts, leaving open spaces for recreation in enclosure bills, and the erection in London of new workmen's dwellings to replace others that are torn down. In some cases also the committee must report specially any unusual provisions contained in the bill, notably in relation to the borrowing powers of local authorities.

Moreover, on some questions the committee has the benefit of advice from public officials. That private bills must be filed with one or more of the public departments has already been pointed out. In a few cases the departments are directed to submit to Parliament a report upon the bill,[1] and they are always at liberty to do so. Under the rules these communications are referred to the committees,[2] which are required to notice in their reports the recommendations of the departments, and state the reasons for dissent where they have not been followed.[3] Occasionally, repre-

[1] *Cf.* S.O.P.B. 154, 155, 157a, 158b, 173, 194c.
[2] S.O.P.B. 212. [3] *Ibid.*, 150, 157, 157a, 173a, 194c, 194d.

sentatives of the departments appear before the committees;[1] and, what is more important, a general oversight of private bill legislation, with the right to make suggestions, is maintained by the officers of the Houses.[2] This is especially true of the Counsel to Mr. Speaker, and of the Chairman of Committees and his counsel in the House of Lords; but the question how effective their supervision is must be deferred until the results of the system are discussed.

Unopposed Bills.

Unopposed bills, that is bills where no adverse petition has been filed, or where the petitioner has not proved a *locus standi*, do not involve a judicial trial between contestants, but only an examination with a view to the public interest.[3] They are, therefore, referred to quite a different committee. Until 1903 it consisted of the Chairman, or Deputy Chairman, of the Committee of Ways and Means, and the Counsel to Mr. Speaker, assisted usually, but not always, by one other member of the House.[4] The Select Committee of 1902 on Private Business was of opinion that a body with so much authority ought to be strengthened by the addition of more members directly responsible to the House,[5] and in partial fulfilment of its recommendations the standing or-

[1] Rep. Com. on Municipal Trading, Com. Papers, 1900, VII., 1, Qs. 569, 985.

[2] *Cf.* S.O.P.B. 79–86.

[3] The total number of private bills that come before the House of Commons runs from 150 to 250 a year, and of these about one half are unopposed in that House. There are also about 50 unopposed provisional orders.

[4] *Cf.* S.O.P.B. (1902) 109, 137. For bills originating in the House the third man was the member indorsing the bill. But this member, if interested, locally or otherwise, although taking part in other ways, could not vote. S.O.P.B. (1902) 139, now S.O.P.B. 138. For bills coming from the House of Lords he was Mr. Parker Smith, M.P. Rep. Com. on Priv. Business, Com. Papers, 1902, VII., 321, Qs. 23, 68–69, 368; and see the Return printed yearly in the Commons Papers of the persons who served on the committee for each unopposed bill.

In the Lords the Committee on unopposed bills consists of the Chairman of Committees and such lords as think fit to attend, but the work is practically done by the Chairman and his counsel. May, 801. Rep. Com. on Priv. Business, Com. Papers, 1902, VII., 321, Qs. 1961, 1984–85, 2096, 2099–2104.

[5] Com. Papers, 1902, VII., 321, pp. viii–ix.

ders provided in the following year that the Committee on Unopposed Bills should consist of the Chairman and Deputy Chairman of Ways and Means, of two other members of the House, appointed by the Committee of Selection, and of the Counsel to Mr. Speaker.[1]

The bills having already been read through by the Speaker's Counsel, and in part by the Chairman of Ways and Means, the committee goes over them rapidly with the promoters, discussing chiefly such points as have been raised by the Speaker's Counsel, and by any reports from government departments.[2] If any other question should come up involving a new and important matter of public policy, the Chairman, who was already overworked, would formerly have avoided the responsibility of deciding it himself by reporting to the House, as he has power to do,[3] that the bill ought to be treated as opposed;[4] and this although there was no one to conduct the opposition.[5] One of the objects of strengthening the committee was to put it in a position to decide all such questions itself. As a matter of fact the committee often makes amendments in a bill, but seldom reports that it ought not to pass.

Report and Consideration.

After a bill, whether opposed or not, has been reported, the House, if dissatisfied, may recommit it either as a whole or with reference to particular clauses, and with or without instructions. When this does not happen, and it is unusual, the bill, if reported without amendment, and not a railway or tramway bill, stands ready for its third reading. If, on the other hand, it has been amended by the committee, or is a railway or tramway bill, it is ordered to lie upon the table for consideration on report.[6] At that stage amendments may be proposed, or a motion may be made to recommit, but in order to insure that the standing orders are complied with, both by the private bill committee and by the

[1] S.O.P.B. 109.

[2] Rep. Com. on Priv. Business, Com. Papers, 1902, VII., 321, Qs. 25, 27, 72–73, 1393, 1405–8. [3] S.O.P.B. 83, 209.

[4] Rep. Com. on Priv. Business, Com. Papers, 1902, VII., 321, Qs. 75–76, 1410–12. [5] *Ibid.*, Q. 1391. [6] S.O.P.B. 213.

House itself, the consideration cannot take place until the Chairman of Ways and Means has informed the House that this is the case; nor can any amendments be offered until the Committee on Standing Orders has reported upon them, if the Chairman thinks it proper that they should do so.[1]

The last stage is that of third reading where only verbal amendments are in order.[2]

Private Bills in the Lords.

After passing through one House a private bill goes to the other, and there is the usual process for reaching an agreement upon amendments. It is needless to trace here the course of a private bill in the Lords.[3] The procedure is essentially the same as in the Commons, and the only differences of any consequence have already been mentioned in the text or in the notes. A great deal of discussion has taken place upon the wisdom of having two separate hearings before the private committees of the two Houses.[4] It has been suggested that a second hearing is needless, and that time and expense would be saved by having a single trial before a joint committee. On the other hand it is urged that where a bill is objectionable or defective the second hearing gives a better chance to reject or improve it; and that as a matter of fact the parties often accept the decision of the first committee, or compromise their differences, only about one third of the bills opposed in one house being opposed again in the other.[5]

Special Procedure for Scotland.

The inconvenience and expense of a trial before a committee in London led to a strong demand for hearings in Scotland upon private bills relating to that kingdom, and in

[1] S.O.P.B. 81, 84, 85, 215–16, 218. Amendments made by the Lords must also be laid before the Chairman of Ways and Means. *Ibid.*, 86. Before consideration bills must also be sent again to the government departments where they have to be deposited before they are introduced. *Ibid.*, 84.

[2] S.O.P.B. 219. In the House of Lords there is no consideration or report stage, and substantial amendments may be made on third reading. Rep. of Com. on Priv. Business, Com. Papers, 1902, VII., 321, App. 15.

[3] *Cf.* May, Ch. xxix.

[4] *Cf.* Reps. of the Sel. Coms. of 1888 and 1902, Com. Papers, 1888, XVI., 1; 1902, VII., 321.

[5] *Cf.* Rep. of Com. on Priv. Business, Com. Papers, 1902, VII., 321, Apps. 8, 12.

1899 a statute was enacted for that purpose.[1] The Act and the general orders made in pursuance thereof, provide that, instead of following the ordinary procedure, promoters of Scotch private bills shall, in April or December, file a petition with the Secretary for Scotland for a draft provisional order deposited therewith. They must also comply with rules similar to those in force for private bills about giving notice, and filing copies and plans with the government departments. The draft order is submitted to the Chairmen of Committees of the two Houses. If either of them is of opinion that it affects interests outside of Scotland, or is of such a character, or raises such a question of policy, that it ought not to be dealt with in the new way, then it takes the regular course of an English private bill. If not, the order follows the new Scotch procedure. The two Chairmen assign an examiner to see that the general orders about notice, and other matters, have been observed, the final power of dispensation in case of non-compliance resting also in their hands. After these preliminary steps have been taken, the petition is ready to begin its active career.

Scotch Private Bill Committees.

If the petition is not opposed, the Secretary for Scotland may, after considering the reports of the public departments, make the provisional order, as prayed for or with amendments. In short, he takes the place of a committee on unopposed private bills. If, on the other hand, he thinks an inquiry ought to be held, or if the petition is opposed, he sends it to a commission selected on a curious plan designed to retain the work as far as possible in parliamentary hands. The difficulty, on one side, of getting members of Parliament to undertake such a service, and the desire, on the

[1] 62–63 Vic., c. 47. Section 15 of the act empowers the Lord Chairman of Committees and the Chairman of Ways and Means, acting jointly with the Secretary for Scotland, to make, subject to objection by either House, general orders for regulating proceedings under the Act. These orders, which are voluminous, may be found in Com. Papers, 1900, LXVII., 649. A few standing orders for Scotch bills are published as Part VI. of the Standing Orders relating to Private Business.

other, to retain a close connection with the Houses, resulted in a compromise between a parliamentary committee and a permanent commission.[1] Each House provides a panel of its own members, that of the Commons consisting of not more than fifteen members appointed by the Committee of Selection.[2] There is also an extra parliamentary panel of twenty men appointed for a term of five years by the two Chairmen and the Secretary for Scotland. The commission upon every petition consists of four persons taken from these panels, the Chairmen of Committees selecting two from the panel of each House, if possible; if not, they appoint as many of the four as they can from the two House panels indiscriminately, the remainder in any case being taken by the Secretary from the extra parliamentary panel.[3] The commission so formed holds its sessions, of course, in Scotland, proceeds like a committee upon an opposed private bill, and has power to decide all questions of *locus standi*. It reports to the Secretary whether the provisional order should be issued and in what form; and he acts accordingly.[4]

Confirmation by Parliament.

The order of the Secretary, whether opposed or unopposed, is not final, but provisional only, and requires confirmation by Parliament. He brings in a bill to confirm it, and if the order was not opposed in Scotland, or is not opposed in Parliament, it is treated as if it had already gone through all the stages up to and including committee, and is ordered to be considered as if reported from a committee of the House. But the right of the parties to a hearing in Parliament as the final court of appeal has been to some extent preserved, for a petition may be presented against any order that has been opposed, or has been the subject of a local inquiry, in Scot-

[1] Rep. of Com. on Priv. Bill Proc. (Scotland), Com. Papers, 1898, XI., 625.

[2] S.O.P.B. 253.

[3] The parliamentary returns show that of the dozen persons required each year to make three commissions on groups of petitions, it has been necessary to take only a couple of names from the extra parliamentary panel.

[4] By § 8 if the commission report that the order be issued, he may amend their draft.

land, and in that case a motion may be made to refer the bill to a joint committee, which hears the parties as in the case of an ordinary private bill, but reports to both Houses. The question of permitting an appeal to a parliamentary committee in London was much discussed at the time, and the bill as finally passed reserved the right, limiting it to a single hearing before a joint committee, instead of two hearings before separate committees of each House as in the case of an ordinary private bill. The promoter, moreover, as well as the opponent, has a right to appeal to Parliament. If his draft order is refused, he may, without going through the other preliminary steps, file it in the form of a substitute bill in the proper public office, and proceed with it like a private bill.[1]

The Scotch procedure has thus the effect of a compulsory arbitration in Scotland, preceding a possible trial at Westminster. It appears, however, that a Scotch confirmation bill is in fact seldom opposed in London.

Ireland and Wales.

Two years after the Scotch statute was passed, similar acts were proposed for Ireland and for Wales, but neither of them was passed. A select committee on a Welsh bill of this kind reported in 1904 that the Scotch procedure as it stood was not adapted to Wales, and that any desire in England for a less costly procedure than now existed would best be met by an extension of the system of provisional orders. The committee remarked that while most of the witnesses examined thought the Scotch Act had worked well on the whole, some of them believed there had been no saving of expense in the case of large schemes. This was attributed by the witnesses mainly to the cost of bringing counsel and experts from London, and in fact, the evidence showed no little difference of opinion about the advantages of the new procedure in several respects.[2] In Ireland there is another obstacle to the adoption of the Scotch Act; for while local hearings on private bills would have especial value beyond St. George's Channel, the Nationalists do not

[1] S.O.P.B. 255–58. [2] Com. Papers, 1904, VI., 409.

want any form of devolution that leaves the final management of Irish affairs in the hands of the British Parliament.

Provisional Orders.

The vast amount of private legislation enacted in England every year is due in large measure to the absence of general statutes upon subjects that would seem to be ripe for them. Year after year private bills are passed on the same subject, until a policy is established which might well be crystallised into a general law, leaving the controversies that arise in its application to be settled by a body of purely judicial character; or, as in continental countries, a final power of dealing with these matters might, subject to rules fixed by law, be vested in the administrative departments. That many costly bills in Parliament would be saved by passing appropriate statutes has been suggested,[1] yet the process goes on slowly, and so far as it has been carried it is for the most part incomplete. During the last fifty years central administrative authority in local and other matters has increased enormously, but in conferring powers upon public departments Parliament has been reluctant to give up its own ultimate control over particular cases. This is especially true of the compulsory sale of land for public purposes; for property in land still retains a peculiar sanctity in England.[2]

Parliament has, no doubt, in many cases, delegated to the administrative organs of the state a final authority to grant special powers to local bodies or private companies, or at least to sanction their use;[3] but in other cases the grant must be laid before the Houses, and does not go into effect if either of them passes a resolution of disapproval.[4] Some-

[1] *E.g.* Rep. of Com. on Police and Sanitary Bills, Com. Papers, 1898, XI., 555; Rep. of Com. on Priv. Business, Com. Papers, 1902, VII., 321, p. vii.

[2] The cases where land can be taken compulsorily without confirmation by Parliament, are few, and are in the main confined to widening highways, enlarging public buildings, providing for national defence, furnishing allotments to labourers, and acquiring land for parish purposes. The most striking departure from the rule is in the Act of 1896 for the construction of light railways. *Cf.* Ilbert, "Leg. Methods and Forms," 320.

[3] This applies to many matters connected with local government. It is true also of the construction of light railways. 59–60 Vic., c. 48, § 9.

[4] This is true, for example, of certificates granted by the Board of Trade to railways, for raising capital, working agreements, and other matters.

times if opposed,[1] and more often whether opposed or not, the orders conferring the powers must be submitted to Parliament for a formal ratification. This is the origin of provisional orders. They are issued by a government office under the authority of statutes, but they are merely provisional until confirmed by Parliament. Except the Treasury, the Admiralty, and the Indian and Colonial Offices, which can hardly come into direct touch with local affairs, almost all the important departments, and even the county councils, have been given some powers of this kind; and they cover all manner of subjects that would otherwise be dealt with by private bills.[2]

Procedure upon Provisional Orders.

Provisional orders are begun by an application to the department that has power to issue them, and although the standing orders do not as a rule apply to these applications,[3] yet, by the enabling acts, or by the instructions issued by the departments themselves, similar regulations about notices, deposit of plans, consent of local authorities, and so forth, are enforced. The department usually holds, by means of an inspector, an inquiry on the spot; and either in this or in some other way objectors who are interested are given a chance to present their case. Upon the report of the inspector, and such other information as it obtains, the department decides whether it will make the order or not.

The orders made are then arranged in groups according to their subjects, and each group is scheduled to a confirming bill, which is introduced into Parliament like a public bill by a minister on behalf of the department. But it is not treated as a public bill, still less as a government bill.

[1] To this class belong the orders for providing dwellings for the working classes, granting charters to municipal boroughs, changing the boundaries of divided parishes, constructing tramways in Ireland, etc.

[2] For a description of the various statutes giving authority to issue provisional orders see Clifford, Ch. xviii., and May, Ch. xxvi., and for a more exhaustive list of those relating to the Local Government Board see Rep. of Com. on Priv. Business, Com. Papers, 1902, VII., 321, App. 10.

[3] The only ones that apply are S.O.P.B. 38 and 39 about replacing work men's dwellings and the deposit of plans.

The minister does not try to force it through; he does not put pressure upon his followers by having the government whips act as tellers in a division. The measure is treated as a group of private bills, except that if an order is unopposed an officer of the department appears in support of it before the committee. The bill is read a first time, sent to the examiner, read a second time and referred to the Committee of Selection or the Committee on Railway and Canal Bills. Then if no petition has been filed against any of the orders in the bill it goes to the Committee on Unopposed Private Bills; otherwise it goes, with all the orders it contains, to an ordinary private bill committee which gives a hearing in the usual form to the promoters and opponents of the orders that are opposed.[1] Finally, the bill goes through the regular stages in the House.[2] In fact the standing orders direct[3] that provisional order bills, after being reported, shall be subject to the same rules as private bills, except so far as the payment of fees by the promoters is concerned.

Advantages of Provisional Orders.

The question of fees is a very important matter. It is one of the chief reasons for resorting to a provisional order; because the fees charged by the Houses to the promoters of private bills are heavy, and in the case of unopposed bills they form a large part of the cost of obtaining the act. An unopposed provisional order is, therefore, very much less expensive than an unopposed private bill; and although, with the large fees of counsel and expert witnesses, an opposed order may cost as much or even more than an opposed bill, it has the benefit of the presumption arising from the action of the department. Moreover, provisional orders, even if contested before the department, are not commonly opposed in the House. In the four years from 1898 to 1901 less than one tenth of the provisional orders were opposed

[1] S.O.P.B. 208a.

[2] In the House of Lords an unopposed bill, like a public bill, is referred after second reading to a Committee of the Whole. An opposed order goes to a private bill committee, and then, with the rest of the bill to a Committee of the Whole.

[3] S.O.P.B. 151.

in Parliament, and only one of them failed to pass.[1] It is, indeed, noteworthy that of the 2520 provisional orders issued by the Local Government Board from 1872 to 1902 only 23 were rejected by Parliament.[2]

Defects of Private Bill Legislation.

The system of private bill legislation, like the rest of man's handiwork, is not altogether without defects. One of these is the costliness of the procedure. A local governing body

Expense.

that wants to do some obvious and necessary public duty, such as to take land for the purpose of a new street or schoolhouse, must go to the expense of getting a provisional order; or if the object happens to be one not covered by any statute for provisional orders, it must incur the greater cost of promoting a private bill; and in either case the owner, if determined to fight to the bitter end, can force the expense up to a considerable sum. In the House of Commons there is a fee for almost every step that is taken by the promoters of a private bill; the minimum fees for the various stages in the House itself taken together are never less than thirty-five pounds, and they increase according to the amount involved, up to four times as much. There is, moreover, a fee of ten pounds for each day that the committee sits, if the promoters appear by counsel, and of five pounds if they do not. Fees on a smaller scale are also charged to opponents. Altogether the annual receipts of the House of Commons from private bill legislation average over forty thousand pounds, while its expenses on that account are less than twelve thousand.[3] In the House of Lords the fees are arranged somewhat differently, but they are, on the whole, about as large;[4] so that the parliamentary charges on the smallest unopposed private bill amount to over one hundred and ninety pounds. Then there are the expenses of parliamentary and local agents, of printing, advertising, and, in the case of opposed bills, of counsel,

[1] Rep. of Com. on Priv. Business, Com. Papers, 1902, VII., 321, App. 11.
[2] *Ibid.*, p. 185.
[3] *Ibid.*, App. 6.
[4] *Ibid.*, App. 15, and see the tables appended to the standing orders.

witnesses, and experts. Sometimes, all this makes a very large sum. Birmingham, for example, spent £44,750 in 1892 in promoting a single bill.[1]

The total amount spent by local authorities in the United Kingdom during the seven years from 1892 to 1898 in promoting and opposing private bills was £1,396,407, while private companies expended for the same purpose £2,806,813. Adding the smaller sums spent on provisional orders, and those paid out by harbour and dock boards, the grand total consumed in private legislation was £4,496,834.[2] The cost of opposed bills cannot be materially reduced by Parliament if the present system is to be maintained; and while this is not true of unopposed bills, it has been argued that high fees are an earnest of good faith and tend to check private speculation in concessions.

Neglect of the Public Interest.

A second defect in the system is a lack of sufficient attention to the interests of the public. As early as 1865 it struck observers that, apart from certain partial safeguards, the public had no friend in this class of legislation.[3]

The fact is that private bill committees are chiefly occupied by a hearing between conflicting interests, in which a citizen whose only motive for appearing is the general welfare has no *locus standi*.[4] Moreover, they are shifting tribunals, whose decisions are uncertain, and whose very nature renders a consistent policy extremely difficult. In fact it is this uncertainty that often causes promoters to try the chance of a private bill, rather than apply for a provisional order on the same subject to a public department that is trying to enforce a well-known policy at variance in some respects with the powers the promoter is seeking to obtain.

[1] Return of Expense of Private Bill Legislation, 1892–98, Com. Papers, 1900, LXVII., 111, p. 7.

[2] *Ibid.*, 187, p. 66. See also the returns for the preceding seven years in Com. Papers, 1892, LXIII., 51.

[3] Clifford, II., 800.

[4] At the local inquiries held by the departments for the purpose of issuing provisional orders, any resident of the district has, in some cases, at least, a right to be heard. Macassey, "Private Bills and Provisional Orders," 388, 418.

The committees are sometimes willing to grant new and unusual powers, without enough regard for the ultimate effect of the precedent they create. This has been specially true in the case of borough councils, and was a cause of no small complaint before the Committee on Municipal Trading in 1900.

Effect of the Standing Orders.

There are, indeed, certain means of preserving uniformity of action that are more or less effective. The first of these are the standing orders, which lay down some rules for the guidance of the committees, and prescribe a few provisions that must be inserted in certain classes of bills. They do not, however, go very far.

Clauses Acts and Model Bills.

Then there are the clauses acts, of various kinds, which are practically always incorporated — though not without additions or exceptions — in private bills on the subjects with which they deal. There are, also, the model bills, which have been carefully drawn up as standards for the committees to follow, although they are by no means obliged to do so. But all these things tend merely to maintain uniformity in legislation of a well-recognised type, along familiar lines. They have little effect in cases where a request is made for new and unusual powers. Cases of that kind are not, indeed, wholly without supervision. If a bill deals with local police or health, it goes before the Police and Sanitary Committee created by the House of Commons for the very purpose of preserving a consistent policy in such matters, and of no small use in that way.[1] But this is true only for a very limited class of measures.

The Government Departments.

The only general oversight comes from the government departments, and the officers of Parliament. It has already been pointed out that all private bills must be referred to one or more of the departments, and that these are sometimes obliged, and always at liberty, to make reports upon them. The reports go to the private bill committees, which are required to notice the recommendations therein in their own

[1] Rep. of Com. on Municipal Trading, Com. Papers, 1900, VII., 183, Qs. 421, 423.

reports to the House. The suggestions cannot, therefore, be entirely ignored, but the departments have no means of enforcing them. The Home Office is, indeed, always represented before the Committee on Police and Sanitary Bills,[1] but it is rarely asked to attend before others;[2] and, in general, it may be said that for a department to communicate with the committees save by its written reports is somewhat exceptional.[3] On novel questions of policy, moreover, the departments seem to follow rather than lead the private bill committees.[4]

Chairman of Ways and Means.

The officers of the Houses of Parliament have a more effective influence. Under the standing orders of the Commons all private bills must be shown to the Chairman of Ways and Means, both before they are considered by a committee and after any amendments have been made.[5] When sitting in the Committee on Unopposed Bills, he frequently requires the agent of the promoters to omit or insert clauses,[6] and occasionally he draws the attention of the chairman of a private bill committee to an extraordinary provision; but he does not feel it his duty to try to secure a general uniformity in private bills.[7] In fact, he is so busy that he can examine personally only a small part of them.[8] The appointment of a Deputy Chairman has been an assistance in this way.[9] But the work is mainly done by the Counsel to Mr. Speaker, who reads all the bills; makes a careful analysis of them, noting the reports from the government departments; sees the agents about any amendments he has to suggest; and calls the attention of the Chairman of Ways and Means to any matters that may require it.[10] Sometimes he is consulted

[1] Rep. of the Com. on Municipal Trading, Com. Papers, 1900, VII., 183, Q. 987; Rep. of the Com. on Priv. Business, Com. Papers, 1902, VII., 321, Qs. 2368–69, 2403–4.
[2] Rep. of Com. on Priv. Business, 1902, VII., 321, Qs. 2378, 2401–2.
[3] Rep. of Com. on Municipal Trading, 1900, VII., 183, Qs. 233–34.
[4] *Cf. Ibid.*, Qs. 3, 103, 145, and 1063.
[5] S.O.P.B. 80.
[6] Rep. of Committee on Priv. Business, 1902, VII., 321, Qs. 403–5.
[7] *Ibid.*, Qs. 391–94.
[8] *Ibid.*, Q. 2327.
[9] *Ibid.*, Qs. 85–87.
[10] Rep. of Com. on Priv. Bill Legislation, Com. Papers, 1888, XVI., 1, Qs. 340–42.

by the chairman of a private bill committee;[1] while the paid referee, on account of his large experience, had formerly some influence with the committees.[2]

The Lord Chairman.

But by far the most important officer of Parliament in this respect is the Chairman of Committees in the House of Lords, the Lord Chairman, as he is called. Being less busy with public affairs than the House Chairman, he is able to devote much more time to private bill legislation. He examines all the bills, even reading those introduced into the House of Commons before the Speaker's Counsel sees them;[3] and he is in constant communication with the Chairman of Ways and Means, and with the government departments.[4] He does not, as a rule, act directly upon the private bill committees,[5] but he confers with the promoters of the bills or their agents, and explains to them what changes he requires them to make. In such cases the promoters usually comply with his wishes. In fact they are practically obliged to do so or withdraw their bill, because the second and third readings of private bills in the House of Lords are always moved by the Lord Chairman, who would simply refuse to act if his advice were not accepted. Of course, some other peer might make the motion and carry it, but this is said to have happened only once within living memory.[6] The Lord Chairman examines provisional orders less thoroughly, and if they contain objectionable provisions he confers with the department that is responsible for them rather than with the promoters.[7]

The greatest obstacles which the Lord Chairman meets with come from what are known as "agreed clauses," that is, clauses agreed upon between opponents and promoters of

[1] Rep. of Com. on Priv. Bill Legislation, Com. Papers, 1888, XVI., I., Qs. 348. Rep. of Com. on Municipal Trading, 1900, VII., 183, Q. 545.

[2] Rep. of Com. on Municipal Trading, 1900, VII., 183, Qs. 2372, 2393, and 2399. [3] Rep. of Com. on Priv. Business, 1902, VII., 321, Q. 248.

[4] Rep. on Municipal Trading, 1900, VII., 183, Q. 3915.

[5] *Ibid.*, Qs. 290–91 and 3923–24.

[6] *Ibid.*, Qs. 284–85, 390, 3912, 3920, 3922; Rep. of Com. on Priv. Business, 1902, VII., 321, Qs. 77–80, 214–15.

[7] Rep. on Municipal Trading, 1900, VII., 183, Qs. 454–55 and 3917–18.

the bill. These in most cases are accepted without much examination by the private bill committees. The Lord Chairman tries to strike them out when he deems them against public policy; but this is not always easy, because it may be an injustice to one of the parties who has consented not to urge or oppose other provisions on the faith of those clauses. Moreover, even if the clauses are struck out of the bill, they may still be operative in fact, as the persons interested often feel bound in honour to carry them out. The matter has a very important bearing on the subject of municipal trading,[1] that is, the supply of public utilities by companies and public bodies, and it will be noticed hereafter in that connection. It is curious that the protection of the public interest in private bill legislation should depend very largely on the action of one man, and that man not the holder of a representative office or responsible to the public, but a member of an hereditary chamber who practically holds his post as long as he pleases.

Merits of the System.

If the English system of private bill legislation has its defects, they are far more than outweighed by its merits. The curse of most representative bodies at the present day is the tendency of the members to urge the interests of their localities or their constituents. It is this more than anything else that has brought legislatures into discredit, and has made them appear to be concerned with a tangled skein of private interests rather than with the public welfare.[2] It is this that makes possible the American boss, who draws his resources from his profession of private bill broker. Now the very essence of the English system lies in the fact that it tends to remove private and local bills from the general field of political discussion, and thus helps to rivet the attention of Parliament upon public matters. A ministry stands or falls upon its general legislative and admin-

[1] *Cf.* Rep. on Municipal Trading, 1900, VII., 183, Qs. 298, 341–44, 347, 3939–41.

[2] For a careful study from this point of view of a fairly good legislative body, by one of its members well fitted to observe, see an article by Francis C. Lowell, in the *Atlantic Monthly*, LXXIX., 366–77, March, 1897.

istrative record, and not because it has offended one member by opposing the demands of a powerful company, and another by ignoring the desires of a borough council.

It Depends on the Support of the Committees by the House.

Such a condition would not be possible unless Parliament was willing to leave private legislation in the main to small impartial committees, and abide by their judgment. If this were not true — and it would not be true in most other legislatures — the promoters and opponents of the bill would attempt to forestall or reverse the decisions of the committees on the floor of the House, and would try to enlist the support of the members in their favour. That is, indeed, occasionally done, and has called forth no small complaint. Perhaps the most notable instance of late years was that of the bills for the organisation of companies to supply electric power in Durham and South Wales. The bills were opposed on the ground both of public policy and of local interest, and were rejected by the House of Commons in 1899 under the powerful influence of the Association of Municipal Corporations. Public feeling was, however, aroused, and the bills were passed in 1901.

In the very nature of things Parliament must have power to overrule the private bill committees, and sometimes does so, but the permanence of the system depends upon the fact that it is not done often. The question, therefore, whether there is a growing tendency to override the committees is a very interesting one. Such meagre statistics as have been collected would appear to show that there has been a slight increase in the number of bills opposed on second and third reading, and in the number of instructions to committees that have been moved,[1] as well as in the amount of time spent in the House in debating these matters.[2] It seems, also, to be the general opinion of men

[1] In the five years 1891–95 the number of bills opposed on second reading averaged 17⅞, while from 1897–1901 they averaged 32. Rep. of Com. on Priv. Business, 1902, VII., 321, Q. 218.

[2] Rep. of Com. on Priv. Business, 1902, VII., 321, App. 2. But these periods are too short to warrant any accurate conclusion. In not more than eight or nine per cent. of the cases does the opposition seem to have succeeded. *Ibid.*, Q. 219–20.

in close touch with private bill practice, that the habit of overruling the committees has gained ground of late years, but fortunately not to any dangerous extent.[1]

[1] *Cf.* Rep. of Com. on Priv. Bill Leg., Com. Papers, 1888, XVI., 1, Qs. 346–47, 487–88, 553, 1244. Rep. of Com. on Municipal Trading, 1900, VII., 183, Qs. 519, 523–26, 529. Com. on Priv. Business, 1902, VII., 321, Qs. 42–43. In conversation the writer found the opinion that the habit was increasing substantially universal.

When the Speaker's Counsel hears that opposition in the House is likely to be made, he sometimes tries to prevent it by arranging for a conference between the promoters and opponents in the presence of the Chairman of Ways and Means. Rep. of Com. on Priv. Bill Legislation, 1888, XVI., 1, Q. 346.

CHAPTER XXI

THE HOUSE OF LORDS

TRACING its origin to the ancient council of the magnates of the realm, the House of Lords has, in the fulness of time, undergone several changes of character.[1] From a meeting of the Great Council of the King, it became an assembly of his principal vassals, the chief landholders of the Kingdom, ecclesiastical and lay; and finally it was gradually transformed into a chamber of hereditary peers, enjoying their honours by virtue of a grant from the Crown. Each phase has left a trace upon its organisation or functions, or upon the privileges of its members.

Composition of the House.

Before the Reformation the ecclesiastics in the House of Lords,[2] including the abbots and priors, usually outnumbered the laymen; but upon the dissolution of the monasteries, and the disappearance therewith of the abbots and priors, the proportions were reversed, and the hereditary element became predominant. At present the House contains several kinds of members, for it must be remembered that every peer has not a right to sit, and all members of the House are not in every respect peers.

The Hereditary Peers.

First there are the peers with hereditary seats. They are the peers of England, created before the union with Scotland in 1707; the peers of Great Britain created between that time and the union with Ireland in 1801; and the peers of the United Kingdom created thereafter. They rank as dukes, marquises, earls, viscounts, and barons, whose pre-

[1] The best history of the House is Pike's "Constitutional History of the House of Lords."

[2] The question whether they sat by virtue of their tenure of land, or of their offices in the Church, has been a subject of some discussion. *Cf.* Pike, 151 *et seq.* Anson, I., 220–22.

cedence, with that of their wives and children, furnishes abundant interest to those who care for such things. The Crown, that is, the ministry of the day, has unlimited power to create hereditary peerages with any rules of descent known to the law in the case of estates in land,[1] and since the accession of George III. the power has been freely used. All but seventy-four out of nearly six hundred seats belong to this class, which is now the only channel for an increase in the membership of the House.

The Representative Peers of Scotland.

When the union with Scotland was made in 1707, the Scotch peers were more numerous in proportion to population than the English; and therefore, instead of admitting them all to the House of Lords, it was provided that they should elect sixteen representatives of their order for the duration of each Parliament. No provision was made for the creation of new Scotch peers, so that with the dying out of peerages, and the giving of hereditary seats to Scotch noblemen by creating them peers of the United Kingdom,[2] the number of Scotch peers who have no seats in their own right has fallen from one hundred and sixty-five to thirty-three. Within another generation they may not be more than enough to furnish the sixteen representatives.

Of Ireland.

The same problem arose upon the union with Ireland a hundred years later; but the Scotch precedent was not followed in all respects; for the act provided that the Irish peers should elect twenty-eight of their number representatives for life, and an arrangement was also made for perpetuating the nobility of Ireland within certain limits. Not more than one new Irish peerage was to be created for every three that became extinct, until the number — exclusive of those having hereditary seats in the House of

[1] And possibly with others. *Cf.* Anson, I., 197–200.

[2] At one time the House of Lords held that a Scotch peer could not be given an hereditary seat as a peer of Great Britain; but this decision was afterwards reversed. Pike, 361–62. A peer so created can still vote for representatives as a Scotch peer. *Ibid.*, 362–63. And there has been some doubt whether, if a representative peer, he vacates his seat at once. *Ibid.*, 362, May, 13.

Lords under other titles — had fallen to one hundred, a limit above which it can never be raised.[1] There is another important difference between the Scotch and Irish peers. The former are wholly excluded from the House of Commons, but the latter can sit for any constituency in Great Britain, though not in Ireland. Under this provision Irish peers have, in fact, often sat in the Commons, the most famous case being that of Lord Palmerston. The Irish peerage thus affords an opportunity to ennoble a statesman, without putting an end to his political career in the popular chamber.

The Bishops.

The dissolution of the monasteries, by removing the abbots and priors from the House of Lords, left the bishops the only spiritual peers; and as such they have held their seats to the present day. By the time the union with Scotland was made, the established church of that kingdom was Presbyterian in form, and no Scotch ecclesiastics were added to the House of Lords. But the Irish established church was Episcopal and Protestant, and hence at the union with Ireland in 1801 four places were given to her bishops, who filled them by rotation sitting for a session apiece. With the disestablishment of the Irish Church in 1869 its representatives vanished from Parliament, leaving the English prelates as the only spiritual peers in the House of Lords.[2] Meanwhile the greater attention paid to the needs of the Church has brought about the creation of new bishoprics in England; but in order not to increase the number of spiritual peers, it has been provided that while the Archbishops of Canterbury and York, with the Bishops of London, Durham, and Winchester, shall always have seats in the House of Lords, of the rest only the twenty-one shall sit who are seniors in the order of appointment.[3] The spiritual peers are members of the House solely by virtue of their office, and so long as they retain it. Except, in fact, for the five great sees they are members only by virtue of seniority

[1] The number is now less than one hundred.
[2] The Bishop of Sodor and Man has a seat, but no vote.
[3] There are now ten English bishops who do not sit in the House of Lords.

in office. At times the Nonconformists have tried to exclude them altogether; but with the growth in the number of lay peers their relative importance has diminished, and it is not probable that they will be removed, unless as part of a larger movement for the reform of the House of Lords, or the disestablishment of the Church.

Life Peers.

Since the House of Lords is not only a legislative chamber, but also the highest court of appeal for the British Isles, it is well that it should contain at all times the legal talent required for the purpose. An obvious method of accomplishing the result, without permanently enlarging the House, or hampering the career of heirs who may not have the wealth to support the dignity, is by giving seats for life to eminent judges. With this object Sir James Parke, a distinguished baron of the Court of Exchequer, received in 1856 a patent as Baron Wensleydale for life. Much learning has been expended upon the question whether the Crown has ever exercised the power to create a life peer with a seat in the House of Lords,[1] and whether, if it ever existed, the power has become obsolete; but the Wensleydale case was settled by a vote of the House that the Letters Patent did not enable the grantee to sit and vote in Parliament. Sir James Parke was thereupon created Baron Wensleydale with an hereditary title, and the appointment of Law Lords as life peers was postponed a score of years.

The Case of Baron Wensleydale.

The Lords of Appeal.

At last the need for increasing the legal members of the House became so clear that in 1876 an act was passed to authorise the appointment of two, and ultimately of four, Lords of Appeal in Ordinary for life.[2] They hold the position, and enjoy a salary of six thousand pounds, on the same tenure as other judges; and since 1887 they have also had a right to sit in the House as long as they live, irrespective of their tenure of the office. The motive for their creation was simply to strengthen the House of Lords as a court of

[1] *Cf.* Pike, 369–76. Stubbs, "Const. Hist.," 5 Ed., III., 454.

[2] Before appointment they must have held high judicial office for two years, or have practised at the English, Scotch, or Irish bar for fifteen years.

appeal. Proposals for life peerages on a more extended scale have also been made in connection with plans to reform the House of Lords as a branch of Parliament. So far these have come to nothing; and, as we shall see hereafter, it is by no means clear that they would attain the end in view, or that, if they did, they would be wise.

The House Determines the Qualification of its Members.

The authority of the House of Lords to determine the validity of new patents has already been referred to in connection with the Wensleydale case. It is also empowered by statute to pass upon the election of Scotch and Irish representative peers. Disputed claims to the succession of hereditary peerages, on the other hand, may be settled by the Crown on its own authority, but it is the habit at the present day to refer these likewise for decision to the Lords.[1]

Disqualifications.

Infants, aliens, bankrupts, and persons under sentence for grave offences, are incapable of sitting in the House of Lords;[2] and instances occurred in the seventeenth century of special sentence of exclusion by the House itself. But more important from a political point of view than the disqualifications for the upper chamber is the fact that a peer cannot escape from the peerage. This is sometimes a misfortune when a man, who has made his mark in the House of Commons, has an obscure greatness thrust upon him by the untimely death of his father. In such a case he loses at once and forever his seat in the House where the active warfare of politics goes on, and this although he may be a Scotch peer, who has no seat in the House of Lords. The question was debated at some length in 1895, when Lord Selborne tried to retain his seat in the Commons by omitting to apply for a writ of summons as a peer; but the Commons decided that he could not do so.[3]

Besides the liberty of speech and freedom from arrest

[1] Pike, 285–87; Anson, I., 227–28. These cases are referred to the Committee of Privileges.

[2] The Act of 1870 abolished corruption of blood, so that a sentence no longer cuts off the heirs.

[3] Hans. 4 Ser. XXXIII., 1058 *et seq.*, 1174 *et seq.*, and 1728 *et seq.* *Cf.* Rep. of Com. on Vacating of Seats, Com. Papers, 1895, X., 561.

Personal Privileges of the Peers

which they possess in common with the members of the other House, the peers, partly in memory of their position as councillors of the Crown, partly as an aftermath of feudal conditions, retain certain personal privileges, of small political importance, but sometimes of interest to the person concerned. One of these is the right of access to the sovereign for the purpose of an audience on public affairs. Another is the right to be tried by their peers in all cases of treason or felony.[1] If Parliament is in session, the trial is conducted by the whole House of Lords, presided over by the Lord High Steward appointed by the Crown. If not it takes place in the court of the Lord High Steward, to which, however, all the peers are summoned.[2] The privilege extends to the Scotch and Irish peers, whether chosen to sit in the House of Lords or not; to the life peers; to peeresses in their own right; and to the wives and widows of peers, unless they have "disparaged" themselves by a second marriage with a commoner; but it does not extend to the bishops, or to Irish peers while members of the House of Commons.[3]

Functions of the House.

The House of Lords is both a coördinate branch of Parliament and a court of law. Its duties as a court of appeal will be described in another chapter with the rest of the national judicial system, and its original jurisdiction, in the trial of peers and of impeachments brought by the House of Commons, is no longer of much consequence. The evolution of the political responsibility of ministers has made impeachment a clumsy and useless device for getting rid of an official, while the greater efficiency of the criminal law has made it needless for punishing an offender; and in fact the last case where it was used was that of Lord Melville, one hundred years ago. It may be noted, however, in this connection that the House still retains the right to require

[1] For misdemeanors, peers, like other persons, are tried by an ordinary jury.

[2] Upon conviction a peer is now liable to the same punishment as other offenders.

[3] For the history of the subject in general see Pike, Chs. x., xi., and for that of the bishops, *Ibid.*, 151–68, 179–94, 219–23.

the attendance of the judges, not only when acting in a judicial capacity, but on all occasions when it may need their advice.

Money Bills. Since the House is a coördinate branch of the legislature, every act of Parliament requires its assent, and although in practice it is far less powerful than the House of Commons, the only subject on which the limitations of its authority can be stated with precision is that of finance. As far back as 1671 the Commons resolved "That, in all aids given to the King, by the Commons, the Rate or Tax ought not to be altered by the Lords";[1] and in 1678 they adopted another resolution that all bills granting supplies "ought to begin with the Commons. And that it is the undoubted and sole right of the Commons, to direct, limit, and appoint, in such Bills, the Ends, Purposes, Considerations, Conditions, Limitations, and Qualifications of such Grants; which ought not to be changed, or altered by the House of Lords."[2] The Commons have clung to this principle ever since, enforcing it by a refusal to consider bills in which the Lords have inserted or amended financial provisions; and although the Lords have never expressly admitted the claim, they have in fact submitted to it.[3]

Paper Duties Bill in 1860. The upper House can, of course, reject a money bill altogether, but the history of the last case where they did so shows the futility of such a power by itself. In 1860 the ministry brought in a bill to repeal the duties on paper, which hindered the development of a cheap newspaper press, and the Lords rejected it in spite of the fact that the budget already passed imposed additional taxation to make up for the loss of revenue from paper. The next year the repeal of the paper duties was simply included in the annual tax bill, and forced through in that way. It is now the regular practice to include all the taxation in one bill, and as the peers never venture to reject as a whole either this, or any of the great measures granting supplies, it is truly said that

[1] 9 Com. Journals, 235.
[2] 9 *Ibid.*, 509.
[3] *Cf.* May, "Const. Hist.," I., Ch. viii., 444.

the House of Lords cannot initiate or amend, and practically cannot reject, any money bill. The principle applies not only to the national receipts and expenditures, but also to local rates,[1] but it does not apply to revenues of the Crown or the Church, nor at the present day to penalties or fees not payable into the Exchequer.[2]

Tacking.

It might be supposed that the Commons could carry any piece of legislation by tacking it to a money bill. This was formerly done; but the Lords have long had a standing order forbidding such a practice, and no attempt has been made of late years to revive it.[3] Moreover the rule about money bills is not strictly enforced where the financial provision is merely incidental to general legislation. The Lords are free to omit such a clause altogether,[4] or if it is so interwoven with the rest of the measure that it cannot be treated separately, the Commons have often waived their rights and taken into consideration amendments made by the Lords.[5] For the sake of convenience they have gone farther still, for they suffer expedients to be used, that really evade, while recognising, their privilege. Bills are sometimes introduced in the House of Lords with financial provisions which are struck out on third reading. In the Commons these provisions are printed as ghosts, underlined or in brackets, to indicate that they are not at the moment a part of the bill, but that a motion will be made in committee to reinsert them.[6] What is more, the Commons have adopted a standing order that it will not insist on its privileges in the case of private, or provisional order, bills which impose tolls, or authorise rates by local authorities for local purposes.[7]

The rule about money bills applies only to measures actually before Parliament. It does not prevent the House of

[1] May, "Parl. Prac.," 542. [2] *Ibid.*, 547, 549–50.
[3] *Ibid.*, 552–53. [4] *Ibid.*, 551–52. [5] *Cf. Ibid.*, 544–46.
[6] For the same purpose the Lords sometimes insert a clause, in a bill or amendment, that a financial provision really essential to their plan shall not be operative, and then the Commons strike the clause out. May, 547–49.
[7] S.O.P.B. 226. Sometimes, also, at the request of the member in charge of a bill, the Commons consent to waive a privilege on which they might have insisted.

Lords from expressing an opinion upon financial matters either in debate or by resolution, or from inquiring into them by means of select committees.[1] In 1903, indeed, was seen the curious spectacle of the House of Lords debating freely Mr. Chamberlain's fiscal policy, while the Opposition in the Commons was striving almost in vain for an opportunity to do so.

Officers of the House of Lords.

Except when a peer is being tried the Lord Chancellor presides over the House. In practice he is always made a peer, but this is not a legal necessity, and, in fact, the woolsack, on which he sits, is commonly said not to be within the House itself. Perhaps for this very reason he has not the authority of the Speaker of the Commons in ruling upon points of order. He does not even decide which peer shall speak, but if more than one rise at once, and refuse to give way, the question who shall have the floor is decided by the House itself, if necessary by division.[2] Order in debate, also, is enforced not by him but by the Lords themselves. Moreover, he has no casting vote, and it is characteristic of his position that the peers do not address him, but speak to "My Lords." In short, his functions are limited to formal proceedings, and even in these he can be overruled by the House.[3] If a peer he can, of course, as such, take part in debate; but otherwise not. During his absence one of the deputy speakers, appointed by the Crown, takes his place, or if none of these be present the House appoints a speaker *pro tempore*.[4]

The other principal officers of the House are the Lord Chairman of Committees, chosen by the House itself, who presides in Committee of the Whole, and who, as we have seen, has great influence over private bill legislation; the Clerk of the Parliaments, who acts as Clerk of the House; the Gentleman Usher of the Black Rod, who acts as messen-

[1] May, 541. [2] *Ibid.*, 296–97. [3] *Ibid.*, 186, 307.

[4] A Lord Keeper of the Great Seal has the same rights to preside as the Lord Chancellor, and if the Seal be in commission the Crown appoints a Lord Speaker. May, 184–86.

ger of the House on great and formal occasions; and the Sergeant-at-Arms; all these last three being appointed by the Crown.

Quorum.

The quorum of the House is fixed at the absurdly small number of three, but this is to some extent delusive, for the presence of thirty Lords is necessary for an effectual division upon any stage of a bill. Formerly the House occasionally imposed fines upon its absent members, a practice that has fallen into disuse. The privilege of voting by proxy has also disappeared. It was abolished by standing order in 1868.[1]

Procedure.

The procedure upon bills is in general similar to that in the House of Commons. There are two readings, and then a Committee of the Whole, followed by a third reading; and there is the familiar rule that no member can speak more than once to the same question, except in Committee of the Whole. The chief difference from the Commons consists in the rule adopted in recent years for referring bills after the committee stage, and before report, to a standing committee appointed by the Committee of Selection.[2] This gives an opportunity to revise the drafting of a bill that has been battered out of shape in its passage through Parliament. As a matter of practice, however, the reference to a standing committee is usually omitted, for the Lords are quite in the habit of shortening the process of legislation by special vote of the House. The committee stage is often left out altogether; and in money bills this always is done. On the appropriation bills, indeed, there is rarely any debate, and all the stages are not infrequently taken on one day.

The Peers have Abundance of Time.

The Lords have no constituents to impress, and hence there are not so many members as in the Commons who want to take part in debate. Moreover, they are not obliged to devote a large part of their time to supply and to the budget; and as their chamber is not the place where the great

[1] Two days' notice must be given of a motion to suspend this order. May, 350–51.

[2] May, 376, 377.

political battles are fought, the Opposition does not oppose at every possible step. They can, therefore, get through their work at leisure. They make use, indeed, of select and sessional committees in much the same way as the Commons; but, having time enough to consider every bill in Committee of the Whole, they do not need time-saving machinery like the Standing Committees on Law and Trade. For the same reason, and because there is no disposition to wilful obstruction, they do not require and do not have a closure to cut off debate. Their sittings also are short. On Wednesday and Saturday they seldom meet at all, while on other days their usual hour of meeting is half-past four, and they rarely sit after dinner-time.

Their Action is Little Fettered by Rules.

On the other hand, the very fact that the fate of ministers does not hang upon their votes renders possible a much larger freedom of action than in the Commons. There is not the same need of precaution against hasty, ill-considered motions, or against votes that might embarrass the government without implying a real lack of confidence. Hence there is no restriction upon the motions that can be brought forward, save that notice must be given beforehand;[1] and any question to a minister may be followed by a general debate, provided again that notice of the question has been given in the orders of the day.[2]

[1] May, 204, 205. [2] *Ibid.*, 206.

CHAPTER XXII

THE CABINET AND THE HOUSE OF LORDS

Effect of the Reform Act of 1832

By sweeping away rotten boroughs, and giving representatives to new centres of industry, the Reform Act of 1832 made a great change in the position of the House of Lords; not by lessening its power — for since the Great Rebellion the Lords as a branch of the legislature has never had much power — but by the change in the composition of the House of Commons which opened a door to conflicts between the two bodies. In the old unreformed days the Lords and Commons were in general accord, because both were controlled by a territorial aristocracy whose chief members were peers. That element remained, no doubt, strong in the Commons after the Act of 1832, but it was no longer overmastering, and it had to use its authority in a more popular spirit, so that the two Houses ceased to be controlled by the same force. By bringing about this result the Reform Act drew attention to the fact that an hereditary body, however great the personal influence of its members, could not in nineteenth century England be the equal in corporate authority of a representative chamber. It became apparent that the House of Lords might on important issues differ in opinion from the House of Commons, and that in such cases an enduring desire of the nation, as expressed in the representative chamber, must prevail.

Power of the Lords Thereafter

This did not mean that the House of Lords must submit to everything that the Commons chose to ordain; that it was to become a mere fifth wheel of the coach; on the contrary, in matters not of great importance, or on which the Commons were not thoroughly in earnest, it exercised its own

judgment, sometimes in cases that caused no little friction between the Houses. In 1860, for example, it rejected the bill to repeal the duties on paper; in 1871 it refused to concur in the abolition of the purchase of commissions in the Army; and in 1880 it rejected the bill to compensate evicted Irish tenants. In all these cases the policy of the House of Commons was ultimately carried out; and the peers recognised fully that their action on great measures was tentative; that they must not go too far; and that if public opinion was persistent they must in the end give way. As Mr. Sidney Low well says: "The House of Lords, ever since the struggle over the great Reform Bill, has been haunted by a suspicion that it exists on sufferance." [1]

The House of Lords is Conservative.

From the fact that it represents, in the main, the interests of property, and especially of landed property, the House of Lords tends naturally to be conservative, in the sense that it is adverse to popular demands which appear dangerous to interests of that kind, or indeed to the established order of things; but more than this, the peerage as a mass tends from its social position in the nation to gravitate toward the political party that clings to the nobility and the Church as pillars of the state. During the half century that followed the first Reform Act, the Liberals were in power much the greater part of the time, and they created by far the larger number of peers; [2] yet the House of Lords remained firmly Conservative throughout; for even Liberal peers — and still more their descendants — are drawn by a steady current to the other side; a current that was accelerated, but not caused, by the Home Rule Bill.

The House is, in fact, overwhelmingly Conservative. Of the hereditary peers more than four fifths belong to the

[1] "The Governance of England," 218.

[2] In 1830 the House of Lords contained 326 hereditary members. From that time until the fall of Mr. Gladstone's cabinet, in 1885, the Liberals made 198 additions to these members; and during the same period the Conservatives made 70. Since 1885 the Conservatives have been in power by far the greater part of the time, and their creations of peers have been correspondingly more numerous.

Unionist party; and the disproportion is increased by the representatives from Scotland and Ireland. In the case of Ireland this is the inevitable result of the method of choosing, because elections occur only one at a time on the death of a representative peer, and his successor is always taken from the dominant — that is, the Unionist — party. In Scotland, there being no provision for minority representation, the same result takes place, the majority electing all the sixteen peers for the Parliament from its own side; and thus the representative peers from both kingdoms, forty-four in number, are Unionists to a man.

Meaning of the Term "Conservative."

It is commonly said that the House of Lords is a conservative body which acts as a drag on hasty legislation, and holds back until the nation shows clearly that it has made up its mind. This is undoubtedly true, and if it were the whole truth the limited authority retained by the House would provoke no strong resentment in any quarter; but it is only a part of the truth. The word "conservative" has two distinct meanings in England, according as it is spelled with a small or a capital C. The first signifies an aversion to change; the second, one of the two great political parties in the state. Now, for more than a generation after the Reform Act of 1832 these two meanings of the word were not very far apart. The Conservative party was to such an extent the party of resistance to change as to make plausible, if not accurate, Macaulay's comparison of the two parties that divided the nation to the fore and hind legs of a stag, the Liberals being always in advance, and the Conservatives following their footsteps at a distance. The simile expressed one aspect of a not uncommon feeling, that the direction of the national policy rested normally with the Liberals, but that when they went too fast the Conservatives would come to power for a short time, while the country adjusted itself to its new conditions. That under these circumstances the House of Lords should act with the Conservative party, and should help them to play the part of a brake from time to time, not in order to stop, but only to slow down, the coach

on a hill, was natural, and not open to serious objection. But Disraeli's constant preaching against a merely negative policy, coupled with the need of seeking for working-class support after the extension of the franchise by the Reform Act of 1867, led to the abandonment by the Tories of the attitude of resistance to change. Even if it be true that the new Tory democracy is, on the whole, less progressive than the Liberal party, it is certainly not opposed to all progress. In more than one direction, indeed, it is distinctly more favourable to change. If the stag has not become double-headed, he has, at least, learned to walk with either end in front; and this change in the Tory party has had a marked effect upon the position of the House of Lords.

The House has Become a Tool of the Conservative Party.

Although the Conservatives have outgrown their negative attitude of resistance to change, and have become an aggressive party with a positive policy, they have retained and even strengthened their control of the House of Lords. The House has not, of course, lost all volition so completely as merely to register the commands of the Unionist leaders. To some extent it has its own opinions, which are now more conservative than theirs; and even when they are in power it amends the lesser details of their bills with a good deal of freedom, sometimes making its own views prevail. In 1899, for example, it struck out of the London Local Government Bill the provision allowing women to sit on the borough councils, a change that the Commons accepted with reluctance; and in 1902 it succeeded in making amendments to the Elementary Education Bill, which threw upon the rates the burden of current repairs in the Church schools, and preserved some control by the bishops over religious instruction therein.

But while the House of Lords has a will of its own in smaller questions, on the great party struggles that rend the country it throws its weight wholly on the side of the Tories, and plays into their hands. Thus, from 1892 to 1895, and again in 1906,—the only two occasions on which the Liberals have been in office for a score of years,—the House of Lords used

its power boldly to hobble the government. That it did so to help the Unionist party, and not simply from conservative objection to change, is curiously brought out by its treatment of the principal measures of 1906. Besides the Education Bill, where the conflict of opinion lay very deep, two other government measures that aroused some feeling came to it from the Commons. One of them, the Trades Dispute Bill, which provided that a trade union should not be liable to suit for any action it might take during a strike, was certainly a radical measure, and one to which a chamber of conservative temperament might well object; but the Lords passed it without amendment. The other, the Plural Voting Bill, designed to prevent a man from voting in more than one place, involved no very profound question of principle, and made no very far-reaching change in English institutions, but was a bone of contention between the parties because it affected the chances of election in close districts. This bill the House of Lords summarily rejected.

The fact is that since the Reform Act of 1832 government by party has become highly developed; and although the differences between the principles of the two parties may be less fundamental than they were formerly, the voting in Parliament runs very much more strictly on party lines.[1] Politics have become more completely a battle between parties, in which it is more difficult than ever to avoid taking sides, while the combatants try to make use of every weapon within their reach. Now the very accentuation of party has made it easier for the peers to resist a Liberal ministry, because in doing so they are evidently opposing, not the people as a whole, but only a part of the people, and a part that is a majority by a very small fraction. In this way it has happened that the House of Lords, without ceasing to have an opinion of its own on other matters, has become for party purposes an instrument in the hands of the Tory leaders, who use it as a bishop or knight of their own colour on the chess-board of party politics.

[1] See the chapter on "The Strength of Party Ties," *infra*.

Position of the House in Forcing a Referendum.

A cabinet never thinks of resigning on account of the hostility of the Lords; nor is its position directly affected by their action. Indirectly, however, it may be very seriously impaired, if the peers, claiming that the government is not really in accord with the electorate, reject important measures, and thereby challenge a dissolution of Parliament. By doing so they may reduce a ministry, that is not in a condition to dissolve, to a state of political impotence, both in fact and in the eyes of the nation. This was true of the Liberal administration in 1893–94, when the peers rejected the Home Rule Bill, and made amendments that struck at the root of the Parish Councils and Employers' Liability Bills, changing the latter in a manner so vital that the government finally withdrew the measure altogether. The Liberals protested that the House of Lords thwarted the will of the people, and ought to be ended or mended. The alliteration helped to make the phrase a catchword, but the cry excited popular enthusiasm so little that at the dissolution in 1895 the country upheld the same party as the House of Lords, and returned a large Unionist majority to Parliament.

For the Lords to appeal to the people at a moment when the people were of their party was naturally not an unpopular thing to do, and for some time after the fall of Lord Rosebery's government they rather gained than lost ground in the esteem of the public. The Conservatives, indeed, declared that the House had renewed its youth, and had become once more an important organ of the state by asserting its right to appealing from the cabinet and the majority in the Commons to the nation itself. The Lords were said to have attained the function of demanding a sort of referendum on measures of exceptional gravity; but useful as such a function might be, if in the nature of things a possible one, the existing House of Lords cannot really exercise it, because their object in doing so is essentially partisan. In attempting to appeal to the electorate, they act at the behest of one party alone. Thus in 1893 the Lords were quite ready to force the issue whether the cabinet

retained the confidence of the country; but in 1905 when a series of adverse by-elections made it exceedingly doubtful whether the Conservative government had not lost its popularity, nothing was further from their intention than to cause a dissolution.

Now, a power to provoke a referendum or appeal to the people, which is always used in favour of one party and against the other, however popular it may be at a given moment, and however much it may be permanently satisfactory to the party that it helps, cannot fail in the long run to be exceedingly annoying to its rival; nor is it likely to commend itself to the great mass of thinking men as a just and statesmanlike institution. The House of Lords is a permanent handicap in favour of the Tories, which is believed to have helped them even in elections for the House of Commons. The workingmen have been told that although the Conservatives promise them less, they are better able to fulfil their promises than the Liberals who cannot control the House of Lords. These things must be borne in mind in discussing a possible reform of the upper House; but before coming to that question it will be well to look at the Lords under some other aspects — at their non-partisan activity, their treatment of private members' bills, and of private bill legislation, and at the personal influence of the leading peers.

Non-political Legislation.

So far we have considered only government bills, backed by the authority of a responsible ministry, which the upper House must treat with circumspection. The Lords do not feel the same restraint in regard to private members' bills sent to them from the Commons. These lie beyond the immediate range of party conflicts, and although they may occasionally deal with important subjects, neither the cabinet nor the parties take sides officially upon them. The Lords can, therefore, amend or reject them without fear; but it has become so difficult for a private member to get through the Commons any bill to which there is serious opposition, that this function of the upper House is not of great use.

Still less vital is its power to initiate measures. In order the better to employ the time of the Commons the government introduces some of its secondary bills first in the Lords;[1] but measures proposed by individual peers have little chance of success. It is hard enough for a private member of the Commons to put his bill through its stages in that House, with all the sittings reserved for the purpose in the earlier part of the session; and it is even harder to pass a bill brought from the Lords at a later date. The result is that of the few private members' bills enacted each session only about one sixth originate with the peers.

Private Bill Legislation.

The relation of the House of Lords to private bill legislation is very different, for bills of that kind are in a region quite outside of politics. In their case, as already observed, the action of the Lords is, if anything, even more important than that of the Commons; and, in fact, the private bill committees of the upper House inspire in general a greater confidence, because the members are men of more experience.[2] While, therefore, the House of Lords occupies a subordinate place in regard to public measures of all kinds, and a position of marked inferiority in the case of government bills, in private and local legislation, which in England is of great importance, its activity is constant and highly useful.

Personal Influence of the Peers.

The personal influence of the Lords is far greater than their collective authority. With the waning of the landed gentry the respect for the old territorial aristocracy has been replaced by a veneration for titles, and this has inured to the benefit of the peerage. One sees it even in business affairs, although the Lords as a class are little qualified by experience for dealing with matters of that kind, the nobility having until recently been debarred by tradition from commercial life. One of the devices of that arch promoter

[1] When the Liberals are in power this is not much use for bills which the Lords are likely to amend seriously, because the amendments would have to be reversed in the Commons at a cost of much time.

[2] Rep. of Com. on Priv. Bill Legislation, Com. Papers, 1888, XVI., 1.

Hooley for inducing the public to embark in his schemes was to include a number of peers in his list of directors — guinea-pig directors, as they were called, because their most visible function was to pocket a guinea for attendance at each meeting. The Hooley revelations some years ago checked this practice; but the fact that it should have existed shows the confidence that titles were believed to inspire among a large class of investors.

The glamour of rank appears to be if anything more dazzling as one descends in the social scale; and a scion of a noble family, even when he has no landed interest at his back, is usually a strong Parliamentary candidate in a working-class constituency. The extension of the franchise has thus rather increased than diminished the influence of the nobility. The House of Commons, no doubt, makes a show of insisting that the peers shall take no part in general elections; but they are, nevertheless, active in politics and even in great electioneering organisations, particularly in those that stand, like the Primrose League, a little outside of the regular party machinery. When a general election is not in progress the leaders of the House of Lords speak constantly in public; and at the present day speeches from the platform are reported in the daily press quite as fully, and read at least as widely, as those delivered in the House of Commons. A foreigner is impressed by the popular confidence in those peers who have attained a position in the forefront of politics. There seems to be a feeling that they are raised above the scrimmage of public life; that in rank, wealth, and reputation they possess already the goal of ambition, and are beyond the reach of the temptations that beset the ordinary man.

Reform of the House of Lords.

The adoption by the Lords, in the autumn of 1906, of amendments to the Education Bill, so contrary to its spirit that they were rejected in the Commons by an overwhelming majority without any attempt at compromise, has brought the question of a reform of the upper House again prominently before the country. No one would now think

of creating the House of Lords as it stands; but, as Mr. (now Lord) Courtney remarks, "The public judgment may long tolerate a machine which works without unnecessary friction, although it would not construct it in the same fashion if it had to be for the first time devised." [1] This is particularly true if it is difficult to propose something that would work better; and therefore in discussing the reform of the House of Lords it is important to have clearly in mind the objects to be attained. Now, there are four possible objects of a reform: to make the House less powerful; to make it more powerful; to change the nature of its power; or to bring it into greater harmony with the popular elements in the state; and it may be interesting to examine these objects in turn.

Objects of Reform.

To Reduce the Power of the House.

The National Liberal Federation has repeatedly passed resolutions in favour of restricting what is called the veto of the House of Lords. This is most natural, for besides the objection in principle to hereditary legislators, there is the galling fact that the House is always hostile to the Liberal party. No one would suggest that so long as a second chamber is suffered to exist it should be wholly deprived of the right to reject or amend bills sent to it from the Commons. It is proposed, however, that the veto shall not be repeated after a certain interval, and the vital question is what that interval shall be. A provision that the Lords should not reject a bill passed by the Commons in two successive Parliaments, would probably be a mere legal ratification of their present constitutional position; for although, after a fresh general election has proved that the cabinet retains the confidence of the nation, the Lords may refuse a second time to enact one of its measures, they have never done so, and are not very likely to venture so far. A provision, on the other hand, that the Lords should not reject or amend a bill passed by the Commons in two successive sessions of the same Parliament would mean that except in the last session of an expiring

[1] "The Working Constitution," 120.

Parliament, they could reject or amend seriously no government bill, whether convinced that the nation approved of it or not.[1] This would be almost equivalent to an entire abolition of the second chamber so far as government measures are concerned, because the shred of authority left would amount to little more than that of requiring the ministers to reconsider their position, which they could hardly do without stultifying themselves. The President of the French Republic has a similar right in relation to the chambers, but it is never exercised. A change of this kind could certainly be made, but whether it would be wise or not is another question.

Moreover, if a rule that the Lords should not reject or amend a government bill passed by the Commons in two successive sessions did not virtually destroy the power of the House of Lords altogether, it would not accomplish the object of the Liberals. It would not put them upon a footing of equality with the Conservatives, for it would mean that it would take them two sessions to pass any legislation of a far-reaching character, while the Conservatives could do it in one.

We are not concerned now with the question of reducing the power of the hereditary members of the House, by introducing other members in their stead; but of reducing the power of the House as a whole. Those persons who are seriously interested in reforming the composition of the body are usually more anxious to increase than to diminish its authority, and it would be somewhat strange to make the House of Lords more representative or more popular, while at the same time taking away the last remnants of its power in political questions.

To Increase its Power.

In considering suggestions to reform the House of Lords for the sake of increasing its efficiency we are met by the question whether with a parliamentary system, that is with government by party, as highly developed as it is in Eng-

[1] Probably the advocates of this policy would not want to apply it in the case of private bill legislation.

land, a more powerful upper House is possible. Fifty years ago second chambers were defended on the ground that they acted as a drag on radical legislation. But, as we have seen, the House of Lords does not really perform that function. It does not try to check legislation by one of the parties, and only under peculiar circumstances can it seriously restrain the other. Nor could any upper House render that service effectively in England to-day. The fact is that although historically the position of the House of Lords may have been the consequence of its hereditary, non-representative character, it is now doomed to its present condition by the inexorable logic of a political system. Its limitations in dealing with government bills are imposed by the principle of a ministry responsible to the popular chamber, and working through highly developed parties; its inability to exert a substantial influence upon other public legislation is the result, not of its own inherent weakness, but of the condition of the House of Commons; while in private bill legislation, which lies outside the domain of politics, it shares in full measure the authority of a coördinate branch of Parliament.

To Change the Nature of its Power.

The same reasoning would apply to any proposal to alter in character the powers exercised by the Lords. The channels of possible activity of any second chamber are fixed in England by the system itself, and they are not far from the ones in which the House of Lords now moves. The House could, no doubt, be shorn of the remnant of political authority that it still wields, and it could be deprived of its right to take part in private bill legislation; but it would seem that, except by merely reducing their extent, the nature of its powers cannot be very materially changed.

To Bring it into Harmony with the Nation.

During the generation following the Reform Act of 1832, men spoke of the possibility of making new peers as a sufficient safeguard against obstinacy on the part of the upper House. It was felt that a ministry with the nation at its back could, if necessary, force the Lords to yield by advising the Crown to create peers enough to turn the scale. Lord

Grey's government proposed to do this as a last resort to pass the Reform Bill of 1832, and obtained the consent of William IV.; but the threat was enough, and the Lords gave way. Such a drastic means of coercion is probably useless to-day, and would be only a temporary remedy. It is really not with the Commons that the House of Lords now comes into serious conflict, but with the cabinet which represents, or claims to represent, the nation, or to be more accurate the major part of the nation; and no creation of peers would be made to force a bill through the House of Lords unless the party in power had a mandate from the people to pass it. This is the real meaning of the saying that the House of Lords can force a referendum, or appeal to the nation, on a measure to which they object. A creation of peers to swamp the upper House would, therefore, not be tried until a general election had proved the persistent will of the electorate upon the measure in question, and then the Lords would in any case submit. Differences of opinion may, of course, arise on the question whether there is sufficient evidence of the popular will or not. In 1893, for example, the Liberals contended that the preceding general election had been carried on the issue of Home Rule, while the Conservatives insisted that it had really turned on other matters; and the same thing happened in the case of the Education Bill of 1906. Such a discussion may be conducted with heat, but especially with the enormous number of peers now required to turn a majority in their House, there is little danger of precipitate action. It is one of many cases where the conventions of the Constitution may appear to be strained, but where one may be sure they will not be broken.[1]

Creation of Peers.

Moreover, if the creation of peers were within the region of practical politics to-day, it would be only a temporary

[1] The power to create peers enough to swamp the House has a potential value. It could be used once for all to abolish or transform the body, and this fact has, no doubt, its effect on the general attitude of the members, but that does not affect the argument that as a means of maintaining harmony between the Houses the power is useless.

remedy for existing grievances. Contrary to the prevalent opinion, Lord John Russell thought that in 1832 the authority of the House of Lords suffered, on the whole, more from the abstention of its members under threat, than it would have from an actual creation of peers that might have brought it into harmony with the people. He remarks that the Tory majority of eighty, hostile to Lord Grey's government, was held back by Wellington, but employed by Lyndhurst to kill unpretending but useful measures.[1] Subsequent events have shown the impossibility of maintaining harmony between the Houses by a single creation of peers, for had a batch of Lord Grey's supporters been given seats in the Lords in 1832, the House would have been heavily Conservative again within a generation.

The difficulty to-day is not so much that the peers are permanently out of accord with the nation, as that they are bound to one of the two parties into which the country is divided. A mere reduction in the size of the Tory majority would do little or no good; nor would the difficulty be solved if the majority were transferred to the other party, or even if it shifted at different periods. In a country governed by party as strictly as England is to-day, the majority in the upper House must at any one time belong to one side or the other. If the majority shifted, there would not be permanent irritation in the same quarter; but first one side, and then the other, would complain that the Lords thwarted the popular will. While, therefore, the occasional creation of a large number of peers, either hereditary or for life, might, at a sacrifice of the self-respect of the House of Lords, produce for the moment a greater similarity of views between the two branches of Parliament, a constant political harmony could be attained only by such additions to the upper House by each new set of ministers as would make it a mere tool in their hands. In short, an upper House in a true parliamentary system cannot be brought into constant accord with the dominant party of the day without destroy-

[1] "Recollections and Suggestions," 110–11.

ing its independence altogether; and to make the House of Lords a mere tool in the hands of every cabinet would be well-nigh i ıpossible and politically absurd.

Reform in the Composition of the House.

What is true of the creation of peers is true also of any other method of changing the membership of the House. Suggestions for reforming its composition have been based mainly upon the desire to reduce the hereditary element, and supply its place by representative men selected in other ways. The House contains, of course, many drones, who have inherited the right, without the desire, for public work. Either they do not attend at all, or they come only to swell a foregone majority upon some measure that has attracted popular interest. They give no time or thought to the work of the House, and their votes, on the rare occasions when they are cast, are peculiarly exasperating to their opponents. As the regular attendants at the sittings are few, it has been suggested that the English, like the Scotch and Irish, nobility should choose representatives of their own order, and that the rest should have no right to vote. Just as the Scotch and Irish representative peers are solidly Unionist, so a change of this kind would merely result in increasing the Conservative majority of the House, unless some principle of minority representation were adopted, in which case the majority, though numerically smaller, would be equally constant and more subject to party dictation.

On the other hand, it has been proposed to make the House more broadly representative of the nation by a more or less extended creation of life peers, nominated, in part, perhaps, by sundry public bodies in the United Kingdom. It may be doubted, however, whether life peers are needed to increase the eminence or, in one sense, the representative character of the House. The peerage has been opened freely to men distinguished in various fields; and while many men without wealth have doubtless been precluded from an honour that would burden their descendants, many others have come in. The number of hereditary members of the House has increased nearly, although not quite, in propor-

tion to population; and only about one fourth of the present members sit by virtue of titles dating before 1800. A large share of the creations have been made for political service; but others have been conferred in consequence of wealth amassed in commercial and industrial pursuits; the most distinguished lawyers and soldiers have always been rewarded by a peerage; and so in more recent times have a few men of eminence in science and literature. A body that contains, or has recently contained, such men as Tennyson, Acton, Kelvin, Lister, Rayleigh, and many more, can bear comparison in personal distinction with any legislative chamber the world has ever known. Therefore one may fairly doubt whether the defect to be remedied by a creation of life peers is either a lack of brains in the House, or a failure of its members to represent the deeper currents of national life.

Reform Unlikely to Add Much Strength.

But the personal distinction of members, in fields outside of public affairs, has very little connection with the political power of a body; and the House of Lords itself furnishes one of the most striking proofs of that fact. The men whose names have been mentioned have taken no part in the work of the House, and such people rarely do. Moreover, if they take part they rarely do it well. Occasionally such a man may have a chance to say something on the subject of his own profession that carries weight. The speech of Lord Roberts in July, 1905, for example, about the inefficiency of the British Army, was considered a very impressive utterance, but, except for the rule of office that sealed his mouth in any other place, he might have delivered it with just as much effect elsewhere. Men who would be created life peers on account of their distinction in other lines would either take no interest in politics, or would take it so late in life that they would rarely carry weight with the public. Such influence and repute as the House of Lords now possesses is derived not from the personal fame of the members but from the social lustre of the peerage, and no creation of life peers would be likely to add

anything to that. The authority of a public body depends not upon the eminence but upon the political following of its members; and it is self-evident that no leading English statesman in the full tide of his vigour and popularity would willingly exchange a seat in the House of Commons for an appointment for life in any second chamber, so that a House of Lords constructed on these principles would become in large part an asylum for decrepit politicians.

Another suggestion of a similar kind is that the House should be remodelled upon the lines of the Privy Council, but the Privy Council to-day as a working body is nothing but the ministry, the other members attending only on ceremonial occasions. It is a mere instrument of government in the hands of the cabinet; nor, so far as English politics are concerned, can it very well be anything else. The proposal that colonial members should sit in the House of Lords is interesting from other points of view, but clearly it could not be applied in the case of domestic legislation. That the will of the House of Commons on English questions should be thwarted by representatives from other parts of the empire would be far more unfortunate than to have it thwarted by hereditary English nobles.

Other Probable Results.

But if a change in the composition of the House of Lords would be very unlikely to raise its political position as a whole, it might well reduce the personal influence of individual peers. If the House came to be regarded as mainly a collection of persons holding seats for life, the social position of its members might be very different from that of an hereditary nobility. A radical reform in the composition of the House might also very well produce a change of another kind. Perhaps the most important function of the House of Lords at the present day, and probably the chief privilege of its members, comes from the fact that it is largely a reservoir of ministers of state. By the present traditions ministers must be all taken from one House or the other; and a large proportion of them are always taken from the peers. This gives a nobleman, who is sincerely interested in public

life, even if of somewhat slender ability, a fair prospect of obtaining a position of honour and usefulness. Now, if a number of life peers were to be created, it would clearly be possible to confer a title upon a man for the purpose of making him a minister. If this were done commonly, it might affect not only the position of the existing peers, but also that of the House of Commons. For a man not born to a coronet would be able to achieve a high office of state without an apprenticeship in the popular chamber. Thus a channel might be opened for a direct connection between the cabinet and the political forces of the nation without the mediation of the House of Commons. The change might be a first step in lessening the authority of Parliament, because cabinets, as will be explained in the following chapter, being really made or destroyed by the popular voice uttered in general elections, much of the power of the House of Commons is based upon the fact that it is the sole recruiting ground for all ministers not hereditary peers.

Unsatisfactory, therefore, as the present position of the House of Lords is to many people in England, the difficulties that surround the question of reform are very great; and a half-unconscious perception of these explains in large part the fact that although proposals to reform the House have been made of late years by leading men of every shade of political opinion, none of them has borne fruit, or even taken the shape of a definite plan commanding any considerable amount of support. To reform the House of Lords, or to create some other satisfactory second chamber may not be an impossible task, but it is one that will require constructive statesmanship in a high degree; and to obtain the best chance of success it ought to be undertaken at the most unlikely time, a time when the question provokes no passionate interest.

CHAPTER XXII A

The House of Lords and the Act of 1911

During the brief tenure of office by the Liberals from 1892 to 1895 the House of Lords increased its apparent power by claiming the right to appeal from the House of Commons to the electorate as the ultimate source of authority. At that time the Liberal majority in the Commons was so small, its dread of a general election so great, as to furnish a substantial basis for the claim; and in fact the general election of 1895, which resulted in a large majority for the Unionists, could be construed as a popular ratification of the action of the peers. The Parliament of 1906 was in a very different position. The Liberals, with their allies, the Labour members and the Nationalists, held more than three quarters of the seats in the Commons, and there could be no doubt that for the moment, at least, they had the support of the country. Yet the House of Lords exercised its power freely. In 1906 it mutilated the Education Bill, and rejected the bill to abolish plural voting at parliamentary elections. In 1907 it rejected the Land Values (Scotland) Bill for the assessment of the capital value of Scottish land with a view to ultimate taxation; and the Conservative peers announced their intention to amend the Small Landowners (Scotland) Bill in such a way that the Government abandoned it. In 1908 the Lords rejected this bill when sent to them again, and also the Licensing Bill, designed to reduce the number of liquor licenses and provide for a local option on the granting of new ones. Moreover, they destroyed a second Land Values (Scotland) Bill by amendments which the Commons were unwilling to consider. In 1909 again

a similar fate befell the Small Dwelling Houses in Burghs Letting and Rating (Scotland) Bill, the peers objecting to the provision for a compulsory payment of rates by the landlord. In the same year they rejected the London Elections Bill to prevent plural voting in the London boroughs.[1] The Commons resented these votes, and as early as June 26, 1907, resolved, on the motion of the Prime Minister; "That, in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other House to alter or reject Bills passed by this House should be so restricted by Law as to secure that within the limits of a single Parliament the final decision of the Commons shall prevail." Nevertheless, the House of Lords might long have remained unshorn of its power had it not rejected the government measures for increasing taxation embodied in the Finance Bill of 1909.

In 1908 an act had been passed to provide old age pensions for all British subjects over seventy years of age, who had resided in the United Kingdom for the last twenty years, were not at the time in receipt of poor relief, had not habitually failed to work according to their ability, and did not enjoy an income of more than thirty guineas a year. A measure for that object had long been advocated by members of both parties, and although the Conservatives in the Commons disapproved of this particular bill, they declared that they believed in the principle and generally abstained from the division on the third reading, at which, indeed, only ten members voted against the bill and 315 in its favour. Nor did the bill meet with serious resistance in the House of Lords where the second reading was carried by a vote of 123 to 16. Unlike the old age pensions in Germany, which are defrayed in large part from contributions imposed upon employers and workmen, the English

[1] In his new edition of May's Constitutional History of England (V., III., 343), Francis Holland says: "During the four years of the Parliament of 1906 no Government measure against the third reading of which the official Opposition voted in the House of Commons passed into law."

pensions are paid wholly from the national treasury. They run from one shilling to five shillings a week according to the income of the recipient, and involve a large expenditure, larger even than had been anticipated. After a year's experience their cost was estimated in the budget of 1909–1910 at £8,750,000, and this, coupled with an increase in the navy, caused a demand for additional revenue.

The Chancellor of the Exchequer proposed to raise the sums required mainly by direct taxation, in large part of a novel kind. The Finance Bill of 1909, in which his proposals were embodied, provided for a capital valuation of land and the payment of an Increment Duty of twenty per cent. when land was sold, or at stated periods if it remained unsold; that is, one-fifth of the increase in price since the last valuation was to be paid as a tax at these times. The assessment was laid on all land whose value was not purely agricultural, save that the sites of small dwelling houses occupied by their owners were exempted. A Reversion Duty of ten per cent. was also to be charged upon the increase in value of land, not agricultural, at the termination of long leases. These two duties were taxation upon what is known as the "unearned increment" of land actually or potentially urban. Then there was an annual Undeveloped Land Duty of a halfpenny in the pound on the existing site value of urban land not covered by buildings; for hitherto taxes on land had been assessed only upon its rental value in its actual condition, not upon the capital value for which it could be sold — and in the case of undeveloped land in or near large cities the difference is very great.[1] There was also a mineral Rights Duty of five per cent. on the rental value of the right to work minerals. Moreover, the Finance Bill imposed a graduated supertax on

[1] This duty was to be assessed only on the excess above the value of the land for purely agricultural purposes. It was not to be charged at all on land worth less than £50 an acre, or on a total ownership worth for agricultural purposes less than £500, although the value of the land was not wholly agricultural. This last provision was a part of the policy of exemption for small landowners.

incomes, and added to the death duties. Indirect taxation, on the other hand, was by no means wholly omitted, for there were Duties on Licenses for the manufacture and sale of spirits, and the Stamp Duties were increased.

The proposals of the government provoked strong opposition, and the Conservatives denounced them as a socialistic attack on property. The feeling was shared by many of the merchants in the City, who declared that the taxes would drive capital abroad. But the cabinet answered that expenditure was increased by measures to which all parties agreed in principle, and that if a larger revenue must be procured, the only alternative to taxing wealth was to tax poverty. The greater part of the Conservatives urged as a source of revenue a preferential tariff. To this the ministers were, of course, opposed, insisting that their proposals were not only a financial necessity, but economically and socially right. One portion of their allies was not, however, entirely satisfied with the budget, for the Nationalists objected to a license duty on the ground that it would fall with disproportionate weight on Ireland. For that reason most of them voted against the second reading of the bill, which was, nevertheless, carried by a vote of 366 to 209;[1] but at a later stage, when the bill came up for the third reading, their leaders had become convinced that it would be unwise to oppose the government, and hence only ten Nationalists abstained, and only one voted for the motion to reject, which was defeated by a majority of 379 to 149.

While the constitutional authority of the House of Lords to amend a money bill had been steadily denied by the Commons, its right to reject such a bill had been generally admitted in principle; but since the practice had been adopted of combining all the financial measures of a session in a single bill, people had assumed that the Peers would not venture, by rejecting it, to leave the government without any of the taxes voted annually, and hence, with revenues

[1] Strictly speaking, this was the vote against the motion that the bill be read this day three months.

insufficient for the public service of the year.[1] When, however, the Finance Bill of 1909 came before the Lords late in the autumn it was received with a storm of opposition on account of its commercial and social effects as well as on financial grounds. It was said to be more than a money bill, more far-reaching than an ordinary budget, and therefore a proper case for rejection pending an appeal to the electorate. After a long debate the Peers, by a vote of 350 to 75, adopted the motion of Lord Lansdowne, the Conservative leader; "That this House is not justified in giving its consent to this Bill until it has been submitted to the judgment of the country." Their action forced a crisis. The government could not remain without the revenue it needed. It could not drop the budget, like other bills, for the time; and to abandon its policy by trying to frame a new budget satisfactory to the Peers was, of course, out of the question. It could only accept the challenge. On December 2 the Commons adopted a resolution; "That the action of the House of Lords in refusing to pass into law the financial provision made by this House for the Service of the year is a breach of the Constitution and a usurpation of the rights of the Commons;" and Parliament was forthwith dissolved.

At the general election in January, 1910, the government lost over one hundred seats, the Labour Party losing about a dozen and the Liberals the rest. Yet the victory was theirs, for although the number of its supporters in the new Parliament was reduced, the ministry had with its allies a majority of 124. But the situation was peculiar, and illustrates the effect of party government in England. The Liberals and Unionists had been returned in almost equal numbers, and the majority depended upon the 40 Labour members and the 82 Nationalists, the latter holding the balance of power. Now the members of this party were in fact opposed

[1] In 1909 the government had power to borrow money under the Appropriation Act, and in fact the annual taxes were for the most part paid voluntarily as it was certain that an act would subsequently be passed to collect them.

to the Duties on Licenses, although most of them had supported the Finance Bill on its final stage; and hence the election, regarded merely as a popular vote on that issue, might be considered hostile to an essential part of the bill. But the Nationalists were far less interested in the question of taxation than in Home Rule, and in order to attain it, and to remove the power of the House of Lords to obstruct it, they were willing to support the Liberal government in the financial measures on which its tenure of office depended. The Finance Bill of 1909 was therefore reintroduced with slight changes, and passed by the House of Commons; whereupon the Lords, yielding, as they had declared they would, to the verdict of the nation, accepted it without a division.

In the meanwhile, and in deference, it was charged, to the demands of the Nationalists, the government, before proceeding with the Finance Bill, had brought into the House of Commons resolutions declaring it expedient "that the House of Lords be disabled by Law from rejecting or amending a Money Bill," and "that the powers of the House of Lords as respects Bills, other than Money Bills, be restricted by Law so that any such Bill which has passed the House of Commons in three successive Sessions" . . . "shall become Law without the consent of the House of Lords on the Royal Assent being declared; provided that at least two years shall have elapsed between the date of the first introduction of the Bill in the House of Commons and the date on which it passes the House of Commons for the third time." A final resolution added, "that it is expedient to limit the duration of Parliament to five years." These resolutions were adopted by the Commons on April 14, 1910, and thereupon the Parliament Bill based upon them was introduced. In speaking of it, Mr. Asquith declared that if the Lords refused to accept the plan, the government would either resign or dissolve, and would not dissolve except under such conditions as would secure that in the new Parliament

the judgment of the people as expressed at the elections should be carried into law; in short, that the King would, if necessary, consent to overcome the resistance of the House of Lords by a creation of peers.

The Lords were expected to take up the resolutions immediately after the spring recess, but before its close King Edward VII. died on May 6. His death and the accession of George V. caused a truce in political strife, and an attempt was made to reach an accord between the parties by means of a private conference of their leaders. During the summer and autumn twenty-one meetings were held — a sufficient proof that the effort was serious — but the negotiations were fruitless, and on November 10 the conference broke up, unable to agree. Thereupon the government announced that after passing the Finance Bill for the year, and a few other necessary measures, Parliament would be dissolved on November 28; adding that it was useless to submit to the Lords a Parliament Bill which they were certain to reject.

The Lords had already become alarmed. As early as 1907 they had appointed a committee to consider a reform in the composition of their House, but no action had been taken upon its report. Now the question was urgent. In March, 1910, they adopted, on the motion of Lord Rosebery, resolutions that a strong second chamber was needed, that it could best be obtained by a reform of the existing body, and that the possession of a peerage should no longer of itself give a right to sit and vote in the House of Lords. In November the sudden announcement of a general election gave little time to formulate a definite policy on the vital issue of the day. On the eve of dissolution Lord Lansdowne, the leader of the Conservative peers, asked that the Parliament Bill be introduced into that House by the government; and at the same time Lord Rosebery brought forward a further resolution of which he had previously given notice. It provided that the House should hereafter consist of representatives chosen by and

from the hereditary peers, of members nominated by the Crown, of peers sitting by virtue of offices they had held and other qualifications, and finally of members chosen from outside. The resolution was adopted without a division, for the government took little interest in the subject, feeling that a reduction of power must precede any reform of organization; and in fact the ministers were by no means agreed upon the future composition of the second chamber, although the preamble to the Parliament Bill stated an intention to create a new body of that kind.

The pressing question was that of the power of the House, and the Lords, in order to present an alternative plan for solving deadlocks between the Houses, suspended their debate upon the Parliament Bill to take up resolutions moved by Lord Lansdowne for the purpose. These declared that the Lords were prepared to forego the right to reject or amend money bills, if effectual provision were made against tacking other matters thereto,—the question whether a measure were purely a money bill to be decided by a joint committee with the Speaker as chairman. They declared further that differences between the two Houses on other than money bills should be settled by a joint sitting, unless the matter were of great gravity and had not been adequately presented to the judgment of the people, when it should be submitted to the voters by referendum. The Liberals objected to the referendum as unworkable, as expensive, because it would be used by the House of Lords only against Liberal measures, and because it would destroy the sense of responsibility and undermine representative government. But Lord Lansdowne's resolutions were adopted by the Peers, and the issue was ripe for the electorate.

The chief question in the election of December, 1910, was of course the so-called "veto" of the House of Lords; but Tariff Reform, the Referendum, and Home Rule were also prominent, the last two being given peculiar significance by Mr. Balfour's statement that he had no objec-

tion to submitting a Tariff Reform Bill to popular vote, and by Mr. Asquith's pledging of his party afresh to Home Rule. The election made almost no change in the relative strength of parties, and the Liberal ministry returned to power with a mandate to carry out its policy of reducing the power of the House of Lords. The Parliament Bill was therefore passed by the Commons, and sent to the other House. Meanwhile the Lords had been engaged in discussing bills for a referendum, and for a drastic reform in the composition of their chamber whereby it would cease to be an instrument in the hands of one party in the state. But the time for alternative plans had passed, and the only serious question was what the Lords would do with the government bill in face of the late election. They did not venture to reject it, but proposed to bring it more nearly into accord with their own plan by excepting from its operation organic changes in the constitution and other grave matters. For this purpose they inserted amendments that any bill affecting the existence of the Crown or the Protestant succession, establishing a national parliament or council in Ireland, Scotland, Wales or England, or raising an issue of great gravity upon which the judgment of the people had not been ascertained, should not be passed over the House of Lords without a referendum. A joint committee, in which the Speaker was to preside and have a casting vote, was to decide whether a bill fell within these provisions, and also whether it was a money bill or not.

The prime minister now made public the assent given by the King before the general election to the creation of peers in case of necessity; and the Commons thus fortified disagreed with all the important amendments of the Lords, save one which excepted from the act any bill to extend the duration of Parliament. When the bill came back to the Upper House, Lord Lansdowne advised his followers to abstain from voting and allow the measure to pass as it stood; but some of the influential peers, with the

former Chancellor, Lord Halsbury, at their head, determined to fight to the end rather than submit. They were known as the "Die-hards," and were numerous enough to place the result in doubt. Fearing, however, the creation of several hundred new peers, a few of the Unionists decided to support the bill, and their votes with those of the Liberals, the two Archbishops and eleven Bishops, made up the majority of 131 to 114. It was 1832 over again. As in that case, the House of Lords accepted the inevitable, and the Parliament Bill became law on August 18, 1911.[1]

After declaring that the second chamber shall hereafter be reconstructed on a popular instead of an hereditary basis, the act[2] provides in substance that if a money bill, having been passed by the House of Commons and sent to the House of Lords at least a month before the end of the session, is not passed by that House without amendment within one month it shall become an act on the royal assent being signified. A money bill is defined as a public bill which in the opinion of the Speaker deals only with the imposition, repeal or regulation of taxation; with the imposition or repeal of charges on the Consolidated Fund or on money provided by Parliament; with the appropriation, receipt, issue or audit of public money; with the raising, guarantee or payment of a loan; or with matters incidental to those subjects. Provisions dealing with the taxation, money or loans of local authorities for local purposes are expressly excluded. In regard to other bills the act provides that if any public bill (other than a money bill or one to extend the term of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not) and is not passed by the House of Lords without amendment or with such amendments only as the Commons accept, it shall become an act on the royal assent being sig-

[1] An excellent short account of the struggle over the Parliament Bill is given in the final chapter of Francis Holland's new edition of May's Constitutional History of England.

[2] 1–2 Geo. V., c. 13.

nified; provided two years have elapsed between the second reading in the House of Commons at the first session and the final passage by that House in the third session. The bill must be passed by the Commons each time in identical form, save for alterations made necessary by the lapse of time, and for amendments agreed to by both Houses. The certificate of the Speaker that the provisions of the act have been complied with is made conclusive. The act, which it may be observed does not affect legislation by private bill or provisional order, ends with a provision that the duration of Parliament shall be five years instead of seven.

The act bears the marks of the conditions under which it was passed. It is an effort by the dominant party in the nation to remove a political grievance, not a methodical attempt to confer on a second chamber the powers appropriate to such a body in the parliamentary government of England. The Liberal majority could hardly suffer their policy on important questions to be thwarted by a house permanently under the control of their opponents, and if a referendum to be applied equally to the bills of both parties were not adopted, they curtailed the powers of the House of Lords no more than was necessary to secure the enactment of their measures within a reasonable time. In fact, the legal rights of the House have been reduced little below the authority actually exerted by it before 1892, and unless its composition is radically changed it will still remain to some extent a political handicap in favour of the Conservatives.

Over money bills the power of the House of Lords is virtually abolished; but although such bills are carefully defined, their scope, like everything else in the British Constitution, will in fact depend upon the continuity of tradition and the sense of fair play. Almost anything can be accomplished under the form of taxation and appropriation; as the right of state banks to issue notes was destroyed in America and a uniform issue of national bank notes substi-

tuted by federal taxes; and as the payment of members of Parliament, certainly an important constitutional change, was introduced, in August, 1911, by a resolution of the House of Commons followed by a vote in Supply, without other statutory enactment—a procedure severely criticised by the Opposition. It must be remembered also that the local provincial police in England, and the elementary schools before 1870 were built up solely by the practice of Treasury grants. That the Speaker will look beneath the form to the substance is shown by his ruling that the Finance Bill of 1911 was not a money bill within the meaning of the act;[1] and if the progress of democracy and the payment of members of Parliament do not greatly change the tone of the House of Commons, by reducing its respect for tradition or its patience of obstacles to legislation, there is small probability of abuse in its exclusive control over money bills.

In the case of other measures the difficulties are likely to be more serious. Quite apart from the danger of losing office on some unforeseen contingency before the end of a Parliament, no ministry can calculate with any certainty on retaining a majority at the next general election. Hence a Liberal cabinet cannot, in a Parliament limited to five years, expect to enact against the opposition of the House of Lords a bill passed by the Commons later than the second, or at most the third, session; and under the present procedure very few important measures can practically be passed in a session. Moreover, in order to become law without the assent of the Peers, the bill must be passed by the Commons in each of the three sessions in identical terms, save only for changes made necessary by the time elapsed or agreed to by both Houses. Now most contentious public bills involve a compromise of conflicting views, and if after two years the composition of the cabinet has altered, there will be new members who would probably

[1] Dec. 15, 1911. Parl. Deb. 5 Ser. XXXII., 2707. He gave no reasons for his decision.

have framed the measure somewhat differently; but they must take it as it stands or abandon it. Most bills also are found after a couple of years to have been imperfect. Time reveals defects, new points of view develop, grievances change, people want more or less drastic provisions. The Lords may, of course, accept amendments, but if hostile to the bill as a whole they may well be reluctant to remove serious obstacles to its enactment. The ministers are not unlikely, therefore, to be placed in the awkward position of insisting on passing a bill admittedly defective without alteration; of staking their existence on opposing, on the ground that the Lords will not accept it, an amendment which is obviously wise, which appeals now to many of their supporters; and this perhaps at a time when the momentum that originally carried the bill has waned, when public interest is focussed elsewhere. Take, for example, the Home Rule Bill of the present session, which is essentially a series of compromises, which bristles with controversial points at every clause, and which, in the powers that it confers and those that it withholds is probably not completely satisfactory to anyone. It is a very different thing to carry through such a bill hot from the forge, and to pass it again hard, cold, and rigid two years later.

Much will depend upon the exercise by the House of Lords of the remnant of its powers. If it is not cowed by defeat, it may use them freely, and if wisely, not without effect. The act may of course prove to be only a first step in a radical reorganization of the composition as well as of the powers of the House, and in that case it is useless to speculate at present on what the changes will be. If, on the other hand, the act proves to be a mere makeshift without further consequences in the near future — and the British Constitution has experienced such things — the House of Lords may still be to some extent an instrument of party, it may not be without influence on legislation; but its claim of right to appeal from the Commons to the people, if not wholly

destroyed, has been much shattered. Conservatives talked at the time the act was passed of setting the authority of the Lords up again when they came to power, but sometimes all the King's horses and all the King's men cannot undo the effects of a fall.

CHAPTER XXIII

THE CABINET AND THE COUNTRY

Transfer of Power from Parliament to the People.

If the predominance of the House of Commons has been lessened by a delegation of authority to the cabinet, it has been weakened also by the transfer of power directly to the electorate. The two tendencies are not, indeed, unconnected. The transfer of power to the electorate is due in part to the growing influence of the ministers, to the recognition that policy is mainly directed, not by Parliament, but by them. The cabinet now rules the nation by and with the advice and consent of Parliament; and for that very reason the nation wishes to decide what cabinet it shall be that rules. No doubt the ministry depends for its existence upon the good pleasure of the House of Commons; but it really gets its commission from the country as the result of a general election. Even if its life should be cut short by the Commons, the new cabinet would not now rest for support upon that Parliament; but would at once dissolve and seek a fresh majority from the electors. This was by no means true forty years ago. The Parliament elected in 1852, which sat a little more than four years, supported during the first half of that time a coalition ministry of Liberals and Peelites, and during the second half a ministry of Liberals alone. The following Parliament affords an even better illustration. It met in 1857 with a large majority for the Liberal cabinet of Lord Palmerston; but in less than a year he was defeated and resigned, to be succeeded by the Conservatives under Lord Derby, who carried on the government for another year before dissolving. The case of the next Conservative administration is more striking still. Coming into office in 1866, in face of a hostile majority,

Its Causes; (1) the Growth of Power of the Cabinet

strongly Liberal, but hopelessly divided upon questions of reform, it remained in power more than two years, and brought to pass a drastic extension of the franchise before it dissolved Parliament. Nothing of the kind has occurred since that time. Every subsequent change of ministry has either been the immediate consequence of a general election, or if not, the new cabinet has kept the old Parliament together only so long as was absolutely necessary to dispose of current business, and has then appealed to the people. Practically, therefore, a change of ministry to-day is either the result of, or is at once ratified by, a general election.

(2) The Increase of the Electorate.

The decline in the power of the House is partly due also to the extension of the franchise, and the consequent growth in size of the electorate, which has become so large that the voters cannot be reached by private or personal contact, but only by publicity. A cynic might well say that if oligarchy fosters intrigue, democracy is based upon advertisement, for in order to control the electorate it is no longer enough, as it was a hundred years ago, to be backed by a few influential patrons or to enlist the support of the members of Parliament. The immense mass of the voters must be addressed, and hence public questions must be discussed not only in Parliament, but in the ears of the people at large.

(3) The Control by Public Opinion.

A third reason why power tends to pass away from the House is the greater control exerted in political affairs by public opinion, in consequence of the rapid means of disseminating knowledge and of forming and expressing a judgment. Whatever may be the importance of the editorial columns of the daily press in creating, or giving voice to, the general sentiment — and there is reason to suppose that editorials are of less consequence in both respects than they were formerly — it is certainly clear that the multiplication of cheap newspapers has made it possible for vastly larger numbers of men to become rapidly acquainted with current events; while the post and telegraph, and the habit of organisation, have made it much

more easy for them to express their views. A debate, a vote, or a scene, that occurs in Parliament late at night is brought home to the whole country at breakfast the next morning, and prominent constituents, clubs, committees and the like, can praise or censure, encourage or admonish, their member for his vote before the next sitting of the House. Rousseau's charge that the English were free only at the moment of electing a Parliament, and then were in bondage during the whole of its term, was by no means really true when he wrote it, and is far less true to-day. It is for this reason that there has ceased to be any clamour for annual Parliaments, almost the only one of the famous six points in the People's Charter that has not been substantially achieved.[1] Parliaments have not grown shorter. On the contrary, in the twenty years from 1832 to 1852, when the cry of the Chartists was heard, the average duration of Parliaments was four years, and since the extension of the suffrage in 1868 they have averaged four years and three-quarters.

Its Manifestations.

The passing of political power from the House of Commons to the people is shown by many unmistakable signs, and by none more clearly than by the frequent reference in Parliament itself to the opinions of the "man in the street." He is said to fear this, or be shocked by that, or expect the other; and the House is supposed to pay some regard to his views, not because he is peculiarly gifted with knowledge, experience, or wisdom, in greater measure than the members themselves. Far from it. He is cited as a specimen of average humanity; the person to whom Carlyle referred when he spoke of modern Parliaments with twenty-seven millions, mostly fools, listening to them.[2] The members of the House are supposed to heed him because they are his representatives; for he is taken as a type of the voter

[1] The six points were: universal suffrage, annual Parliaments, equal electoral districts, abolition of property qualification, vote by ballot, and payment of members. Of all these demands annual Parliaments and payment of members alone have not been substantially attained.

[2] "Latter Day Pamphlets: The Stump Orator," No. 5.

of fair intelligence. In fact he is the personification of what is believed to be outside opinion.

The Doctrine of Mandate.

Another sign of the times is found in the doctrine, now sanctioned by the highest authority, that Parliament cannot legislate on a new question of vital importance without a mandate from the nation. The theory that the individual representative is a mere delegate of his constituents, so that he is bound to resign and submit to reëlection if he changes his views, has long been a subject of discussion; but the idea that Parliament as a whole exercises a delegated authority in the sense that it is morally restrained from dealing with questions that have not been laid before the people at the preceding general election would formerly have been regarded as a dangerous political heresy. Yet during the recent agitation in regard to fiscal policy, Mr. Balfour, while repudiating the suggestion that the existing Parliament, having been elected on the single issue of the South African War, ought to be dissolved when peace was made,[1] refused to grant time for a debate on free food, on the ground that it would be constitutionally improper for Parliament to act on the question until it had been submitted to the people at a general election,[2] and that it would be unwise for the House to discuss a subject on which it could not act.[3]

Based upon a similar principle is the claim reiterated by the Opposition during the latter part of Mr. Balfour's administration, that, although supported by a majority in the House of Commons, he ought to resign, because a long series of by-elections had shown that he had lost the confidence of the country. His retention of office under those conditions was said to be contrary to the spirit of the Constitution;[4] and Mr. Balfour's resignation late in 1905, when Parliament was not in session, involved an acknowledgment, if not of the necessity, at least of the propriety, of

[1] *E.g.* Hans. 4 Ser. CXXXII., 1013–15; CXLI., 162.
[2] *Ibid.*, CXXXI., 679; CXLVI., 987–89.
[3] *Ibid.*, CXLI., 163; CXLV., 622, 627; CXLVI., 496.
[4] *Ibid.*, CXXXII., 1005, 1019; CXLI., 122–23, 180–82.

withdrawing from office in such a case. Former cabinets have sometimes broken up on account of dissensions among their members, or the impossibility of maintaining an efficient government; but there has been no previous instance of a cabinet, supported by a majority in Parliament, which has resigned apparently in consequence of a change of popular sentiment.

Waning Interest in Reports of Debates

But perhaps the most ominous sign that power is passing away from the House is the slowly waning interest in parliamentary debates. In the eighteenth century the House strove to prevent the publication of its discussions. Now the debates are printed under a contract with the government, which provides that no speech shall be reported at less than one third of its actual length;[1] and most of the members like to appear in the newspapers as prominently as they can. But, if the desire of the members to be reported is still increasing, the eagerness of the public to read what they say is less keen. Men who are thoroughly familiar with the reporters' gallery tell us that the demand for long reports of speeches in Parliament has declined, and that editors find it for their interest to cut them down, often substituting for the remarks of the members themselves descriptive sketches of what took place.[2] One cause of this is, no doubt, the length of the debates, and the number of minor speakers taking part, which tends naturally to dull the popular craving to read them. Then there is the fact that Parliament is no longer the only place where the party leaders make notable speeches. In short, the predominance of the House of Commons as the great forum for the discussion of public questions has been undermined by the rise and growth of the platform.

[1] Cabinet ministers and the leaders of the Opposition are reported in full in the Parliamentary Debates, and other members usually at about two-thirds length. Macdonagh's "Book of Parliament" contains an interesting chapter on "The Reporters' Gallery."

[2] Macdonagh, 315. And see an article by Alfred Kinnear, and an answer by A. P. Nicholson in the *Contemporary Review* for March and April, 1905, LXXXVII., 369, 577.

History of the Platform.

After a long slumber the habit of speaking at public meetings revived about the middle of the eighteenth century;[1] and a little later it was taken up, in connection with the early political associations, as a systematic means of agitation in the hope of bringing pressure to bear upon Parliament. At an early time leaders of the party in opposition were present; but after the outbreak of the French Revolution public meetings came to be used mainly by the working classes, and were regarded as seditious. Men who took part in them were prosecuted, and acts were passed to suppress them. These were so effective that by the opening of the next century political meetings had ceased to be held; except at elections, when some of the candidates for Parliament made speeches to their constituents. The repressive statutes were, however, temporary, and, although they were reënacted more than once, the meetings revived during the intervals of freedom. The last of these special statutes, one of the famous Six Acts of 1819, expired in 1825, and from that time the platform entered upon a fresh career, marked by three new features: the participation of all classes; the organised effort to bring about a definite political change by a legitimate creation of public opinion; and the growing use of public speaking by parliamentary leaders as a regular engine of party warfare. Moreover, the influence of the platform was much enlarged by the practice, which began shortly before that time, of reporting the meetings and speeches at considerable length in the provincial press.

The Platform and Popular Movements for Reform.

The first movement at this period in which the platform played a leading part was conducted by the Catholic Association in Ireland, and ended in the removal of Catholic disabilities by the Act of 1829. But far more important examples of the use of public meetings are to be found in England. Throughout the agitation that accompanied the passage of the Reform Act of 1832, public meetings were innumerable, and the platform was raised to a dignity and

[1] The best work on this subject is Jephson's "The Platform: Its Rise and Progress."

influence much greater than ever before. In fact its position as a recognised power in English public life began at that time. Its rapid advance in good repute was much helped by the fact that during the struggle for reform it was used mainly to strengthen the hands of the ministry; but this was not yet its characteristic function. For the next score of years it was chiefly employed in attempts to force upon the attention of Parliament, by popular agitation, measures which did not otherwise receive serious consideration. Two efforts of the kind are especially noteworthy. One of them, that of the Anti-Corn-Law League, by the completeness of its organisation, by the cohesion and eloquence of its leaders, by confining its attention to one point, and by good fortune, succeeded in accomplishing its object. The other, that of the Chartists, lacking these advantages, failed; and although most of the demands of the Chartists were afterward obtained, that was the result not of their endeavours, but of other causes.

The Platform and the Ministers.

Meanwhile the platform was used more and more freely by the parliamentary leaders, but this came gradually. Pitt spoke only in the House of Commons; and in fact until a few years before the Reform Bill almost no minister, except Canning, made political speeches outside, and his were addressed mainly to his own constituents. In 1823, however, he delivered a speech at Plymouth, in which for the first time a statement about foreign policy was made by a minister in public, and five years later the change in the government's policy about Catholic disabilities was announced at a banquet. With the reform movement the ministers began to take the public a little more into their confidence. At the general election of 1831, Lord John Russell made the first public speech intended as an election cry,[1] and aroused an echo at meetings throughout the land. In the same year Lord Grey talked about the bill at the Lord Mayor's dinner, a festivity that became in after years a regular occasion for announcements of government

[1] Jephson, II., 65.

policy. From that time the use of the platform grew rapidly in favour with the cabinet. In 1834 Lord Brougham made the unfortunate series of harangues in Scotland that wrecked his political career. A little later Lord Melbourne explained his own dismissal in a public speech; and Peel, on taking office, declared his policy in an address to his constituents. So important a matter, indeed, did the platform become in public life, that Lord Melbourne, referring to the performances of Brougham and O'Connell, spoke of the vacation as a trying time.[1] Thereafter the platform was constantly used both by ministers and leaders of the Opposition to bring public opinion to their side.

As usual in English politics, practice outran theory; for so late as 1886 Mr. Gladstone, in answer to a remonstrance from the Queen, felt it necessary to excuse himself for making speeches outside of his constituency, on the ground that in doing so he was merely following the example of the Conservatives.[2] Yet in 1879 he had set the nation ablaze by his Midlothian campaign; and although his orations there were delivered as a candidate for the seat, they were, and must have been intended to be, published by the newspapers all over the country.[3] It was, in fact, at this very time that Lord Hartington spoke of the far greater interest taken in public speeches than in debates in Parliament.[4] Not that the platform became at once of especial value to the party leaders. On the contrary, it was at first used much more frequently by the Anti-Corn-Law League, the Chartists and others. But since the introduction of something very

[1] Walpole, "Life of Lord John Russell," I., 248.

[2] Morley, "Life of Gladstone," III., 344.

[3] Mr. Lecky expressed a common opinion in the introduction to the second edition of his "Democracy and Liberty" (p. liii.), where he spoke of Mr. Gladstone as "the first English minister who was accustomed, on a large scale, to bring his policy in great meetings directly before the people," adding that he "completely discarded the old tradition that a leading minister or ex-minister should confine himself almost exclusively to Parliamentary utterances and should only on rare occasions address the public outside." Mr. Gladstone's power was, indeed, due quite as much to the effect of his public speeches as to his influence over the House of Commons.

[4] Quoted by Jephson, II., 391.

near manhood suffrage, which began in 1868, great popular movements, unconnected with party politics, have become well-nigh impossible. In a real democracy there is little use in trying to overawe the government by a display of physical force, and hence an agitation has for its natural object the winning of votes. But the House of Commons has now been brought so fully into accord with the masses of the people that any strong popular sentiment is certain to find immediate expression there. Once in the House it is on the edge of a whirlpool, for even if it originates quite outside of the existing parties, and gives rise, at first, to a new political group, it can hardly fail, as it gathers headway, to be drawn into the current of one of the two great parties, and find a place in their programme. Now in any question connected with party politics the highest interest attaches to the speeches of the party leaders, both because they are the standard bearers in the fight, and because they are the men who have power, or at the next turn of the wheel will have power, to give effect to their opinions.

Public Speaking now Universal.

The platform has thus had a perfectly natural evolution. So long as elections to the House of Commons were controlled by a small number of persons, public speaking could be effective only occasionally, when popular feeling could be deeply stirred over some grievance; and it was employed chiefly by outsiders in an effort to force the hands of Parliament. This was in part true even after 1832. But when the suffrage was more widely extended in 1868, so that elections depended upon the good-will of the masses, it became necessary for any one with political aspirations to reach the public at large, and the most obvious means of so doing was from the platform. Speeches by candidates at elections became universal, and in order not to let the flame of loyalty burn low, it has been increasingly common to fan it at other times, by the talking of members to their constituents, and still more by addresses to the whole community on the part of leaders of national reputation. Public speaking has, therefore, become constant, without regard

to the existence of any issue of unusual prominence. James Russell Lowell long ago made a remark to the effect that democracy is government by declamation, and certainly household suffrage has loosened the tongues of public men. An observer at the present day is struck by the fluency of Englishmen upon their feet, and by the free use of humour as a means of emphasis, instead of the sonorous phrases formerly styled oratory.

The Platform has Increased the Influence of Party Leaders.

It has now become a settled custom for the cabinet ministers and the leaders of the parliamentary Opposition to make a business of speaking during the late autumn and the spring recess; and the habit tends to magnify their power, for they are the only persons who have fully the ear of the public. Except for a few important utterances, the debates in Parliament are not very widely read; editorials in the press are read solely by members of one political faith; the remarks of private members to their constituents are published only in the local papers; but public speeches by the chief ministers, and to a less extent those by the principal leaders of the Opposition, are printed at great length by the newspapers of both parties, and are read everywhere.[1]

Moreover, the platform gives a greater freedom than the floor of the House. The ministers do not want to bring before Parliament a policy they are not immediately prepared to push through, nor would it be easy to find time amid the business of a session to do so. It is not altogether an accident, it is rather a sign of the times, that Mr. Chamberlain broached his plan of preferential tariffs, not in Parliament, but at a public meeting in Birmingham. It was, indeed, a strange thing to see an ardent discussion on a most important question conducted in public meetings and in the press, while the ministers were striving to prevent debate upon it in the House of Commons. It was a mark of the

[1] Mr. Kinnear in the *Contemporary Review* for March, 1905, says that the demand by newspapers for public speeches by leading statesmen has declined. They would probably have more readers, though fewer hearers, if they were neither so long nor so frequent.

limitation which the course of events has placed upon Parliament. The platform has brought the ministers face to face with the people, and this has increased the political importance of both. Not only is the electorate the ultimate arbiter in political matters, but the platform has in some degree supplanted the House as the forum where public questions are discussed.

Its Benefits

Frequent public addresses by the men in whom the whole responsibility for the conduct of national affairs is concentrated, and by those who will be responsible when the next change of ministry occurs, cannot fail to educate the voters, and quicken their interest in all the political issues of the day. Moreover, the process is not confined to the intermittent periods of election, but goes on all the time; and although the practice, brought into vogue by the Anti-Corn-Law League, of joint debates at public meetings has not taken permanent root in England, the same result is reached in another way, because the party leaders answer one another's speeches from different platforms, and if the listeners are not identical, the public reads both arguments. Sir Henry Maine spoke of the tendency to look upon politics as a "deeply interesting game, a never-ending cricket-match between Blue and Yellow";[1] and the fact that this aspect of the matter is more marked in England than anywhere else makes English politics the most interesting, and the most easy to follow, in the world. The rulers of the country, and those who both have been and will be her rulers, fight at close range across a table for six months of the year, and during the rest of the time they carry on the ceaseless war by public speaking. As in the Athenian democracy, the citizens witness a constant struggle among rival statesmen for supremacy, but in England they are merely spectators until a general election summons them to give their verdict. One can hardly conceive of a system better calculated to stimulate interest in politics without instability in the government.

[1] "Popular Government," 149.

Its Perils.

But if the platform educates the voter, it has its dangers also. Bismarck is reported to have said that the qualities of the orator are not only unlike, but incompatible with, those of the statesman; and certainly the continual need of taking the public into one's confidence is hard to reconcile with the execution of far-reaching plans for the national welfare, for until the results are in sight, these cannot be made intelligible to the mass of the people. The English statesman is called upon at all times to show his hand, at the risk of seeming disingenuous or secretive if he does not do so. His whole policy is analysed and criticised; the seeds he plants are dug up prematurely to see if they are sprouting. Hence he is under a strong temptation to take a stand that will win immediately popular approval. In short, he lives in a glass house, which is likely to mean a very respectable but rather superficial life.

Moreover, in the custom of speaking from the platform there lurks a danger to the system of cabinet government; for that system is based upon the principle that the initiative in public policy rests with the ministers, and the main issue decided at a general election is whether the cabinet shall remain in power. Now ministers have not always been in the habit of arranging what shall be said upon the platform with the same care as what measures shall be brought before Parliament. But in view of the present importance of the platform it is obvious that if the cabinet system is to continue, the ministers must present a unanimous front to the public as well as to Parliament; and this consideration leads to a study of the function of party in the English political system.

PART II. — THE PARTY SYSTEM

CHAPTER XXIV

PARTY AND THE PARLIAMENTARY SYSTEM

Lack of a Psychology of Political Parties.

THE last generation has made great strides in the study of psychology. The workings of the individual mind, and its reaction to every stimulus or impression, especially under morbid conditions, have been examined with far more care than ever before. Social psychology has also come into view, and attempts have been made to explain the psychology of national traits, and of abnormal or unhealthy popular movements, notably mobs. But the normal forces that govern the ordinary conduct of men in their public relations have scarcely received any scientific treatment at all. In short, we are almost wholly lacking in a psychology of political parties, the few scattered remarks in Maine's "Popular Government" being, perhaps, still the nearest approach to such a thing that we possess.[1]

Although Parties are Universal.

The absence of treatises on the subject is all the more remarkable because the phenomena to be studied are almost universal in modern governments that contain a popular element. Experience has, indeed, shown that democracy in a great country, where the number of voters is necessarily large, involves the permanent existence of political parties; and it would not be hard to demonstrate that this must in the nature of things be the case. That

[1] Rohmer's *Lehre von den politischen Parteien*, which attempts to explain the division into parties by natural differences of temperament corresponding to the four periods of man's life, is highly suggestive, but is rather philosophic than psychological; and like most philosophical treatises on political subjects it is based upon the writer's own time and place rather than upon a study of human nature under different conditions.

parties exist, and are likely to continue to do so, has provoked general attention. By all statesmen they are recognised as a factor to be reckoned with in public life; and, indeed, efforts have been made in various places to deal with them by law. In the United States, for example, the local caucuses, or conventions of the parties, and their methods of nominating candidates, have of late years been regulated by statute; while in Switzerland and Belgium, elaborate schemes of proportional representation have been put into operation to insure a fair share of seats to the groups in the minority.

Modern View of Parties.

But if political parties have become well-nigh universal at the present time, they are comparatively new in their modern form. No one in the eighteenth century foresaw party government as it exists to-day, enfolding the whole surface of public life in its constant ebb and flow. An occasional man like Burke could speak of party without condemnation;[1] but with most writers on political philosophy parties were commonly called factions, and were assumed to be subversive of good order and the public welfare. Men looked at the history with which they were familiar; the struggles for supremacy at Athens and at Rome; the Guelphs and Ghibelines exiling one another in the Italian republics; the riots in the Netherlands; the civil war and the political strife of the seventeenth century in England. It was not unnatural that with such examples before their eyes they should have regarded parties as fatal to the prosperity of the state. To them the idea of a party opposed to the government was associated with a band of selfish intriguers, or a movement that endangered the public peace and the security of political institutions.

Foreign observers, indeed, point out that for nearly three hundred years political parties have existed in England, as they have not in continental countries; and that the pro-

[1] In his oft-quoted, but very brief, remarks in the "Observations on 'The Present State of the Nation,'" and "Thoughts on the Cause of the Present Discontents." But twenty-five years later in a letter to Richard Burke he falls into the current talk about the evils of domination by a faction.

cedure of the House of Commons has consistently protected the Opposition in its attacks upon the government.[1] This is true, and there is no doubt that even in the seventeenth century party struggles were carried on both in Parliament and by pamphlets and public speeches, with a freedom unknown in most other nations; but still they were a very different thing from what they are now. They were never far removed from violence. When the Opposition of those days did not actually lead to bloodshed, it was perilously near to plots and insurrection; and the fallen minister, who was driven from power by popular feeling or the hostility of Parliament, passed under the shadow at least of the scaffold. Danby was impeached, and Shaftesbury, his rival, died a refugee in Holland. With the accession of the House of Hanover, and the vanishing of the old issues, political violence subsided. The parties degenerated into personal factions among the ruling class; and true parties were evolved slowly by the new problems of a later generation.

"His Majesty's Opposition."

The expression, "His Majesty's Opposition," said to have been coined by John Cam Hobhouse before the Reform Bill,[2] would not have been understood at an earlier period; and it embodies the greatest contribution of the nineteenth century to the art of government—that of a party out of power which is recognised as perfectly loyal to the institutions of the state, and ready at any moment to come into office without a shock to the political traditions of the nation. In countries where popular control of public affairs has endured long enough to be firmly established, an Opposition is not regarded as in its nature unpatriotic. On the contrary, the party in power has no desire to see the Opposition disappear. It wants to remain in power itself, and for that reason it wants to keep a majority of the people on its side; but it knows well that if the Opposition were to become so enfeebled as to be no longer formidable, rifts would soon appear in its

[1] *E.g.* Redlich, *Recht und Technik*, 74–79.

[2] *Cf.* Review of his unpublished "Recollections of a Long Life," in the *Edinburgh Review*, April, 1871, p. 301.

own ranks. In the newer democracies, such as France and Italy, there are large bodies of men whose aims are revolutionary, whose object is to change the existing form of government, although not necessarily by violent means. These men are termed "irreconcilables," and so long as they maintain that attitude, quiet political life with a peaceful alternation of parties in power is an impossibility.

Conditions of Good Party Government.

The recognition of the Opposition as a legitimate body, entitled to attain to power by persuasion, is a primary condition of the success of the party system, and therefore of popular government on a large scale. Other conditions of success follow from this.

Opposition must not be Revolutionary.

If the Opposition is not to be regarded as revolutionary, its objects must not be of that character, either in the eyes of its own adherents, or in those of other people. As Professor Dicey has put it, parties must be divided upon real differences, which are important, but not fundamental. There is, of course, no self-evident line to mark off those things that are revolutionary or fundamental; and herein lies an incidental advantage of a written constitution restricting the competence of the legislature, for it draws just such a line, and goes far to confine the immediate energies of the parties to questions that are admitted not to be revolutionary.[1] In the absence of a constitution of that kind, party activity must be limited to a conventional field, which is regarded by the public opinion of the day as fairly within the range of practical politics. Clearly the issues must not involve vital matters, such as life or confiscation. When, during the progress of the French Revolution, an orator argued in favour of the responsibility of the ministers, and added "By responsibility we mean death," he advocated a principle inconsistent with the peaceful alternation of parties in power.

[1] Neither in France nor in Italy does the constitution really perform that service; because in each case it does little more than fix the framework of the government, without placing an effective restraint upon legislative action; and because the constitution itself is not felt to be morally binding by the irreconcilables.

Lines of Cleavage must not be Social.

For the same reason there is grave danger when the lines of cleavage of the parties coincide with those between the different social classes in the community, because one side is likely to believe that the other is shaking the foundations of society, and passions are kindled like those that blaze in civil war. This is true whenever the parties are separated by any of the deeper feelings that divide mankind sharply into groups; and especially when two or three such feelings follow the same channel. The chief difficulty with Irish Nationalism, as a factor in English politics, lies in the fact that to a great extent the line of cleavage is at once racial, religious, social, and economic.

Issues must be Based on Public Matters.

In order that the warfare of parties may be not only safe, but healthy, it must be based upon a real difference of opinion about the needs of the community as a whole. In so far as it is waged, not for public objects, but for the private gain, whether of individuals, or of classes, or of collective interests, rich or poor, to that extent politics will degenerate into a scramble of self-seekers.

Relation of Parties to Political Institutions.

Before inquiring how far these conditions have been fulfilled in England we must consider the form that party has assumed there, and the institutions to which it has given birth. England is, in fact, the only large country in which the political institutions and the party system are thoroughly in harmony.

In America.

The framers of the Constitution of the United States did not foresee the rôle that party was to play in popular government,[1] and they made no provision for it in their plan; yet they established a system in which parties were a necessity. It was from the first inevitable, and soon became clear, that the real selection of the President would not be left to the judgment of the electoral college — a result made the more certain, first, by providing that the members should assemble by States, and hence should not meet together as a whole for deliberation; and second, by ex-

[1] For the views of these men on the relation of parties or "factions" to public life see "The Federalist," No. 10, written by Madison.

cluding from the college all congressmen and holders of federal offices, that is, all the leading men in national public life.[1] If the electoral college was not really to select the President, it must become a mere machine for registering the results of a popular vote throughout the nation, and the candidates for the presidency must be designated beforehand in some way.

In a small district where the voters are few, and an interchange of opinions naturally takes place by informal conference, public officers may be elected by popular vote without the existence of any machinery for nomination; but in a large constituency, where the voters are not personally acquainted with each other, men who have the same objects in view must get together, agree upon a candidate, and recommend him to the public. Otherwise votes will be thrown away by scattering them, and it will be mere chance whether the result corresponds with the real wishes of the voters or not. In short, there must be some process for nominating candidates; that is, some party organisation; and the larger the electorate the more imperative the need of it. Now the electorate that practically chooses the President of the United States is by far the largest single constituency that has ever existed in the world. It is, in fact, noteworthy that democracy throughout Europe adheres to the custom of dividing the country for political purposes into comparatively small electorates; while in the United States it is the habit to make whole communities single constituencies for the choice of their chief magistrates — state governors or national president — a condition of things that

[1] Professor Max Farrand has pointed out to me that the question of having the electors for the whole country meet in one place was discussed in the Constitutional Convention, and was rejected in favour of the present plan, because under the latter, "As the Electors would vote at the same time throughout the U.S. and at so great a distance from each other, the great evil of cabal was avoided." G. Hunt's "Writings of Madison," IV., 365–66. Cabal had a vague and spectral meaning, but covered anything in the nature of party. The exclusion from the electoral college of members of Congress and federal office-holders was defended on the same ground. *Cf.* "The Federalist," No. 68.

involves elaborate party machinery for nomination, and hence the creation of huge party organisations on a popular basis.

The form of government in the United States has thus made parties inevitable; and yet they were furnished with no opportunity for the exercise of their functions by the regular organs of the state. There were no means provided whereby a party could formulate and carry through its policy, select its candidates for high office, or insure that they should be treated as the real leaders of the party and able to control its action.[1] The machinery of party, therefore, from the national convention to the legislative caucus, has perforce been created outside the framework of the government, and cannot be nicely adjusted thereto.

In Continental Europe.

The European countries, on the other hand, that have adopted the English parliamentary system, have usually copied those features, like the responsibility of the ministers, which were most readily perceived, without acquiring at the same time the substructure on which the system rests, the procedure which prevents friction, or the national traditions which supply the motive power. The result has been that a form of government well fitted to the great English parties has proved very imperfectly suited to the numerous political groups that exist in most of the continental legislatures.[2] In France the conditions have indeed changed much in the last few years, the procedure has been gradually better adapted to the parliamentary system, and

[1] In his "Rise and Growth of American Politics," a book full of penetrating suggestions, Mr. Henry Jones Ford has argued that party exists in America in order to bring about an accord among public bodies that were made independent by the Constitution; to force into harmonious action the various representatives of the people. Professor Goodnow develops the same idea from a different standpoint in his "Politics and Administration." But, especially in view of the comparatively small accord among public bodies, or harmonious action of the public representatives, and the enormous influence of parties in elections, it seems to the writer more correct to say that parties in America exist mainly for the selection of candidates.

[2] This subject is treated in Dupriez's admirable work *Les Ministres*, in Bodley's "France," and in the writer's "Governments and Parties in Continental Europe."

the ministries have gained in stability; but as yet the difficulties are by no means overcome. In some of the smaller countries, such as Belgium and Switzerland, the organs of government and the system of parties are less inconsistent; in Belgium because she followed British precedents more faithfully; in Switzerland because she was enabled by her small size, coupled with a federal structure, to create a novel polity of her own, in which parties are given no constitutional sphere of action, and play an unusually subordinate part. In none of these countries, however, is the form of government so fully consonant with the party system as it is in Great Britain.

English Parliamentary System Grew out of Parties.

In England the party system is no more in accord with the strictly legal institutions, with King, Lords and Commons, than it is elsewhere; but it is in absolute harmony with those conventions, which, although quite unknown to the law, make up the actual working constitution of the state. It is in harmony with them because they were created by the warfare of parties, were evolved out of party life. Government by a responsible ministry was not the inevitable consequence of the long struggle between the House of Commons and the Crown. Some other means might very well have been devised for taking the executive power out of the personal control of the King. It was rather the result of the condition of the House itself; for it is inconceivable that this form of government should have appeared if Parliament had not been divided into Whigs and Tories. In fact the whole plan would be senseless if parties did not exist. The reason for the resignation of a ministry upon the rejection of a measure it has proposed is that the defeat indicates a general loss of confidence in the policy of the party in power, and the preference for another body of leaders with a different policy. If this were not so, the Swiss practice of remaining in office, but yielding on the point at issue, would be far more sensible. The parliamentary system is thus a rational expression of the division of the ruling chamber into two parties.

It has Made Parties Stronger.

Neither the parliamentary system nor the party system, neither the responsibility of ministers to the House of Commons nor the permanent division into two parties, grew up in a day. Throughout the eighteenth century the principle of cabinet responsibility was but dimly recognised; while parties at times disintegrated, and the wheels of government were kept going by means of corruption, which has served in all ages as a lubricant for ill-adjusted political machinery. But little by little, with halting steps, the rivalry of parties built up the responsibility of ministers, and this in turn helped to perpetuate the party divisions; for the parliamentary system, like every rational form of government, reacts upon and strengthens the conditions of its own existence. It is based upon party, and by the law of its nature tends to accentuate party. Ministers perceived that their security depended upon standing together, presenting a united front, and prevailing upon their friends to do the same. The leaders of the Opposition learned also that their chance of attaining to power was improved by pursuing a similar course. In this way two parties are arrayed against one another continually, while every member of Parliament finds himself powerfully drawn to enlist under one banner or the other, and follow it on all occasions. He cannot consider measures simply on their merits, but must take into account the ultimate effect of his vote. As soon as men recognise that the defeat of a government bill means a change of ministry, the pressure is great to sacrifice personal opinions on that bill to the greater principles for which the party stands; and the more fully the system develops, the clearer becomes the incompatibility between voting as the member of Parliament pleases on particular measures, and maintaining in power the party he approves. In short, the action of the House of Commons has tended to become more and more party action, with the ministers, as we have already seen, gradually drawing the initiative in legislation, and the control over procedure, more and more into their own hands.

It is Government by Party.

The English government is builded as a city that is at unity in itself, and party is an integral part of the fabric. Party works, therefore, inside, instead of outside, the regular political institutions. In fact, so far as Parliament is concerned, the machinery of party and of government are not merely in accord; they are one and the same thing. The party cabal has become the Treasury Bench. The ministers are the party chiefs, selected not artificially but by natural prominence, and the majority in the House of Commons, which legislates, appropriates money, supervises and controls the administration, and sustains or discards ministers, is the party itself acting under the guidance of those chiefs. The parliamentary system, as it has grown up spontaneously in England, is in its origin and nature government by party, sanctioned and refined by custom. In that respect it differs, not only from national political systems elsewhere, but also from British local government. This last is not an outgrowth of party, but, like most of the existing popular institutions in other countries, was designed, not evolved. In it, as we shall see hereafter, party has no organic connection with the ruling bodies, and has not the same controlling authority as in national affairs.

It can Thrive only with Two Parties.

If the existence of a responsible ministry normally involves government by party, it also requires as a condition of success that there shall be only two parties. The ills that have flowed from the subdivision of the French, the Italian and other parliaments, into a number of groups are now an oft-told tale. The consequences there are very different from those that occur where the executive is not responsible to the legislature. In this last case the presence of several groups may result in the election of a president, a council or an assembly, representing a minority of the voters, and if so the popular will may not be truly expressed. Yet the government will go on unshaken until the next periodic election. But with similar conditions under the parliamentary system the administration itself will be weak, its position unstable, its tenure of office dependent upon

the pleasure of a group that may be ready to sacrifice everything else for a single object. Parnell was quite right in his reckoning that if he could keep the Home Rulers together until they held the balance of power in the House, one or other of the great parties must make terms with them, or parliamentary government would be unworkable.

Opposition not Entirely Genuine.

In the English system the initiative in most matters of importance has come into the hands of the cabinet ministers, as the representatives and leaders of the predominant party. It is their business to propose, and it is the business of the Opposition to oppose. But the attitude of the latter is not quite spontaneous. On rare occasions it congratulates the government upon some action, which it supports heartily. More commonly it seeks to criticise everything, to find all imaginable faults. Impotent to legislate, it tries to prevent the majority from doing so; not content with expressing its views and registering a protest, it raises the same objections at every stage in the passage of a bill; and sometimes strives to delay and even to destroy measures which it would itself enact if in power. Its immediate object is, in fact, to discredit the cabinet. Now this sounds mischievous, and would be so were Parliament the ultimate political authority. But the parties are really in the position of barristers arguing a case before a jury, that jury being the national electorate; and experience has shown, contrary to the prepossessions of non-professional legal reformers in all ages, that the best method of attaining justice is to have a strong advocate argue on each side before an impartial umpire. Unfortunately the jurymen in this case are not impartial, and the arguments are largely addressed to their interests, but that is a difficulty inseparable from democracy, or, indeed, from any form of government.

Waste of Capacity

Another result of party government that is constantly decried is the waste of capacity it involves. Why, it is asked, should an excellent administrator leave his post, because some measure quite unconnected with his depart-

ment — a measure, it may be, that he has himself opposed in the cabinet — is rejected by the House of Commons? Such a system interferes with that continuity of policy which is often essential to success both in foreign and internal affairs, and this is, no doubt, an evil; but owing to the presence of a highly trained body of permanent officials, who carry on the traditions and largely control the policy of the departments, it is not so important in England as one might suppose. The system also debars one half of the talent in public life from the service of the state; but this misfortune is one that, for one reason or another, has existed to some extent in all countries at all times. The idea of a state where all the ablest men in the land join, without regard to political opinions, to devote the best of their talents to the public service, is enchanting, but it has never been permanently realised anywhere.

Issues not Decided solely on their Merits.

Another criticism levelled at party government in England arises from the impossibility of supporting the party in power on one issue and opposing it on another. A voter at the last election who objected strongly to any change in fiscal policy, and equally strongly to any concessions on the subject of Home Rule, found himself on the horns of a dilemma. He was compelled to make up his mind which issue he thought most important, and trust to Providence about the other. In a party government, where the cabinet must resign if any of its vital measures are rejected, those measures cannot be considered by individuals on their merits. The policy of one party or the other must be supported as a whole. This is certainly a limitation on personal freedom of action, and it acts as a restraint just to the extent that the government is conducted strictly on party lines. The party system certainly involves compromise of opinion; but then there is some compromise required for the enactment of every public measure, whether parties exist or not, for it never happens that the legislators who vote for any bill are all perfectly satisfied with every one of its clauses.

Government by party is not an ideal regimen. Like everything else it contains both good and evil. A political organisation, indeed, that avoided all strife and all waste would certainly be impossible, and would probably, by relaxing effort and sapping the springs of human nature, prove undesirable. As yet it is too early to strike a final balance between the merits and the defects of the party system in England, and it would be hopeless to attempt it here. Both good and evil will appear more fully as we proceed.

CHAPTER XXV

PARTY ORGANISATION IN PARLIAMENT

The Need of Whips.

In every legislative body a vote is supposed to express the sense of the House, and there is a universal fiction that all the members are constantly present; but this is often far from being the fact; and it always behooves any one interested in a particular matter to expend no small amount of labour in making sure that those persons who agree with him are on hand when the decisive moment comes. All this applies with peculiar force to the House of Commons; for not only the fate of the particular measure under consideration, but the very life of the ministry itself, may depend upon a single division; and it is the more true because the average attendance, while a debate is going on, is unusually small. When the division bell rings, two minutes are, indeed, given for the members to rush in from the lobbies, the library, the smoking and dining rooms, and the terrace, yet the government cannot trust to luck for the presence of enough of its followers in the precincts of the House to make up a majority. There must be someone whose duty it is to see that they are within call.

Who They Are.

The duty of keeping the members of a party on hand is performed by the whips, whose name is abbreviated from the men who act as whippers-in at a fox-hunt. They are all members of the House, and those on the government side receive salaries from the public purse on the theory that it is their business to "keep a house" during supply; that is, to insure the presence of a quorum, so that the appropriations may be voted. The chief government whip holds the office of Parliamentary Secretary to the Treasury, with a salary of £2000. Formerly he was often called

simply the Secretary of the Treasury—an expression occasionally confusing to the readers of books written a generation ago. He is sometimes called, also, Patronage Secretary of the Treasury; and in old times no small part of his functions consisted in distributing patronage, in the days when it was freely employed to secure the support of members of Parliament. In fact he is still a channel for the disposition of such minor patronage as remains in the gift of the Prime Minister, including the creation of lesser titles. He is assisted by three other members, who hold the office of Junior Lords of the Treasury, with the salary of £1000 apiece.[1] As has already been explained, the Treasury Board never meets, so that the duties of the Junior Lords are to-day almost entirely confined to acting as whips; and, to enable them to do that more effectively, one of them is always a Scotch member. The position of whip is one of great importance, but it entails some sacrifices, for by custom the whips take no part in debate, and although their work is felt throughout the House, it is little seen by the public. The chief whip, however, is often given afterwards a position in the ministry, or otherwise rewarded.

The Opposition also has its whips, usually three in number, whose position is important; though not so important as that of the government whips, because while a failure to have the full strength of the party present may be unfortunate, it cannot, as in the case of the government, be disastrous. Naturally the Opposition whips have no salaries, but they are sustained by the hope that their turn will come.

Duties of the Whips

The government whips act as the aides-de-camp, and intelligence department, of the leader of the House. In the former capacity they arrange for him with the whips on the other side those matters in which it is a convenience to have an understanding. The membership of select

[1] Formerly the Parliamentary Groom in Waiting acted also as a whip; but the office was abolished in 1892.

committees, for example, is generally settled between the chief whips on the two sides of the House; and the time when the test vote on some great measure will take place is usually arranged beforehand in the same way.

They bring in the Members.

When an important division is likely to occur, each side musters its whole force for a great trial of strength; and not only the majority, but the size of the majority, is a matter of importance to the ministers, for it shows how completely they can depend upon the support of their followers. But it is not on vital questions alone that the government must avoid being beaten, because a defeat, even though not such a one as would cause resignation, nevertheless weakens to some extent the credit of the cabinet. It gives the public the impression that the ministers are losing popularity; either that their followers are becoming rebellious and voting against them, or, at least, that they are so far indifferent or disaffected as to stay away. Nothing succeeds like success; and it is a maxim in politics as well as in war that one must maintain a reputation for being invincible. Any defeat of the government always causes cheers of triumph among the Opposition; and especially of late years, when defeats have become more rare, it is a thing that requires explanation.

The whips must, therefore, always keep a majority within sound of the division bell whenever any business that may affect the government is under consideration. For this purpose they are in the habit of sending out almost every day to all their supporters lithographed notices stating that a vote on such and such a matter is likely to come on, and requesting the attendance of the member. These notices are underscored, in accordance with the importance of attendance, from a single line, meaning that the whip desires the member's attendance, to four lines, or a couple of very thick lines, which mean "come on pain of being thought a deserter." In fact the receipt of messages of this kind is the test of party membership. In 1844 a correspondence on the subject took place between Peel and

Disraeli shortly before the final breach occurred. Disraeli, who had been criticising the policy of the government in Ireland and Servia, was not sent the usual whips, and protested on the ground that he had not ceased to be a member of the party.[1]

All this is not so important in the case of the Opposition; for, the consequences of being caught napping are not so serious. It is enough for them to summon their full force from time to time, when a good chance for a large vote occurs. The proceedings of their whips, therefore, though generally the same, are somewhat less systematic.

They must Know that the Members are Present.

The whips act also as an intelligence department for the government leader. It is their business not only to summon the members of the party to the House, but to know that they are there. By the door leading to the coat room, through which the members ordinarily enter the House from Palace Yard, there are seats; and here may always be seen one of the government whips, and often one from the Opposition. Each of them takes note of every member who goes in and out, sometimes remonstrating with him if he is leaving without sufficient reason. By this means the whip is expected to be able, at any moment, to tell just how large a majority the government has within the precincts of the House; and on the most important divisions the whip sees that every member of the party, who is well, is either present or paired. Of course, the same thoroughness cannot be attained on smaller questions; and although the government whip tries to have constantly on hand more members of his own party than of the Opposition, it is not always possible to do so. He may have expected a vote to take place at a given hour, and sent out a notice to every one to be present at that time, and the debate may suddenly show signs of coming to an end earlier. In that case it is usually possible to get some member of the government to talk against time while the needed members are fetched in. At times even this resource

[1] Parker, "Sir Robert Peel," III., 144–47.

Snap Votes.

fails, and the government is occasionally defeated on what is known as "a snap vote."

That of 1895.

Humorous anecdotes are told of frantic attempts to bring in the members, and of practical jokes in trying to prevent it;[1] but the only one of these cases that led to serious results occurred in 1895. The Liberal government had been desperately clinging for life to a small majority of about a dozen, when there came on for debate a motion to reduce the salary of the Secretary of State for War, made in order to draw attention to an alleged lack of cordite. The whips sitting by the regular entrance of the House had in their tally the usual majority for the government; but a score of Tories had gone from the Palace Yard directly to the terrace, without passing through the ordinary coat-room entrance. When the division bell rang they came straight from the terrace to the House, and to the surprise no less of the tellers than of every one else, the government was defeated by a few votes. This was clearly a "snap" division, which would not ordinarily have been treated as showing a lack of confidence in the ministry. But the time comes when a tired man in the sea would rather drown than cling longer; and that was the position of Lord Rosebery's government.

Whips must Know the Temper of the Party.

The whips keep in constant touch with the members of their party. It is their business to detect the least sign of disaffection or discontent; to know the disposition of every member of the party on every measure of importance to the ministry, reporting it constantly to their chief. A member of the party, indeed, who feels that he cannot vote for a government measure, or that he must vote for an amendment to it, is expected to notify the whip. If there are few men in that position, so that the majority of the government is ample, and the result is not in danger, the whip will make no objection. A novice in the strangers' gallery, who hears three or four men on the government side attack one of its measures vigorously, sometimes

[1] Macdonagh, "Book of Parliament," 372–78.

thinks that there is a serious risk of defeat; but if he watched the countenance of the chief whip on the extreme end of the Treasury Bench, he would see no sign of anxiety, and when the division takes place the majority of the government is about the normal size. The fact is that the whip has known all along just how many men behind him would vote against the government, just how many would stay away, and that it really made no difference.

Methods of Pressure on Members.

If, on the other hand, the majority of the government is narrow, or the number of refractory members is considerable, the whip will try to reason with them; and in a crisis, where a hostile vote will be followed by a dissolution, or by a resignation of the ministry which involves, of course, a dissolution, his reasoning is likely to be effective; for no member wants to face unnecessarily the expense of a general election, or the risk of losing his seat. The strength of motives of this kind naturally depends very much upon his tenure of the seat. If, as sometimes happens, he is the only member of the party who has a good chance of carrying the seat, or if his local or personal influence there is so strong that he is certain to carry it, he will hold a position of more than usual independence. But this is rarely the case.

Fear of Dissolution.

Action of Constituents.

Nor is the fear of dissolution the only means by which pressure can be brought to bear upon a member who strays too far from the party fold. His constituents, or the local party association — which for this purpose is much the same thing — can be relied upon to do something. Any direct attempt by the whips to bring pressure upon a member through his constituents would be likely to irritate, and do more harm than good. But it is easy enough, in various ways, to let the constituents know that the member is not thoroughly supporting his party; and unless his vote against the government is cast in the interest of the constituents themselves, they are not likely to have much sympathy with his independence.

Social Influence.

Another means of pressure is found in social influence, which counts for much in English public life; and for that

reason it is considered important to have as chief whip a man of high social standing as well as of pleasant manners and general popularity. The power of social influence has always been great in England, more particularly among the Conservatives. In 1853, Disraeli, who was trying hard to build up the Tory party, and had at the time little else to build it with, urged the importance of Lord Derby's asking all his followers in Parliament to dinner in the course of the session.[1] Nor does the use of influence of this kind appear to have declined. It has been said of late years that if a Unionist did not vote with his party, he was not invited to the functions at the Foreign Office; and the weakness of the Liberals for nearly a score of years after the split over Home Rule was due in no small part to the fact that they had very little social influence at their command. A sudden political conversion some years ago was attributed to disappointment of the member at the small number of invitations received through Liberal connections; and the change of faith no doubt met its reward, for it was followed in time by knighthood.

Payment of Election Expenses.

Finally the whips have, upon a certain number of members, a claim arising from gratitude. Elections are expensive for the candidate, and it is not always easy to find a man who is ready to incur the needful cost and trouble, especially when the chance of success is not large. Under these conditions the central office of the party, which is under the control of the leaders and the whip, will often contribute toward a candidate's expenses. It is done most frequently in well-nigh hopeless constituencies, and therefore the proportion of men who have received such aid is much greater among defeated than among elected candidates; although the cases are by no means confined to the former class. How often aid is given, and in what cases it is given, is never known, for the whip naturally keeps his own counsel about the matter; but the number of members on each side of the House, a part of whose election expenses have

[1] Malmesbury, "Memoirs of an Ex-Minister," I., 382.

been paid from the party treasury, is not inconsiderable. Upon these men the whips have, of course, a strong claim which can be used to secure their attendance and votes when needed.

If all the means of pressure which the whips can bring to bear are unavailing, and the supporters of the government who propose to vote against it are enough to turn the scale, or if the whips report that the dissatisfaction is widespread, the cabinet will, if possible, modify its position. This is said to have been the real cause of the apparent surrender of the Liberal ministry to the demands of the Labour Party upon the bill to regulate the liability of trade unions in 1906. The whips found that many of their own followers had pledged themselves so deeply that they could not support the government bill as it stood.

The Whips as Tellers.

When the government is interested in the result of a vote, it informs the Speaker that it would like its whips appointed tellers in the division, a suggestion with which he always complies. This is the sign that the ministers are calling for the support of all their followers, and that the division is to be upon party lines. Often in the course of a debate upon some amendment to a government bill, one hears a member, rising behind the Treasury Bench, appeal to the leader of the House not to put pressure upon his supporters on that question. He means that the government whips shall not be made the tellers, in which case each member is free to vote as he thinks best without a breach of party loyalty, and the result, whatever it may be, is not regarded as a defeat for the cabinet. Occasionally this is done, but not often; because on the question so treated the government, in abandoning its leadership, is exposed to a charge of weakness; and also because it is unsafe to do it unless the ministers are quite indifferent about the result, for the effect of the pressure on the votes of many members is very great.

The whips may be said to constitute the only regular party organisation in the House of Commons, unless we include

No Other Party Machinery in Parliament.

under that description the two front benches. The very fact, indeed, that the ministry and the leaders of the Opposition furnish in themselves the real party machinery of the House, avoids the need of any other. The ministers prepare and carry out the programme of the party in power, while a small coterie of leaders on the other side devise the plans for opposing them. The front bench thus does the work of a party committee or council, and in neither of the great parties is there anything resembling a general caucus for the discussion and determination of party policy. Sometimes a great meeting of the adherents of the party in Parliament is called at one of the political clubs or elsewhere, when the leaders address their followers. But it is held to exhort, not to consult; and, in fact, surprise is sometimes expressed by private members that the chiefs take them so little into their confidence.[1]

The organisation of the two great parties in Parliament has almost a military character, with the cabinet as the general staff, and the leader of the House as the commander in the field. This is naturally far less true of lesser groups, which have not the tradition of cabinet leadership to keep them in line. In their case a real caucus of the party, to consider the position it shall assume in a crisis, is not unknown. Two particularly celebrated meetings of that kind took place within a few years of each other: one held by the Liberal Unionists before the vote on the Home Rule Bill in 1886; the other the meeting of the Irish Nationalists which deposed Parnell from the leadership of the party in 1890.

A caucus of one of the two great parties has occasionally been held to select a leader in the House, in those rare cases where it has found itself in Opposition without a chief. This happened, for example, in 1899, when the post of leader having been left vacant by the retirement of Sir William Harcourt therefrom in the preceding December, the Liberal members of the House met on the day before the opening of

[1] See, for example, Sir Richard Temple, "Life in Parliament," and especially pp. 39–40.

the session, and chose Sir Henry Campbell-Bannerman to succeed him. Sir Henry thenceforward led the party in the Commons, and became, in due course, Prime Minister, when the Liberals came to power in 1905. Except, however, for an accident of that sort, neither of the two great parties has any machinery for choosing its chiefs, or deciding upon its course of action. The leaders, and when the party comes to power the ministers, are, no doubt, indirectly selected by the party itself, for they are the men who have shown themselves able to win its confidence, and command its support. But the choice is not made by any formal vote; nor is it always precisely such as would result from a vote. The Prime Minister, if not himself in the Commons, appoints the leader of the House and his principal lieutenants, being guided in the choice by his own estimate of their hold upon the party, and by the advice of the other chiefs. When appointed, the leader leads, and the party follows.

CHAPTER XXVI

NON-PARTY ORGANISATIONS OUTSIDE OF PARLIAMENT

Different Kinds of Political Organisations.

THE political organisations outside the walls of Parliament may, for convenience, be classified under four heads; although the groups so set apart are not always perfectly distinct, and a particular organisation is sometimes on the border line between two different groups. These four heads are: —

1. Non-party organisations, whose object is to carry into effect some one project or line of policy, but not to obtain control of the general government, or to act as an independent political group in the House of Commons.

2. Local party organisations, each confined to one locality, whose primary object is to nominate party candidates and carry the elections in that place, although they may incidentally bring their influence to bear on the national policy of the party.

3. National party organisations, whose object is to propagate the principles of the party, to aid in carrying the elections throughout the country, and also to formulate and control to a greater or less extent the national party policy. Of the organisations formed for such a purpose, the most famous was early dubbed by its foes the "Caucus," and under that title the career of these bodies on the Liberal and the Conservative side will be described in Chapters XXIX. and XXX., the Labour Party being treated in a later chapter by itself.

4. Ancillary party organisations. These are handmaids to the party, which make no pretence of trying to direct its policy, but confine themselves to the work of extending its

popularity, promoting its interests, and preparing the way for its success at the polls. They will be discussed hereafter, but a few words must be said here about the most important of them all, because without a knowledge of its character, the history of the caucus, with which it has come into contact, can hardly be understood. It is the central association, or central office, of the party, composed of paid officials and agents, with or without the help of a group of wealthy and influential men. It raises and disburses the campaign funds of the party, and takes charge of general electioneering interests; but it always acts in close concert with the party leaders and the whips, and is, in fact, under their immediate direction and control. The central office is thus a branch of the whip's office, which attends to the work outside of Parliament, and it is really managed by a principal agent or secretary directly responsible to the parliamentary chiefs.

They are Distinct from the Organs of State.

Unlike the instruments of party inside of Parliament, all of these four classes of exterior political organisation are wholly unconnected with the constitutional organs of government; save that the central office is directed by the whip. Outside of Parliament, as in the United States, the organisation of parties is artificial or voluntary, that is, the mechanism stands quite apart from that of the state, and its effect thereon is from without, not from within. From this fact have flowed important consequences that will be noted hereafter.

The Non-Party Organisations

Among the different kinds of political organisation those here called non-partisan are by far the oldest. Yet the term itself may be misleading. It does not mean that they have confined their efforts to cultivating an abstract public opinion in favour of their dogmas, for they have often sought to elect to Parliament men who would advocate them there. Nor does it mean that they have had no connection with the existing parties, for sometimes one of the parties has countenanced and supported their views, and in that case they have thrown their influence in favour of the candidates of that party. The term is used simply to denote a body

whose primary object is not to achieve victory for a regular political party. Curiously enough, such a group of persons often comes nearer than the great parties of the present day to Burke's definition of party as "a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed." For each of the leading parties includes men who are not wholly at one in their principles. Party aims are complicated and confused, and are attained only by a series of compromises, in which the ultimate principle is sometimes obscured by the means employed to reach it. A party in modern parliamentary government would be more accurately defined as a body of men united by the intent of sustaining a common ministry.

Their Early History.

Various organisations of the kind termed here "non-partisan" arose during the latter part of the eighteenth century. The first of these of any great importance appears to have been the Society for Supporting the Bill of Rights, founded in 1769 to assist Wilkes in his controversy with the House of Commons, and in general to maintain the public liberties and demand an extension of the popular element in the constitution. Finding that the society was used to promote the personal ambition of Wilkes, some of the leading members withdrew, and founded the Constitutional Society with the same objects. Ten years later county associations were formed, and conventions composed of delegates therefrom met in London in 1780 and 1781 to petition for the redress of public grievances. Other societies were established about the same time, and they were not always of a radical character. The Protestant Association, for example, was formed under the lead of Lord George Gordon to maintain the disabilities of the Roman Catholics, and brought about the riots of June, 1780, which are still called by his name.

The political societies of those days were short-lived, and most of them died soon; but the outbreak of the French Revolution sowed the seed for a fresh crop. In 1791 the working classes of the metropolis organised the London

Corresponding Society, and the next year men of less extreme views founded the Society of the Friends of the People to promote moderate reform. Whether radical or moderate, however, associations of that kind could not live in those troublous times. The repulsion and alarm provoked by the course of events in France were too strong to be resisted, and a number of repressive statutes were passed to break them up. First came an Act of 1794 to suspend the writ of habeas corpus, then in the following session another to prevent seditious meetings, and, finally, a statute of 1799, which suppressed the London Corresponding Society by name, and any others that were organised with branches. These acts and a series of prosecutions drove out of existence all the societies aiming at political reform; and during a few years, while the struggle with France was at its height, the course of domestic politics was unvexed by such movements. But the distress that followed the wars of Napoleon caused another resort to associations, which was again met by hostile legislation.

The Catholic Association, and Movements for Reform.

The repressive statutes were, however, temporary, and when the last of them expired in 1825, the way for popular organisations was again free. The Catholic Association had already been formed in Ireland to procure the removal of religious disabilities, and just as it disbanded, with its object won, in 1829, the shadow of the coming Reform Act brought forth a number of new political societies in England. In that very year Thomas Atwood founded at Birmingham the Political Union for the Protection of Public Rights, with the object of promoting parliamentary reform; and after the introduction of the Reform Bill similar unions, formed to support it, sprang up all over the country. An attempt was even made to affiliate them together in a great national organisation; but the government declared the plan illegal, and it was abandoned. Among the most interesting of the societies of this kind were those organised in London. Here, in 1831, the National Union of the Working Classes was founded by artisans, disciples of Robert Owen, commonly

known as the "Rotundanists," from the name of the hall where their meetings were held. But Francis Place, the tailor, a notable figure in the agitations of the day, had no sympathy with the socialistic ideas of these men, and dreaded the effect of their society upon the fate of the Reform Bill. He had a much keener insight into the real situation, and started as a counterstroke the National Political Union, with the sole object of supplying in London the popular impulse needed, in his opinion, to push the measure through.[1] The Bill was no sooner passed than the many associations, which had been founded upon a union of the middle and lower classes to effect a particular reform, began to die out.

The Anti-Slavery Societies.

Meanwhile two successive organisations of a non-partisan, and, indeed, of a non-political, character, had been carrying a purely humanitarian movement to a triumphant end. The Committee for the Abolition of the Slave Trade was formed in 1787, and strove, by the collection of evidence, by petitions, pamphlets and corresponding local committees, to enlighten public opinion and persuade Parliament. After working for a score of years, supported by the tireless efforts of Wilberforce in the House of Commons, it prevailed at last upon Parliament to suppress the slave-trade by the Acts of 1806 and 1807. Sixteen years thereafter the Anti-Slavery Society was formed to urge the entire abolition of slavery throughout the British dominions, and this it brought about in 1833, the strength of its advocates in the Commons, backed by popular agitation outside, being great enough to compel Lord Grey's government to bring in a bill for the purpose.[2]

Non-Party Organisations after 1832.

Since 1832 the non-party organisations have been, on the whole, more permanent, and more widely extended than before; and, with some marked exceptions like that of the Chartists, they have tended to rely less upon a display of

[1] Graham Wallas, in his "Life of Francis Place," gives a graphic description of the movements in London.

[2] For these movements see Clarkson's "History of the Slave Trade," "The Life of Wilberforce," by his sons, and "The Memoirs of Sir T. Fowell Buxton."

physical force, and more upon appeals to the electorate—a change following naturally enough upon the enlargement of the franchise. Chartism developed out of a large number of separate local organisations of workingmen, who realised that they had gained no political power from the Reform Act, and demanded a reform of Parliament in a really democratic spirit. The movement took its name from the People's Charter, with its six points, published in 1838 by the London Working Men's Association. To this the various local bodies adhered, sending the next year delegates to a great People's Parliament in London. But the violence of the language used by the Chartists opened a door for prosecution; the leaders became frightened, and for the moment the agitation lost its force. In 1840 it was reorganised, and was supported by several hundred affiliated bodies. From first to last, however, it was weakened by dissensions among the leaders, relating both to the methods of operation and to subordinate issues. The movement culminated in 1848, in the mass meeting on Kennington Common, which was to form in procession, and present a mammoth petition to Parliament. The plan had caused grave anxiety; troops were brought up, thousands of special constables were sworn in; but at the last minute Feargus O'Connor, the leader of the Chartists, lost his nerve, and gave up the procession. The great demonstration was a fiasco, and soon after the whole movement collapsed.

The Chartists.

One of the many reasons for the failure of Chartism was the existence at the same time of the most successful non-partisan organisation that England has ever known, the Anti-Corn-Law League. This, like the Anti-Slavery Association of an earlier day, was formed to advocate a single specific reform, and to its steadfast fidelity to that principle its success was largely due. It excluded rigidly all questions of party politics, and in fact its most prominent leader, Cobden, always retained a profound distrust of both parties. The reform embodied, however, in the eyes of its votaries, both an economic and a moral principle, so that they were

The Anti-Corn-Law League.

able to appeal at the same time to the pocket and the conscience of the nation — a combination that goaded Carlyle into his reference to Cobden as an inspired bagman preaching a calico millennium. As the League appealed to more than one motive, so it used freely more than one means of making the appeal. After a number of local associations had been formed, a meeting of delegates from these, held in 1839, founded the League, which proceeded to organise branches all over the country, sent forth speakers and lecturers, worked the press, collected information, issued pamphlets by the ton, petitioned Parliament, and strove to elect candidates who would support its views. All this was done upon a huge scale with indefatigable energy. The movement derived its force from the middle-class manufacturers, but they strained every nerve to indoctrinate the working classes in the cities, and later the rural population, until at last public opinion was so far won that the crisis caused by the failure of the Irish potato crop brought about the repeal of the Corn Laws in 1846. The League had done its work and dissolved.

Other Non-Partisan Associations.

There have been, and still are, a large number of other associations of a non-partisan character, which bestir themselves about some political question. Often they exist in pairs to advocate opposing views, like the Marriage Law Reform Association, and the Marriage Law Defence Union, the Imperial Vaccination League, and the National Anti-Vaccination League. These associations are of many different kinds. Some of them are organised for other objects, concerning themselves with legislation only incidentally, and taking no part at elections, like the Association of Chambers of Commerce, and the Association of Municipal Corporations. Some exist primarily for other purposes, but are very active in politics, like certain of the trade unions;[1] others are formed solely for the diffusion of political doctrines, but generally abstain from direct electoral work, like

[1] This does not refer to the political labour organisations that have grown out of the trade unions, but must now be classed as regular parties. For the earlier political activity of the trade unions, as such, see Sidney and Beatrice Webb, "Industrial Democracy," I., 247 *et seq.*

the Fabian Society, with its socialist ideals; and, finally, there are organisations which, although not primarily partisan, in fact exert themselves vigorously to help the candidates of one of the great parties. To the last class belongs the Liberation Society, formerly very active in urging the disestablishment of the Church, and throwing its influence in favour of the Liberals; and also its opponent, the Committee for Church Defence, equally strong on the side of the Conservatives. More active than either of them at the present day is the Free Church Federation, which has been brought into the political arena by its repugnance to the Education Act of 1902. In the same category must be placed the National Trade Defence Association, an organisation formed by the liquor dealers to resist temperance legislation, and perhaps Mr. Chamberlain's recent Tariff Reform League, both of which support the Tories. It so happens that the societies that oppose the last two bodies are not so consistently devoted to the Liberals. Then there are societies of another type formed for a transitory purpose in foreign affairs: such as the Eastern Question Association of 1876, which opposed Disraeli's Turkish policy, and the present Balkan Committee working for freedom in Macedonia.

All associations that attempt to influence elections are in the habit of catechising the candidates and publishing their answers, sometimes producing a decided effect upon the vote. Now it may be suggested that societies which take an active part in elections, and always throw their influence on the same side, ought not to be classed as non-partisan, but rather as adjuncts to the great parties; and yet they differ from the true ancillary organisations because their primary object as societies (whatever the personal aim of individual members may be) is not to place the party in power, but to carry through a particular policy with which that party happens to be more nearly in sympathy than its rival.

CHAPTER XXVII

LOCAL PARTY ORGANISATIONS

CONTRASTED with those bodies which are non-partisan, but extend over the whole country, or at least over an indefinite area, stand the local party organisations. Before the Reform Act of 1832 local organisations such as exist to-day for the election of parliamentary candidates were almost unknown. They would, indeed, have been of little use in most of the old electorates. Not to speak of the rotten boroughs, which were sold for cash, a large number of the smaller constituencies were pocket boroughs, in the hands of patrons who would not have suffered any one else to influence the voters. In 1807, when Lord Palmerston was elected to Parliament for Newtown in the Isle of Wight, Sir Leonard Holmes, who controlled the seat, made a stipulation that he should "never, even for an election, set foot in the place. So jealous was the patron lest any attempt should be made to get a new interest in the borough." [1]

Even in the counties the voters were so much under the personal lead of the landowners that party machinery would have been superfluous. A few of the large boroughs had, indeed, an extended franchise and a wide electorate. Most notable among them was Westminster, and here a real political organisation for the election of members to Parliament existed for some years before the great reform. It was, however, conducted in the interest neither of the Whigs, nor of the Tories, but of Radical Reformers, who were truly independent of both parties.[2]

[1] Bulwer, "Life of Palmerston," I., 23-24.
[2] *Cf.* Wallas, "Life of Francis Place," Chs. ii., v.

Their Origin.

With the extension of the franchise a change began in the political status of the voters. In many constituencies it was no longer enough to secure the support of a few influential persons; and the winning of a seat by either party depended upon getting as many of its adherents as possible upon the voting lists. The watchword of the new era was given by Sir Robert Peel in his celebrated advice to the electors of Tamworth in 1841, "Register, register, register!" It was the more important for the parties to take the matter in hand, because disputes about the complex electoral qualifications, instead of being settled on the initiative of the state, were left to be fought out before the revising barrister by the voters themselves, who were apt to be very negligent unless some one made a systematic effort to set them in motion. It was not less necessary for the parties to keep the matter constantly in hand, because, the duration of Parliament being uncertain, it could not be put off until shortly before the election. The lists must be kept always full in view of a possible dissolution. Often the work was done on behalf of the sitting member or the prospective candidate by his agent on the spot, without any formal organisation. But this was not always true, and, in fact, the Reform Bill was no sooner enacted than local registration societies began to be formed, which for some years increased rapidly in number among both Liberals and Conservatives.[1]

[1] By 1837 Conservative registration societies had become common throughout the country. (Publications of the National Union of Conservative Associations, 1868, No. 4.)

By far the best, and in fact the only comprehensive, work on the party organisations in Great Britain is Ostrogorski's "Democracy and the Organisation of Political Parties," Vol. I. His description is very complete, but, while accurate, is likely to mislead a superficial reader, who might easily get an impression that the extreme cases were typical, although the writer takes pains not to say so. Mr. Bryce's caution in the preface should, therefore, be borne in mind. Mr. Ostrogorski appears to look on democracy, and on party machinery in particular, from the outside, as something artificial and weird, rather than the natural result of human conduct under the existing conditions. He does not seem to put himself quite in the shoes of Mr. Chamberlain, Mr. Gladstone, Mr. Schnadhorst, Lord Randolph Churchill, Lord Salisbury, Captain Middleton, or other men who have come into con-

Their Early Objects.

The primary object of the registration societies was to get the names of their partisans on to the lists, and keep those of their opponents off; and they are said to have done it with more zeal than fairness, often with unjust results, for any claim or objection, though really ill-founded, was likely to be allowed by the revising barrister if unopposed.[1] From registration a natural step led to canvassing at election time; that is, seeking the voters in their own homes; persuading the doubtful; when possible, converting the unbelieving; and, above all, making sure that the faithful came to the polls. This had always been done by the candidates in popular constituencies; and now the registration societies furnished a nucleus for the purpose, with a mass of information about the persons to be canvassed, already acquired in making up the voting lists. The nomination of candidates did not necessarily form any part of their functions. The old theory prevailed, of which traces may be found all through English life, that the candidate offered himself for election, or was recommended by some influential friend. The idea that he ought to be designated by the voters of his party had not arisen; nor did the local societies, which were merely self-constituted bodies, claim any right to speak for those voters. No doubt they often selected and recommended candidates; but they did so as a group of individuals whose opinions carried weight, not as a council representing the party.

The time was coming, however, when another extension of the franchise, and the growth of democratic ideas, would bring a demand for the organisation of the societies on a representative basis. The change began almost immediately after the passage of the Reform Act of 1867; and the occasion — it cannot properly be called the cause —

tact with the party organisations, and ask what he himself would, or might, have done in the same position. Hence his analysis has a slight air of unreality, and does not wholly approve itself as a study of ordinary political motives. But apart from this criticism, the work is admirably done, and is an invaluable contribution to political science

[1] Ostrogorski, I., 156–58.

of the movement is curious. When discussion in England was busy with Hare's plan for proportional representation, which John Stuart Mill hailed as the salvation of society, serious voices were heard to object to the scheme on the ground that it would lead to the growth of party organisations, and would place the voter in the grip of a political machine.[1] It is, therefore, interesting to note that the first outcry in England against actual party machinery was directed at an organisation which sprang from the minute grain of minority representation in the Act of 1867.

The Birmingham Caucus.

Its Object.

By the Reform Act of 1867 the great towns of Liverpool, Manchester, Birmingham and Leeds were given three members of Parliament apiece; but in order to provide some representation for the minority, the Lords inserted, and the Commons accepted, a clause that no elector in those towns should vote for more than two candidates.[2] Much foresight was not required to perceive that if one of those towns elected two Liberals and a Conservative, two of her members would neutralise each other on a party division, and her weight would be only one vote; while a much smaller town that chose two members of the same party in the ordinary way would count for two in a division. Such a result seemed to the Radicals of Birmingham a violation of the democratic principle, and they were determined to prevent it if possible. They had on their side more than three fifths of the voters, or more than half as many again as their opponents, and this was enough to carry all three seats if their votes were evenly distributed between three candidates. But to give to three candidates the same number of votes when each elector could vote for only two of

[1] Trevelyan, "A Few Remarks on Mr. Hare's Scheme of Representation." *Macmillan*, April, 1862; Bagehot, "English Constitution," 1 Ed., 188–94; and see Hans. 3 Ser. CLXXXIX., 458. See also Leslie Stephen, "The Value of Political Machinery," *Fortnightly*, December, 1875.

[2] The provision was applied also to the county constituencies returning three members, which some of them did under the Reform Act of 1832. In the City of London, which had four seats, an elector was to vote for only three candidates. 30–31 Vic., c. 102, §§ 9, 10, 18.

them was not an easy thing to do, and failure might mean the loss of two seats. Very careful planning was required for success, very strict discipline among the voters, and hence a keen interest in the result among the mass of the people and perfect confidence in the party managers.

Its Formation.

To provide the machinery needed, Mr. William Harris, the Secretary of the Birmingham Liberal Association, a self-constituted election committee of the familiar type, proposed to transform that body into a representative party organisation; which was forthwith done in October, 1867. The new rules provided that every Liberal subscribing a shilling should be a member of the association, and that an annual meeting of the members should choose the officers and twenty members to serve upon an executive committee. This committee, which had charge of the general business of the association, was to consist of the four officers and twenty members already mentioned, of twenty more to be chosen by the Midland branch of the National Reform League when formed, and of three members chosen by a ward committee to be elected by the members of the association in each ward. According to a common English custom the committee had power to add to its members four more persons chosen, or, as the expression goes, co-opted, by itself. There was also a larger body, consisting of the whole executive committee and of not more than twenty-four members elected by each of the ward committees. It was officially called the general committee, but was commonly known from the approximate number of its members as "The Four Hundred." It was to have control of the policy of the association, and to nominate the three Liberal candidates for Parliament in the borough.[1]

The number of Liberal voters in each of the several wards was then carefully ascertained; and those in one ward were directed to vote for A and B; those of another

[1] Ostrogorski, "The Introduction of the Caucus into England," *Political Science Quarterly*, June, 1893, p. 287. Langford, "Modern Birmingham," II., 362–63.

for A and C; those of a third for B and C; and so on, in such a way that the total votes cast for each of the three candidates should be as nearly as possible the same. Protests were, of course, made against voting by dictation. It offended the sense of personal independence; but the great mass of Liberals voted as they were told, and all three of the candidates were elected.

Its Early Victories.

The association had accomplished a great feat. Three Liberals had been sent to Parliament from Birmingham in spite of the minority representation clause. But a chance for another victory of the same kind did not come again until the dissolution six years later; and at first the managers were less fortunate in the elections to the school board. The Education Act of 1870 provided for cumulative voting at the election of these bodies; that is, the elector might cast all the votes to which he was entitled for one candidate, or distribute them in any way he pleased. The system made it possible for very small minorities to elect one or more candidates, and the Liberal Association, in trying to elude its effects, as they had done in the case of the parliamentary election, attempted too much and carried only a minority of the board. For a time the organisation languished; but it was soon recalled to a more vigorous life than ever.

Its Revival in 1873.

In 1873 the association was revived for the purpose of getting control of the municipal government of the town, and introducing a more progressive policy in its administration. Two names are especially associated with the new departure, that of Mr. Schnadhorst, the secretary of the association, who had a genius for organising, and that of Mr. Chamberlain, who was the leading spirit of the movement, and became the mayor of the borough in the following autumn. These men proceeded to reconstruct the association on a slightly different, and apparently even more democratic, plan. Taking the wards as the sole basis of the fabric, an annual meeting was held in each ward, at which any Liberals residing there might take part. They

were entitled to do so whether voters or not, and without regard to any subscription, provided they signified their adherence to the objects and organisation of the association, a statement which was understood to imply a willingness to accept the decisions of the majority. The meeting elected a committee, a chairman and a secretary for the ward; three persons to serve with those two officers upon the executive committee of the central association; and a number of persons, fixed in 1877 at thirty, to serve on the general committee. The central executive committee contained, in addition to the five members so elected in each ward, the four officers of the association, and thirty members coöpted by itself. It chose seven of its own members, who with the four officers formed a management sub-committee of eleven. The general committee of the association was composed, as before, of the whole executive committee, together with the thirty representatives from each ward; and, as there were sixteen wards, it numbered by 1877 five hundred and ninety-four members; and was known as the "Six Hundred" of Birmingham. It had power to determine the policy of the association, and to nominate the candidates for Parliament and the school board. The members of the town council, on the other hand, being elected by wards, were nominated by the ward committees; but the whole association was bound to support them.

Its Efficiency.

Such was the new organisation of the Liberal Association.[1] Its efficiency as an engine for controlling elections is proved by the fact that during the four years from 1873 to 1876, inclusive, it carried all three seats in Parliament in spite of the provision for minority representation, a majority of the school board at each election in spite of the provision for cumulative voting, and all but two of the sixty-eight members elected to the town council during that period.[2] The association was, indeed, well constructed for the purpose.

[1] H. W. Crosskey, "The Liberal Association — the 600 — of Birmingham." *Macmillan*, February, 1877.

[2] H. W. Crosskey, *ut supra.*

As in the case of every political organisation based upon primary meetings, an attempt to wrest the control from those who held it was a difficult undertaking. To be successful more than half the wards must be captured at one time, and that in the face of vigilant men, who knew all the ropes, who had the management sub-committee in their hands, and who by means of coöptation could convert a narrow majority into a larger one, and thus perpetuate their own power. On the other hand, a revolt against the nominations actually made was well-nigh precluded by the agreement virtually entered into on joining the association, to abide by the decision of the majority. It has been said that for a dozen years the men who conducted the organisation sent travelling companions to one ward meeting after another to insure the election of their supporters to the various committees.[1] Whether this be true or not, it is certain that the power of the managers was never overturned. Their rule has, indeed, been prolonged over such a period that it must be attributed both to the excellence of the mechanism and to their own popularity. Throughout the many vicissitudes of his long career, from his early years of advanced radicalism, through his breach with Mr. Gladstone over the Home Rule Bill, his subsequent junction with the Conservatives, and finally his advocacy of a wholly new policy about preferential tariffs, Mr. Chamberlain has never failed to carry every one of the parliamentary seats in Birmingham for his own adherents. Such a result shows a power which nothing but a strong personal hold upon the people, and a hold coupled with a highly efficient organisation, could have secured.

Criticisms of the System.

The system adopted by the Liberals in Birmingham was copied in other places, and soon became the subject of vehement discussion, the arguments for and against it being the same that are commonly used in the case of every party organisation. Its adversaries declared that it threw absolute power into the hands of men with time to devote

[1] Ostrogorski, I., 166–67.

to working the machinery; that it set up a tyranny which crushed out individuality, extinguished free discussion of opinions, destroyed independence in public life, caused a loss of variety and fertility in Liberalism, and brought party politics into municipal affairs where they ought not to be.

Its Defence.

To these criticisms the advocates of the system replied that the association was conducted by the men with the most public spirit, because they were willing to devote time and thought to the work; that it could not create a tyranny, because the ward meetings were open to all Liberals, who could at any time overthrow the management if they chose; that, in regard to independence, every Liberal had a right to speak freely at the ward meetings, to persuade his fellows to adopt his views if he could, and that this is the only right he ought to enjoy, because "a minority has no right to thwart a majority in determining the course of Liberal policy." They insisted that the association was simply "a method by which those who believe in human progress . . . can take counsel together; come to an agreement as to their nearest duty; and give their decisions practical effect in the legislation of their town and country." They claimed that such men "are bound to select representatives who will support the definite measures they believe to be immediately necessary for the peace and prosperity of the land." [1] In short the Radicals of Birmingham looked upon themselves as reformers with a mission to fulfil, and felt the impatience — perhaps one may say intolerance — which men in that position always feel for the hesitating, the wavering, and the independent members of their own party. To the Radicals the association appeared as an effective instrument for putting their ideals into practice, and seemed wholly good; while others, who had not the same faith in the end to be attained, felt keenly the evils which the organisation actually involved, and still more the abuses to which it might give rise in the future.

[1] H. W. Crosskey, "The Birmingham Liberal Association and its Assailants." *Macmillan*, December, 1878.

The Caucus and Town Politics.

In regard to the charge of bringing politics into municipal affairs the Radicals boldly justified their course, insisting that they stood for a definite progressive policy in local, as well as in national, affairs.[1] Under the lead of Mr. Chamberlain, who was elected mayor of Birmingham in the autumn of 1873 — the same year in which the association was revived — the town council entered upon a period of great activity. It improved the ordinary public services, such as paving and sanitation; reorganised the health department; and inaugurated an efficient system of sewerage with a large filtration farm, which was, at least, a great improvement on what had gone before. It undertook also a number of public works of a class now called "municipal trading." The first of these was the supply of gas, both for lighting the streets and for private use. There were at the time two gas companies in Birmingham, and Mr. Chamberlain persuaded the council that the town could make a profit by buying their property, and conducting the business itself. A bargain was struck with the companies, and the purchase was made. It was no sooner done than a proposal was made to apply the same principle to water, which was also in the hands of a private company. In this case, however, the object was not profit, but an improvement of the supply with a view to better health, for a large part of the population still depended upon wells, many of them, of course, in a dangerous condition. Again a bargain was made with the company, and the water passed in turn under public control.

Finally an ambitious plan was adopted for improving the appearance of the town. Parliament has enacted a long series of statutes intended to secure better houses for the working classes. One of them, the Artisans and Labourers Dwellings Improvement Act of 1875,[2] empowered any town, if authorised by a provisional order of the Local

[1] *Cf.* Chamberlain, "The Caucus." *Fortnightly*, November, 1878; and the two articles by H. W. Crosskey already cited.

[2] 38–39 Vic., c. 36.

Government Board confirmed by Parliament, to expropriate at its fair market value an unhealthy area, that is, a district where the crowding together or bad condition of the houses, and the want of light and air, were such as to be dangerous to health. The town was to prepare a scheme for laying out new streets and otherwise improving the area, and was authorised to sell or let any part of the land on condition that the purchasers should carry the scheme into effect. Now Birmingham, like many of the English manufacturing places, had grown up in a squalid way, a network of narrow streets, devoid of space or dignity; and in the centre was a great slum with a high death-rate. This last, a region of more than ninety acres in extent, was taken under the Act; a broad thoroughfare, named, in recognition of its public origin, "Corporation Street," was laid out, and the land bordering upon it let on long ground leases for commercial buildings. The original intention had been to erect new houses for the people whose dwellings had been destroyed; but this part of the plan was in the main abandoned, on the ground that houses enough were provided by private enterprise.

The management by a town of its gas and water supply, the purchase and lease of large tracts of land, are steps in the direction of what is known to-day as municipal socialism; and they provoked a difference of opinion that still exists, both upon the wisdom of the policy in general, and upon the extent to which it can be profitably carried. The problem will be discussed hereafter, but we must note here that the Radicals of Birmingham believed it to be a political issue, which justified the use of party organisation as much as the issues that arose in Parliament. They felt in the same way about the administration of the new school law. In their eyes all these things formed part of a great Radical policy of which they were the protagonists.

The Birmingham Radicals had faith, not only in their political aims, but also in the means they had devised for carrying them out. They did no little missionary work in

other towns, urging the Liberals to introduce local representative associations on a democratic basis after the Birmingham pattern. In spite of opposition the idea was received with such favour that by the end of 1878 about one hundred bodies of this kind existed in different places.[1] The movement was reënforced by the foundation, in 1877, of the National Liberal Federation, whose history will form the subject of a later chapter. This body admitted to membership only associations of a democratic character, and its influence was strongly felt. The Birmingham leaders, who controlled the Federation, naturally desired to increase its power by extending the number of affiliated bodies as much as possible; while the local associations found an advantage in joining it as soon as it became a factor in Liberal politics. Moreover, after the split in the party over the Home Rule Bill, in 1886, when the Federation took the side of Mr. Gladstone's followers against Mr. Chamberlain, the former became interested in making the organisation as widely representative and popular as possible. These various motives gave successive impulses, with the result that by 1886 the Federation comprised two hundred and fifty-five local associations, and by 1888 seven hundred and sixteen.[2] The rules of the Federation, under the title of the "Objects" for which it exists, still open with the words "To assist in the organisation throughout the country of Liberal Associations based on popular representation," and the rules are preceded by a statement which says, *All associations, thus constituted, are eligible for affiliation.* Although the statement goes on to declare that "No interference with the local independence of the Federated Associations is involved. Each association arranges the details of its own organisation, and administers its own affairs." Still it has always been assumed that the local bodies were to be popular in character. In fact the old self-appointed committees were

The Spread of Associations on the Birmingham Model

[1] H. W. Crosskey. *Macmillan*, December, 1878.
[2] Proc. Ann. Meeting, 1888, p. 14.

hardly compatible with the democratic spirit brought in by the Reform Act of 1867, and in the boroughs they soon gave way to representative bodies with a popular organisation.

The process was much less rapid in the county constituencies,[1] for not until 1884 was the franchise in these enlarged as it had been in the boroughs in 1867, and when that had been done the traditional authority of the squire and the parson presented an obstacle that yielded slowly. Even now Conservative candidates are returned unopposed more frequently in the counties than in the boroughs, especially in the rural counties of the south. Often it was found impossible to establish a Liberal association in each parish, and a local correspondent was, and in some cases still is, a necessary substitute. But the growth of democratic ideas, the practice of popular election, the change in economic conditions caused by the decay of agricultural prosperity and the desire to live in cities, with the consequent scarcity of rural labour, have, by reducing the patriarchal influence of the landlord over his people, paved the way for representative political organisations. At the present day associations democratic in form exist in almost every parliamentary constituency, whether borough or county, where the number of Liberal voters is not so small, or the chance of success at elections is not so desperate, that the district is what is sometimes officially called derelict.

Existing Organisation of Local Liberal Associations.

The constitutions of the local Liberal associations are not precisely uniform, nor, apart from the general principle that they ought to be based upon popular representation, is any pressure exerted to make them alike. The Liberals in each place are at liberty to organise themselves as they please; and in this connection it may be observed that all political societies are treated as purely voluntary, that is, the state makes no attempt to regulate them by law. The provisions in regard to primaries and the nomination of candidates by party conventions, which have become

[1] *Cf.* Ostrogorski, "Democracy," I., Part III., Ch. i., Ser. viii.

universal in the United States, are entirely foreign to English ideas, and would be regarded with astonishment and aversion.

The Draft Rules

But while the Federation does not strive to enforce uniform regulations, it issues a pamphlet of "Notes and Hints for the Guidance of Liberals," covering organisations both in rural villages and in towns, and containing drafts of rules, which may be taken as typical. The pamphlet suggests that in rural districts there should be normally, in each parish or polling district, a self-appointed committee with power to add to its own members. The term "committee" is used because the members, being few, can do most of the work directly, instead of delegating it to a smaller body. In reality the committee is the whole association for the parish, and although the draft rules do not expressly so provide, the intention is clear that it shall include all known Liberals there, whether voters or not. It must meet at least six times in the year; and elects a chairman, treasurer, honorary secretary, and any sub-committees that may be needed. It appoints, also, in proportion to population, delegates to the Liberal association for the parliamentary division, which selects the candidate of the party for the House of Commons.

Rural Districts.

Small Towns.

For small towns without wards the model organisation is similar, except that the primary body is called an association, and meets only once a year, unless convened at other times on the request of twelve members; current business being transacted by an executive committee composed of the officers, and of a certain number of other members chosen at the annual meeting. Above the associations for the parish or polling district, and the small town, comes an association for the parliamentary division of the county in which they are situated. This is often, though not always, purely a representative body, without any mass meeting of members. It has a council, composed mainly of delegates chosen from the parishes, towns, or other primary districts, roughly in proportion to population; and an executive com-

mittee, sometimes elected entirely by the council, sometimes containing delegates from the districts. Finally it has its officers who are members of both these bodies.

Large Towns.

For large towns, that are divided into wards, the draft rules follow more closely the Birmingham plan. They provide in each ward for a committee or association designed to include every man who is disposed to help the Liberal cause. This body elects its officers, the other members of its executive committee, and delegates to the general committee for the town according to population. The association for the whole town meets annually to choose its officers, some members of the general committee, and, in case the town is not a parliamentary borough, delegates to the association for the division of the county. The association for the town is managed, as is usually the case in all organisations of this kind, by three distinct authorities. First, the officers, who attend to current administration. Second, the executive committee, which consists of these officers, of the three officers of each ward, and of members chosen by the general committee. Third, the general committee itself, which determines the policy to be pursued, and is composed of members elected in part by the ward committees and in part by the annual meeting of the whole association for the town. In parliamentary boroughs the general committee — often known as the Council, and sometimes as the Liberal Two Hundred, or whatever the nearest hundred may be — nominates the party candidate for the House of Commons, on the recommendation of the executive committee, and subject to final adoption at a meeting of the association. But in fact the executive committee, in all Liberal associations for parliamentary constituencies, either selects the candidate, and asks for a formal approval by the council, or lays before that body two or three names to choose from. In any case the meeting of the whole association is merely a grand ratification gathering held for applause, not for consultation. The effect is like that of the ancient proclamation, "this is your king an' it please you."

Variations in Different Places.

The draft rules prepared by the Federation are merely typical, and although in their general outlines they give a very fair idea of the organisation of local associations throughout the country, there are endless variations in detail and in nomenclature. If, indeed, the constitutions of a number of these bodies are examined at random, no two of them will probably be found exactly alike. It may be observed that the draft rules make no provision for coöptation, an arrangement that appears nevertheless in the rules of many local associations. Nor do they require the payment of any subscription as a condition for membership; but this again is not infrequently done, the sum required running from a nominal amount up as high as five shillings. Sometimes the payment is a condition for any participation in the organisation; sometimes it is not needed for voting in the ward or district meetings, but confers a right to vote in the general meetings of the association, or to be elected to the committees by coöptation. Occasionally Liberal members of the town council and school board have *ex officio* seats on the council of the association; or local Liberal clubs, although not strictly democratic, are given a representation upon it. But owing to the fact, which will be explained hereafter, that the competition for nomination to Parliament is not very keen, and hence there is rarely a close canvass of the members of the committees, all these differences in detail are of little practical importance. The essential point is that in almost every English parliamentary constituency, whether county or borough, where the chance of carrying the election is fair, there is to-day an association of a representative and nominally, at least, of a democratic character. It contains habitually the three organs, of officers, executive committee, and council; while in the great towns that have several seats there is a still larger organisation comprising all the parliamentary divisions.

The Paid Agents.

It is an old custom for parliamentary candidates to employ paid agents, usually solicitors by profession, to take charge of the election, and with the growth of popular or-

ganisations the business has assumed in most places a more systematic form. The association for each parliamentary division, and sometimes for a smaller district, has a paid as well as an honorary secretary. His duties are many, for he is the maid-of-all-work of the organisation, and is known by the comprehensive title of Liberal Agent for that division. He acts as clerk for the association, organises committees for wards or polling districts, supervises subordinate agents, arranges public meetings, gives advice and assistance wherever needed, canvasses the voters, attends to their registration, and conducts the hearings before the Revising Barrister. He is also usually appointed by the candidate his statutory election agent; and, if so, he takes general charge of the whole campaign, having under him a band of clerks, sub-agents, and messengers, and a small army of volunteer canvassers. He is an important factor in politics; for upon his skill as an organiser, and his tact and good sense in conducting the fight, the result of the election may often depend.

These agents have been said to be the only professional politicians in England; and in one sense that is true, for they are the only class of men who make a living out of party politics; but the expression is inappropriate, because they are not politicians at all in the sense in which the term is used in other countries. They have nothing to do with the direction of politics; they merely help to elect a candidate in whose selection they have no voice; and although their advice may have weight, their duty is solely to carry out the instructions of others. Like all other permanent officials in England, their actual influence depends upon circumstances. If a chairman is capable and active, the power of the agent will not be so great as in the more common case where the chairman leans very much upon him. The agents, in short, are more nearly akin to the permanent official than to the politician. In fact they have no political aspirations for themselves, for they are not of the class from which members of Parliament are taken.

Their salaries, which vary much, run all the way from forty

pounds to four hundred pounds, with about one hundred and fifty pounds as the average, the scale of pay having risen somewhat of late years. They must be thoroughly familiar with the law of registration and election, and are commonly recruited from solicitors with a small practice, or from accountants; although many of them—perhaps nearly one half — finding that their work as agents fills their whole time, have given up all other business. The occupation tends, indeed, to become a profession by itself; one to which a man devotes his life after he has once entered it. The Liberal agents have a national association of their own, containing some two hundred and fifty members, and a few years ago, in order to maintain a higher standard, a smaller society was formed, which issues certificates of qualification. The association meets every year at the time of the meeting of the National Liberal Federation, and such of the agents attend as can afford to go, or can get their employers to pay their expenses. They meet usually about one hundred and fifty strong, and are given a breakfast at which they are addressed by the chief whip, and by the leader of the party in Parliament or some other prominent member; for their importance is now thoroughly appreciated. Thus there has arisen in English political life a class of men whose counterpart exists in no other country. They occupy in the party a position not unlike that of the non-commissioned officers in the army. Their work is essential to success, but they have no hope of promotion beyond their own grade. Their position is perfectly well understood, and they tend to surround it with professional safeguards and supports.

Liberal Agents in Scotland.

In Scotland political associations with paid agents have developed more slowly than in England; partly because a great deal of the work connected with registration, which falls upon the party agents in England, is done by the public authorities north of the Tweed; and partly because it was the old Scotch habit to have election business, like everything else, conducted for the candidate by his regular attorney. The result is that although there are many Liberal

associations in Scotland, and the agents have tended to become a class so far as to form a society among themselves, they have as a rule much less work to do than in England, and are still usually paid almost entirely out of the candidate's own pocket. Hence, when he is defeated, and gives up the fight, the constituency is apt to lose its agent altogether, and become derelict.

Conservative Local Organisations.

Contrary to the prevailing opinion, the Conservatives have, in the matter of party organisation, been more than once the first in the field; and although their machinery has neither been so democratic nor attracted so much attention as that of the Liberals, it has been on the whole more effective. The Reform Act of 1832 was no sooner passed than they began energetically to form registration societies; and the extension of the borough franchise in 1867 brought a renewed activity. They tried at once to enlist the interest, and win the support, of the workingmen who had been made voters in large numbers. At the general election of the following year they worked in vain, but in a short time they succeeded so well, that at the next election, in 1874, they obtained a majority in the House of Commons for the first time since 1841. Their victory was, indeed, commonly attributed to their superior organisation, a fact which gave a powerful incentive to the adoption by their rivals of Mr. Chamberlain's plan for a National Liberal Federation.

Their Growth after 1867.

Conservative associations of a modern type had, indeed, been formed in some places long before 1867,[1] but the Act of that year gave a new and vigorous impulse. It had

[1] In Liverpool, for example, a Conservative association originally formed in 1832, was replaced in 1848 by a new Constitutional Association upon a broader foundation. Among the objects the latter aimed "To promote by all legal means the Election of Members of Parliament for the Borough who subscribe to, and uphold the principles of the Association. . . . To promote by all legal means the Election of such Candidates for the Town Council as are Members of this Association." It contained at the outset a couple of hundred members; and it had in part a representative character with the wards as a basis, for its affairs were managed by a general committee, composed of thirty members chosen by the association, together with the chairman and secretary of each ward committee *ex officio*. (Fiftieth Rep. Liverpool Const. Assoc., 1898.)

hardly been enacted when local associations, largely composed of workingmen, sprang up, especially in the manufacturing districts of the north. Some of them were very large, the one at Bradford, for example, had, by 1872, twenty-five hundred members, and was believed to have caused the change in the politics of the place.[1] The associations increased rapidly in number. In 1871 there were two hundred and eighty-nine of them; in 1872, three hundred and forty-eight; in 1873, four hundred and seven; in 1874, four hundred and forty-seven; in 1875, four hundred and seventy-two, besides two hundred and twenty-eight branch associations; and in 1876 the number of Conservative associations of every kind in England and Wales was nearly eight hundred.[2] A considerable part of them were composed almost entirely of the artisan class. Many societies had, indeed, been organised under the name of Conservative Working Men's Associations, and these had set up a separate national union among themselves.

They Become Representative.

The associations formed at this time seem to have been voluntary bodies without a representative character, and in fact some of them were turned into clubs, in order to make them more attractive, or, according to the expression then used, to enable the members to obtain recreation as well as knowledge. But if the new Conservative associations were unlike the Birmingham Caucus, the size of their membership made them also very unlike the old registration societies. The object was not now merely to see that the faithful were properly registered, but to recruit supporters, stimulate enthusiasm, and discipline a fighting force among the masses of the people. The Conservatives are more easily led by authority than the Liberals, but the time was at hand when even among them more democratic forms were needed. After Mr. Gladstone's victory at the

[1] Speech of Mr. Taylor, in the Report of the Conference of the National Union in 1872.

[2] Reports of Council at Conferences of the National Union in 1875 and 1876.

elections of 1880 a cry was again heard that the result was due to better organisation; in this case to the Birmingham Caucus, and curiously enough to the paid agents which it employed.[1] The movement among the Conservatives towards more popular forms of party machinery began with the associations in the large towns, which felt keenly the competition of the Liberal hundreds with their closely knit fabric of representative committees based on open meetings in the wards. In these places the Conservatives copied the organisation of their rivals, and thence the fashion spread gradually over the country, receiving an additional impetus in 1887, when the National Union of Conservative Associations was itself remodelled upon a wider basis, with a series of representative councils.

Existing Conservative Local Organisations.

Like the National Liberal Federation, the Conservative central office has issued draft rules to serve as models for local associations, and they may be regarded as typical. In the case of a borough the ward polling district, or such other subdivision as shall be found convenient, is suggested as the primary unit. In each of these there is to be a branch association, composed of all the Conservatives in the district who subscribe not less than one shilling to its funds. The branch association, at a mass meeting of its members, is to elect a president, a chairman, an honorary secretary and a treasurer, a committee to manage its affairs, and representatives to the central committee for the borough, in the proportion of one for every two hundred voters upon the parliamentary register. The central association for the whole borough is to consist of the members of the various branches. It is to hold general meetings for the choice of

[1] In his remarks at the Conference in 1880, the Chairman of the Council of the National Union of Conservative Associations said: "It was not at all satisfactory to find that in a number of constituencies gentlemen who practically knew nothing of election matters undertook the management merely as a professional duty in their capacity as lawyers. . . . The Birmingham Radicals had made a point for many years of training a number of men to election work, and of giving them experience by employing them in municipal contests, and he recommended their example to the attention of the meeting." Report of the Conference of 1880.

its officers; but it is to be managed by a central committee composed of the officers and representatives of the branch associations, together with the officers of any Conservative clubs in the borough, and representatives of the local Habitations of the Primrose League. This committee, being large, is authorised to delegate any of its powers to an executive committee, and other sub-committees, subject to ratification of their acts. In order to stimulate the necessary subscriptions, the rules provide, in accordance with a common Conservative practice, that all members who contribute not less than one guinea a year shall be styled Vice-President; but in this case they are given no power, and the title is their sole reward. The model rules for the parliamentary division of a county are framed upon the same lines, except that, when possible, associations are to be organised in each parish. This involves an additional wheel in the machinery, the parochial meetings electing the committee for the polling district; and the district meeting, which consists of all the members of the parish associations, electing the central committee for the parliamentary division.

A Complex Type — Bradford.

As in the case of the Liberal party, the model rules issued by the central office are merely typical, and although the general principles of organisation in the different local bodies are the same, there are great variations in detail. The Conservative Association of Bradford may be taken as a good example of the more complex forms. Here the geographical elements are the polling district, the ward, the three parliamentary divisions, and the borough as a whole; the committees in each of these being constructed by a combination of direct election, and of representation both of the smaller units and of clubs. Thus the polling district has a committee, composed of all the members of the party therein, which elects, besides its own officers, ten representatives to the ward association — of whom three are designated to serve on the ward executive — five representatives to the council for the parliamentary division,

and two to the general council for the borough. The ward association consists of the officers and representatives of the polling districts; of representatives of any constitutional associations within the ward; and of subscribers to the amount of five shillings a year. It has an executive committee composed of the officers for the ward, and of the officers and representatives of the polling districts. The chief business of the ward association is registration, and the nomination and election of candidates for the city council, the municipal contests in Bradford being conducted on party lines. The divisional association consists of all persons who subscribe a shilling, or are enrolled as members of a polling district committee. Its business is conducted by a council containing the officers and five other members chosen at the annual mass meeting, the officers of ward and polling district associations, and representatives both from those associations, and from Conservative clubs. It acts, however, largely by means of sub-committees.

Finally the general association for the borough, with a similar qualification for membership, has, besides the ordinary officers, a long list of vice-chairmen, which includes all persons subscribing two pounds a year to its funds. The general council is composed of all these officers, of representatives from the divisions, polling districts and clubs, and in addition, of all men who pay one guinea a year — another instance of giving special privileges to the larger subscribers. The executive for the borough, styled the Finance and General Purposes Committee, consists of thirty members elected by the council; of representatives of the two leading clubs; of officers of the divisional associations; and of all the officers of the central association, including the vice-chairmen. Now, in 1900, the vice-chairmen formed a majority of the committee, and many of them must have acquired the position by reason of subscriptions to the funds. This is important not only because the management of the association as a whole is really in the hands of the General Purposes Committee, but espe-

cially because the rules require the divisional councils to invite that committee to be present for consultation at the meetings held for the selection of parliamentary candidates. The privilege so conferred is, however, merely potential, for it is almost universally the case in Conservative associations that the nomination of candidates for the House of Commons is arranged by the executive body or by a sub-committee thereof, and is simply accepted by the council.

Extent of Conservative Associations.

Conservative associations of a popular character, with subordinate branches more or less fully developed, now exist in almost every parliamentary constituency in England and Wales, and in all but a few of those in Scotland, the central office of the party being engaged in a ceaseless effort to perfect the organisation wherever it remains incomplete. Unless in a very feeble state, the associations have their professional secretaries or agents, who are paid, on the average, a little higher salaries than their Liberal rivals, and are, therefore, it is claimed, on the whole, a better grade of men. The Conservative, like the Liberal, agents have societies of their own; a mutual benevolent society, and a national association with subordinate branches which admits members only on examination.

The Paid Agents.

Similarity of Liberal and Conservative Associations.

At the present day local party organisation has been brought to a high state of efficiency in England, each party having covered almost the whole of Great Britain with a tessellated pavement of associations. These are especially complete in the boroughs, for on both sides the machinery in the rural parts of counties is less fully developed. The Conservatives have done their work a little more thoroughly than the Liberals, because with more rich men in their ranks they have larger resources in money, and can maintain paid agents in more constituencies where the chance of success is small. In general character the local associations of the two parties do not differ greatly, the most obvious contrasts being the common use of coöptation by the Liberals, and the special privileges accorded to the

larger subscribers among the Conservatives. But neither of these things is universal, and in their essential features the local organisations of both parties are framed upon the same general principles. Both of them are democratic in form, admitting all adherents of the party, or all who pay a small subscription. Both are in form representative, the affairs of the associations being managed by a series of councils and committees, composed mainly of delegates whose authority is based ultimately upon mass meetings of all the members.

CHAPTER XXVIII

ACTION OF LOCAL ORGANISATIONS

All Popular Party Organisations are Largely Shams.

ALTHOUGH the local associations purport to be democratic and representative, it would be an error to take their rules too seriously. Every voluntary political organisation contains an element of sham. Part of its stock in trade is the pretence that it is more powerful, and more widely representative, than it really is. Much of its success depends upon the old Chinese military policy of scaring the enemy by an imposing appearance before the fight begins. In ordinary times of public inattention the *vox populi* may be manufactured by a small number of persons, for the mass of the people are rarely interested until an issue has been presented to them, and the framing of that issue, which may be by far the most important step in the whole process, is often done at a meeting of half a dozen men. All the members of the party may have a right to attend that meeting, but they will not do so, or if they do the private conference will take place earlier, and the meeting will simply decide upon the acceptance of plans prepared beforehand. This is a law of human nature resulting from the fact that a large assembly can only say Yes or No. It does not mean that the desires of the public are perverted, for as a rule it has none that are strong or definite. It means that the number of people who care enough to take an active part in the formative stage is small, and in the long run they get control of the wires whether as an elected or a self-constituted committee. The sham consists in making it appear that the plan proposed expresses the preconceived wish of a large body of people.

In England the element of sham in the party organisations is as great as it is elsewhere. Although the council of a local

Local Associations Controlled by a Few Men.

association is a numerous body, and gives the appearance of a highly popular institution, the association, as a whole, usually contains among its enrolled members not more than one tenth, or at most one fifth of the voters belonging to the party; and the meetings for the election of delegates to the various councils and committees are thinly attended.[1] The organisation is, in fact, managed, as a rule, by a few men influenced to a greater or less extent by the paid agent. They are often, especially among the Liberals, tradesmen or even workingmen, who take an active interest in politics, without cherishing any parliamentary aspirations for themselves, or any political ambition unless it be for municipal office; but they like, especially if Conservatives, to take for their chairman a man of higher social position. Moreover, there seems to be little rivalry for the positions that give a control of the body. On the contrary, one is much more impressed in ordinary times by the efforts of an organising secretary, spurred on from above, to interest people in forming associations in unpromising districts, than by struggles for power in the most active associations. In England the stage at which public interest awakes is the election, the process of selecting the candidates arousing little attention. While, therefore, the franchise is wide, and the number of people who vote is very great, the nomination is really made by a body of men no larger than the voters in an ordinary borough before 1832.

Possibility of their Capture.

For Personal Motives.

One might suppose that under such conditions it would be easy for a small knot of adroit and persistent men, or even for a single resourceful manipulator, to capture a local association; but in normal times there is little incentive to do so. To explain fully why this is the case would anticipate much that remains to be said about the social and political traditions of England. Yet some of the reasons can readily be suggested. The expense of maintaining the organisation and a seat in Parliament is large, and the funds must be provided by somebody. If they are subscribed

[1] Ostrogorski, I., 332–33.

from public spirit by local men who do not want the seat themselves, those persons will naturally control the association. If they are defrayed by the candidate, or member of Parliament, then under ordinary circumstances he will control so far as his own seat is concerned; and by nursing and courting the constituency, or by his political reputation, he will probably have built up a popularity among the voters which the association cannot defy. The expense limits, therefore, the class of persons who might want to capture the association in order to control the nomination to the House of Commons; nor among those who could afford the cost is there much object in so doing. If, as in some other countries, nominations were confined by law or by custom to residents of the constituency, the rivalry between two or three aspirants for the honour might become intense; but in England the local man has little advantage over a stranger, and if the party association in his own place is unwilling to accept him, the expenditure of labour, time and money required to capture it would probably be much greater than would procure him a nomination elsewhere. Apart from the personal privilege of sitting in the House there are no strong selfish motives for getting control of a local organisation. The member of Parliament has no patronage to distribute among the men to whom he owes his seat; and although the association may lead to the town council, or even the honourable post of a justice of the peace, these are not in themselves objects of keen emulation, nor are they stepping-stones to higher things beyond.

For Political Objects.

Moreover, there is no object under ordinary circumstances in capturing a local association with a view to promoting a political policy; for the policy of the party is directed by the parliamentary leaders, in the cabinet or on the front Opposition Bench, and the local party voter has, as a rule, little sympathy for the member who weakens the party by thwarting them. There are, however, cases of deep political cleavage in the party ranks before the leaders have agreed upon a policy, when there may be the strongest incentive

to capture the local organisations in order to turn the scale. The breach among the Liberals over the first Home Rule Bill was an example of that kind, and had Mr. Gladstone given a longer premonition of his plans there would, no doubt, have been a struggle for the control of the local Liberal associations all over the country. The recent agitation for fiscal reform furnished another instance of the same kind, and a very striking one; because the Conservative leader not only took no positive stand on the question, but intimated that the party could adopt no definite policy on the subject until the next election. Under these conditions the attitude of the local Conservative organisations became of the utmost importance, and it is said that a systematic effort was made by the members of the Tariff Reform League to capture them in the interest of the reform. Certainly many of them showed that they held very definite opinions on the point, sometimes absolutely opposed to those of their sitting member.

Relation of an M.P. to his Association.

Connected with this question is another: that of the relation of a member of Parliament to the association of his constituency. In the early days of the Birmingham Caucus, shortly after it had begun to spread over England, a case of friction between a sitting member and the local association occurred, which caused much controversy and no little alarm. The caucus was the bugbear of the day, and men feared that it was about to turn the representative into a mere instrument to register the decisions of a party machine — an anxiety heightened by the fact that the new associations were in the hands of the Radical wing of the party.

The Case of Mr. Forster.

Mr. W. E. Forster, in carrying through Parliament the Education Act of 1870, had offended the more extreme Radicals, because the act did not provide that education supported by public rates should be compulsory and free, and because, in their eyes, it treated the Church schools with too much favour. Although opposed by the Radicals, he was reëlected for Bradford in 1874 by the help of Conservative votes; but in 1878 he came into collision with the

Liberal association which had just been formed there. One of its rules provided that any one proposed for nomination to Parliament must give an assurance to the general committee that he would abide by their decision in regard to the selection of the candidate. To that condition Mr. Forster refused to submit, denying the right of any association to come between him and his constituents. The association insisted upon its rule, and the controversy in Bradford provoked a discussion in the public press of the country. In the end the matter was compromised by changing the rule so as to read that such an assurance "may be required" instead of "shall be required," and Mr. Forster allowed his name to be submitted to the general committee. He had won his point, for he had been nominated without giving the assurance; but his troubles with the association were not at an end. In 1882 he resigned from Mr. Gladstone's ministry because he disapproved of the so-called Kilmainham treaty, and before long the quarrel broke out again, continuing until his death in 1886.[1] The particular provision which gave occasion to the dispute in 1878 has not proved a permanent source of difficulty, for the local associations have not been in the habit of demanding a pledge of that kind, and on the other hand the ordinary rules of fair play require that a man who allows his name to be proposed for nomination shall abide by the decision of the body to which he submits it, unless he feels that he has been unjustly treated, or unless some important question of policy is involved.

Local Pressure on Members Neither New nor Systematic

A much more important matter is the control exerted by the local party association over its representative in the House of Commons, whether by urging him to take a particular line of action, by refusing a renomination, or even by the more drastic measure of requesting his resignation in case he fails to comply with its opinion. Mr. Ostrogorski lays great stress upon the quarrel in 1885 between the Liberal association in Newcastle and Mr. Joseph Cowen, who had

[1] Ostrogorski, I., 194–203, 228–30. T. W. Reid, "Life of William Edward Forster," I., 517–20; II., 44–55, 206–14, 219–20, 501, 511, 535–36.

taken a highly independent attitude in Parliament, and had not given a consistent support to the Liberal cabinet.[1] No one would assert that an association, any more than an individual voter, is bound to support a candidate of whose views and conduct in public affairs it seriously disapproves, because he is an estimable person. Yet this was very nearly the relation of Mr. Cowen to the local association. Voters and organisations must consider the opinions as well as the personality of the candidate, and this they may well do without reducing him to a mere mouthpiece of their wishes.

But in order to determine the real import of an attempt to fetter the independence of a member of Parliament, one must consider how far it introduced a new practice into English politics, and for what purposes the claim of the association to call the member to account has been used. The question whether a member of Parliament is the agent of his constituents, morally bound to carry out their wishes, or whether he is to act solely according to his own opinion of the interest of the whole kingdom, is as old as Burke's famous discussion with the electors of Bristol. The latter view always has been, and still is, the prevailing one in theory; but the charge that the representatives have become mere delegates has been constantly cropping up. In 1849, for example, very nearly at the high-water mark of independence in Parliament, and long before the party machine had been thought of, there were complaints about the thraldom of members to their constituents.[2] A member must always have been more or less in bondage in the proprietary boroughs, and this continued in some places after the first Reform Act. As late as 1857 Sir Stafford Northcote gave up his seat for Dudley because he found that he practically represented Lord Ward.[3] The exercise of control over their member by influential constituents is, therefore, not a new thing, and the advent of the modern party asso-

[1] I., 230–40. [2] *Cf.* Jephson, "The Platform," II., 324–27.
[3] Lang, "Life of Sir Stafford Northcote," I., 141–50.

ciations has not, as men feared, developed it into a system. No doubt the Liberal caucus in the days of its youth tried to bring an organised pressure to bear upon the members,[1] but this has diminished rather than increased of late years.

The Question When a Member Ought to Resign.

The question under what circumstances a member ought to resign his seat is one which always has been, and always will be, perplexing. The doctrine that he must resign simply because the local party association asks him to do so can be confidently asserted to have made little or no headway in either of the two great parties. But that a member who has pledged himself expressly or tacitly to the support of a certain policy, and then changes his mind, may, in some cases, be bound in honour to go back to his constituents, would hardly be denied. Whether such an obligation has arisen or not must depend upon the circumstances, and upon the definiteness and importance of the pledge or understanding. When Peel decided to bring in the bill for Catholic Emancipation, to which he had previously been openly opposed, he felt constrained to resign his seat for Oxford, and was defeated for reëlection to his great grief;[2] but he did not feel under a similar duty when converted to the repeal of the Corn Laws, and was reproached on that account by Disraeli.[3]

A candidate who seeks election as a member of a party, or as a supporter of a cabinet, may well be considered to have given a general pledge to remain in the party or to support that cabinet, so that if he ceases entirely to do so he may be bound to resign. This is the form in which the question has arisen of late between members and local associations, but both obligation and actual practice are as unsettled to-day as similar questions have been in the past. When the South African War broke out a few members on the gov-

[1] *Cf.* Ostrogorski, I., 208–16, and see Ch. xxix., *infra.*

[2] Parker, "Life of Sir Robert Peel," II., 88, 101–2.

[3] "To the opinions which I have expressed in this House in favour of protection, I adhere. They sent me to this House, and if I had relinquished them, I should have relinquished my seat also." Hans. 3 Ser. LXXXIII., 112.

ernment side of the House felt unable to support the cabinet on that question. One of them, Sir Edward Clarke, who sat for Plymouth, was requested by the Conservative association of the borough to resign, and did so,[1] provoking comment favourable and otherwise. The same action was proposed in the case of Mr. (now Lord) Courtney; but he took the ground that as a Liberal Unionist he had professed to support the cabinet only on the issue of Home Rule, and had caused his independence upon other matters to be clearly understood. The motion to request his resignation was defeated in the Liberal Unionist association of his constituency,[2] but he was not renominated at the next general election. In the same Parliament Mr. (now Sir) George Doughty, who, for other reasons, crossed the floor from the Liberal to the government side, resigned his seat at Great Grimsby, and was reëlected by an increased majority. While in the following Parliament Sir Michael Foster and Mr. Winston Churchill crossed in the opposite direction, without feeling bound to resign. The former, representing a university, had, indeed, stated at the election that he was by no means a strict party man, and retained his seat after a good deal of reflection.[3] Other cases of a radical change of policy could be cited, but these are enough to show that local party organisations have not fastened on their members chains that can be used with certainty to withdraw them from their seats even in so strong a case as an open breach with their party.

Refusal to Renominate.

The refusal of support for reëlection, by men of decisive influence in a constituency, on the ground that they cannot approve the course pursued by their representative, is a thing that must always happen; although it did not take the form of withholding a nomination by a party association until bodies of that kind came into being. A refusal made by powerful individuals was not less effective because they

[1] *The Times*, Feb. 10, 1900.
[2] *Ibid.*, Feb. 23 and 26, March 9 and 15, 1900.
[3] *Ibid.*, Nov. 29, 1902, Jan. 2, 3, 6, 7, 8, 12, 13, 17, 1903.

were not styled a representative committee. But such refusals, by whomsoever made, have always been rare. Nothing, indeed, impresses a foreign observer of British politics more than the universal recognition of the claim of a sitting member to renomination. So far as his own party is concerned his tenure of office is good behaviour, and at the present day the local association very seldom fails to renominate him, save in two cases; one where his course of action has been nearly tantamount to a change of party, a going over to the enemy; the other where the party itself is deeply cleft over a vital question on which the leaders have given an uncertain sound. This last was true in the general election of 1906, when several of the local party organisations were sharply divided upon the issue of fiscal policy.

Influence of Local Associations Used for Party Cohesion.

The fear that the local associations, by dictating to their member a given course of action, by requesting his resignation, or by refusing him renomination, would degrade him to the position of the delegate of a local party machine has certainly not been realised; and it is not less instructive to observe the purposes for which such influence as they possess has actually been used. A stranger might have expected that it would be employed to promote local interests. But that has not been the case. No doubt members of Parliament, like all other popular representatives, are affected by the special interests of their constituents. On matters that touch these they must consider the welfare of their own locality. A measure like the Agricultural Rates Act of 1896, for example, which by relieving agricultural land from a part of its burden of rates, and making up the loss to the local authority from the National Treasury, changed the incidence of taxation between town and country, is sure, for local reasons, to detach some members from their regular party allegiance. But with the absence of national grants for local improvements, and with the judicial procedure for private bill legislation, the occasions, outside of the dockyard towns, where distinctly local interests come into play are not numerous. Moreover, in those cases the

member is affected by the impression his action is likely to have upon the bulk of his constituents, or by the solicitation of a body that represents special interests, rather than by pressure from his local party association. Nor does the latter, at the present day, commonly try to enforce upon him the particular views held by its managers upon matters of public policy. On the contrary such action as it takes is, and has been from the beginning, almost wholly confined to urging him to support the leaders of the party.[1]

Reasons for This.

That the local associations act, not on behalf of local interests or opinions, but for the cohesion of the party as a whole, is the result of many causes, and not least among them of the fact that the member is commonly not a resident of the place for which he stands. This makes it easy for him to look upon himself as a representative of the nation at large, rather than a delegate of a borough. It saves him also from parochial sympathies and prejudices; and above all it relieves him from the necessity, he would otherwise be under, of serving an apprenticeship in the local association, and coming into Parliament a product of the machine. Another cause is the strength of national party ties, and the greater strictness of party discipline, of which more will be said hereafter. The local associations have fallen in with this tendency, and any substantial control they have acquired over their members has been exerted to make them follow, not local wishes, but the party leaders. Bagehot has remarked somewhere that the House of Commons has been saved from becoming a collection of delegates from local constituencies by the spirit of deference; but at the present day it is due in even larger measure to the spirit of party. That spirit has prevented the predominance of local interests which is the curse of many legislative bodies.

[1] Occasionally some local interest is touched by an administrative act o order, and the member for the place exerts himself to get the grievance redressed; but except, perhaps, for asking a question in the House this hardly affects his attitude in Parliament, and the fact that he belongs to one party or the other has little or no weight with the administrative departments.

CHAPTER XXIX

THE RISE AND FALL OF THE CAUCUS

The Liberals

The Conference at Birmingham in May, 1877

NOT content with creating local associations of Liberals on a democratic basis, the Radicals at Birmingham conceived the idea of uniting them together in a great national federation which should represent the whole party throughout the kingdom. The Tories had formed, some years earlier, the National Union of Conservative Associations, and their great victory of 1874, attributed largely to better organisation, had made the time ripe for a more vigorous combination on the Liberal side. Moreover, the new associations framed on the Birmingham pattern had already shown the possibility of concerted action on national questions; for they had held simultaneously a large number of indignation meetings to denounce the Bulgarian atrocities. In May, 1877, therefore, they were invited to send delegates to a conference at Birmingham to form a national party organisation. The call for the meeting contained a clear statement of its purpose. "The essential feature of the proposed Federation," it declared, "is the principle which must henceforth govern the action of Liberals as a political party — namely, the direct participation of all members of the party in the direction, and in the selection of those particular measures of reform and of progress to which priority shall be given. This object can be secured only by the organisation of the party upon a representative basis." [1]

[1] These and the following statements are taken from the official "Proceedings attending the formation of the National Federation of Liberal Associations with Report of Conference held in Birmingham on Thursday, May 31, 1877." Since this chapter was written, "The National Liberal Federation, from its Commencement to the General Election of 1906," has been

Proceedings Thereat.

The conference was attended by delegates from ninety-five local associations, and Mr. Chamberlain, who had entered Parliament the year before, was called to the chair. In his opening speech he propounded with even greater distinctness the object of the plan. "We hope," he said, "that the time is not distant when we may see a meeting of what will be a really Liberal Parliament, outside the Imperial Legislature, and, unlike it, elected by universal suffrage, and with some regard for a fair distribution of political power." After speaking of the need of trusting to the popular initiative in framing the immediate policy of the party, he continued: "Our association will be founded on the belief that the Liberals in the country are more united than their leaders, and that they have attained a pretty clear conception of what are the changes in our Constitution which they believe will be beneficial to the country; that we may obtain their adoption by a little gentle pressure, which concerted action may enable us to bring to bear, and that in this way we may exert a great influence on the future policy of the Liberal party." In the ensuing debates the same point of view was emphasised by Mr. William Harris, the founder of the Liberal "Four Hundred" in Birmingham, who declared that "The enfranchisement of the great mass of the people in towns had given the power of controlling representation into the hands of the people, but the direction of the policy of the party, the inauguration of measures to be submitted to Parliament, and the determination of questions on which the people should be asked to agitate, had been confined to the people who had managed the Liberal party; and it was, no doubt, the dissatisfaction of the Liberals with this state of things which led to the inaction of the Liberal party at the last election. . . . To find a remedy for this state of things was the object they invited the representa-

published by Dr. Robert Spence Watson, for many years its president. But although a valuable history of the organisation, and a vigorous statement of the opinions held by its leaders, the book adds little to the information that may be gathered from other sources, for the author does not take us behind the scenes.

tives present to consider that morning. . . . Why should they not at once and for all form a federation which, by collecting together the opinions of the majority of the people in all the great centres of political activity, should be able to speak on whatever questions arose with the full authority of the national voice."

The chief business of the conference was the adoption — without amendment — of the constitution which had been prepared beforehand. Mr. Chamberlain was then elected president of the Federation with great enthusiasm. A number of vice-presidents were taken from other towns; but the treasurer and honorary secretary were also citizens of Birmingham, while Mr. Schnadhorst, the great organiser, whose hand had been at work throughout the movement, became at once the active secretary. In short, all the offices of any real importance were retained in the town that had given birth to the Federation and was to control its movements for some years to come.

Mr. Gladstone's Benediction

The makers of the Federation had taken pains to secure for their plan the sanction of Mr. Gladstone, whose name, in spite of his resignation of the Liberal leadership, carried more weight than that of any one else in the party. He was present in Birmingham on the day of the conference, and in the evening addressed a public meeting. After stating that, in point of organisation, the Conservatives had for years been ahead, and would remain ahead so long as the Liberals adhered like them to a method of arbitrary selection of the representatives of party, founded mainly upon the power of the purse, he declared that it was, in his opinion, to the honour of Birmingham that she had "held up the banner of a wider and of a holier principle"; and he rejoiced that the large attendance of representatives of constituencies showed a disposition to adopt this admirable principle. Thus he gave the new organisation his blessing and bade it God-speed.[1] The public meeting ended with a

[1] M. Ostrogorski points out very clearly how important it was for the standing of the Federation to have the real Liberal leader for its sponsor, and how this was possible, because he was not the nominal leader. I., 181.

Aim of the Federation.

resolution moved by Mr. Chamberlain, and adopted unanimously, which put into formal terms the aim of the movement, already so clearly set forth in debate. It said that, as the opinion of the people should have a full and direct expression in framing and supporting the policy of the Liberal party, this meeting heartily approves of the proposal of a Federation of Liberal Associations. In short, it was made perfectly evident at every step in the genesis of the Federation, in the call for a conference, in the speeches made thereat, and in the final resolution which closed the proceedings, that the new organisation was intended to take an important, and perhaps the leading, hand in directing the policy of the party. It was expected to be, as Mr. Chamberlain expressed it, a Liberal parliament outside the imperial legislature; not, indeed, doing the work of that body, but arranging what work it should do, or rather what work the Liberal members should bring before it, and what attitude they should assume. By this process the initiative on all the greater issues, so far as the Liberal party was concerned, would be largely transferred from the Treasury Bench to the Federation. This was, indeed, expressly stated by some of the speakers as their principal desire, and with such an avowed object it is not surprising that the new machine for the manufacture of Liberal policy should have been popularly called the Caucus.

Its Constitution.

The Council.

The constitution adopted at the conference provided for a great representative assembly of the Federation, called the Council, composed entirely of delegates from the local associations, roughly in proportion to the population of their towns or districts. If the population was under fifty thousand the association was entitled to five representatives; if between fifty and one hundred thousand to ten; and if larger still to twenty representatives. The Council was to hold an annual meeting at which the president, vice-president, treasurer, and honorary secretary, were to be elected. Special meetings could also be called by the officers. Each annual meeting was to decide upon the place at which the

next should be held, and in order to awake enthusiasm for the party all over the country it has been the habit, from that day to this, to hold the annual meeting at one after another of the chief provincial towns.

The General Committee.

The constitution set up one other body, partly but not wholly representative in character. It was called the General Committee, and consisted of the officers of the Federation; of delegates from the associations, two in number if the town or district had less than fifty thousand people, three if it had between fifty and one hundred, five if it had over one hundred thousand; and finally of not more than twenty-five additional members chosen by the Committee itself. The principal functions of the Committee were: to aid in the formation of local associations based on popular representation (no others being admitted to membership in the Federation); and to submit to the associations political questions upon which united action might be considered desirable. Unlike the Council, which was to visit different places, the General Committee was to meet in Birmingham until it decided otherwise. It was empowered to elect its own chairman, and it chose Mr. William Harris of that town, the father of the first representative association established there in 1868.

The Federation Begins Actively.

The Federation does not seem at first to have been universally attractive, even to the local associations formed after the Birmingham pattern, for it was joined at the outset by only about half as many of them as had sent delegates to the conference. But by January, 1879, when the first meeting of the Council was held at Leeds, the number had risen to one hundred and one. In its report at that meeting the General Committee showed that it had been very active. It had held no less than five sessions, and on the subject of the Eastern question it had stirred up many public meetings, and had organised a great deputation of local delegates to the Liberal leaders in the two Houses of Parliament. The Committee believed that its labours had not been fruitless, for the report said: "In regulating the action of the Liberal

party, both in and out of Parliament, in bringing about closer union between leaders and followers . . . the efforts of the Federation resulted in a great and important measure of success. . . . But for the Liberal action, largely stimulated and guided by the Federated Liberal Associations, we should unquestionably have been at war with Russia." Mr. Chamberlain in his presidential address at the meeting of the Council at Leeds, speaking of any possible attempt to avoid a programme of domestic policy, when the Liberals again came to power, remarked: "I think we shall be justified in saying to Lord Hartington[1] that concession is a virtue that gains by being reciprocal." At this time the Radicals and the Whigs, or Liberals of the older type, still formed mutually distrustful wings of the party, and the Federation was the organ of the former.

In its regular session the Council passed no vote on public policy; but, at the public meeting in the evening, resolutions were adopted against the foreign policy of the Conservative government, and in favour of peace, retrenchment, and reform. At the meeting at Darlington in the following year a similar course was followed. Clearly the Federation was taking very seriously its mission as a spur to the Liberal steed; but equally clearly it was not as yet seeking to act as a parliament outside of the imperial legislature, and the centre of gravity was at this time not in the Council, but in the General Committee.

Mr. Chamberlain Enters the Cabinet.

Before the third meeting of the Council took place in January, 1881, an event had occurred that changed essentially the attitude of the Federation. The general election of 1880 had placed the Liberals in office with Mr. Gladstone at their head, and Mr. Chamberlain had been given a seat in the cabinet. It is commonly stated that his connection with the Federation was not the cause of his selection, and this is no doubt perfectly true in the sense that it was not the

[1] Then the Liberal leader in the House of Commons. The statements of what took place at these meetings are taken from the annual reports published by the Federation.

direct reason for offering him the seat. It is, indeed, well known that the choice lay between him and Sir Charles Dilke.[1] But as Mr. Chamberlain had sat less than four years in Parliament, and had never been in the ministry, it can hardly be denied that his position at the head of the new Liberal organisation, which had attracted so much attention throughout the country, was one of the factors in the political prominence that brought him within reach of the cabinet. His new office necessarily brought a change in his relation to the Federation. It was obviously unfitting for him to remain the chief officer of a body that might be used to bring pressure to bear upon Parliament and even upon his colleagues. He therefore resigned the post of president, and was succeeded by his friend and fellow-citizen Mr. Jesse Collings;[2] but he continued until the Liberal split in 1886 to make the principal speech at the evening public meeting held in connection with the annual session of the Council.

The Federation lost none of its momentum from the change of ministry. On the contrary its activity increased, and in fact it began at this time to try its hand at framing a programme for the party in a rudimentary way. At its meeting in Birmingham in January, 1881, the Council passed, among other resolutions, one that urged upon the government the need of dealing at the earliest possible moment with various reforms, such as the amendment of the land laws, the extension of the franchise in rural districts, the redistribution of seats, and the creation of representative institutions in the counties. Similar resolutions were passed at the next annual meeting, which took place at Liverpool in October of the same year.

The Federation Begins to Act as an Outside Parliament

Meanwhile the activity of the General Committee about current political questions continued; especially in the form of inciting local associations to constrain their representa-

[1] Morley, "Life of Gladstone," II., 630. Jeyes, "Mr. Chamberlain," 85–86.

[2] Mr. Collings remained president only one year, and his successors were from other towns.

It Puts Pressure upon Members of Parliament.

tives to vote with the cabinet. The annual report to the meeting of the Council at Liverpool said that some Liberals had been disposed to propose or support amendments which struck at the vital principle of the Irish Land Bill, while others abstained from voting. The Committee had thereupon decided that its "duty could be most properly and efficiently discharged by inviting the Liberal constituencies to bring legitimate pressure to bear upon those of their representatives, who, in a great national crisis, had failed to support the government." A circular was, therefore, issued to the federated associations which excited much complaint amongst the members of Parliament, but produced the desired effect.[1] When the bill was threatened with amendments of the House of Lords a meeting of delegates was called to attack the peers. This, in the opinion of the Committee, also had an effect, and helped to pass the bill.[2]

The systematic obstruction by Mr. Parnell and his followers in the Commons, and Mr. Gladstone's plan in 1882 for a new procedure which would enable the House to cut off debate, gave a fresh occasion for bringing the pressure of the federated associations to bear. A circular was sent out, and at once a large majority of them passed resolutions in support of the government's plan.[3] The General Committee held meetings also in connection with the Irish Coercion Act of that year, and sustained the cabinet heartily, while at the same time suggesting amendments. Some of these were adopted, and as the Committee complacently remarked, "The Federation may thus claim the credit of having on the one hand strengthened and guided public opinion in support of measures deemed necessary for the

[1] Rep. of 1881, *cf.* Ostrogorski, I., 209–11.

[2] Political education had always been one of the functions of the Federation, and it was in the habit of distributing party literature. In 1881 it sent out copies of two speeches by Mr. Chamberlain. These were, in fact, the only speeches it circulated that year.

[3] Rep. of meeting of General Committee, March 6, 1882; Ann. Rep. to Council, December, 1882, *cf.* Ostrogorski, I., 213–15.

maintenance of order; and on the other of having sought to mitigate the severity of the proposed enactments." [1]

It Calls a General Conference of the Party.

In 1883 the Federation took up energetically the extension of the franchise in the counties. It called a great conference of delegates at Leeds; acting on this occasion in coöperation with the National Reform Union of Manchester and the London and Counties Liberal Union, two rival organisations, which were, however, more local and less aggressive, and waned slowly before the greater vigour of the Federation.[2] The delegates met two thousand strong, representing more than five hundred associations, and adopted resolutions declaring that it was the duty of the government at the next session of Parliament to introduce bills to extend the county franchise and redistribute seats. Another conference in Scotland passed similar votes. "Taken together," the General Committee say in their annual report, "they represent the great bulk of the Liberal party throughout Great Britain . . . and . . . it is not too much to expect that such an expression of opinion will exercise decisive weight with the Members of the Government in the arrangement of their measures."

Its Claims at This Time.

These examples show the attitude and the activity of the Federation during the first Liberal ministry that held office after its formation. It claimed to represent, or perhaps one ought to say it claimed that it would when fully developed represent and that it could immediately evoke, the opinion of the whole Liberal party in the country. It was, therefore, convinced that it ought to exert a great influence upon the cabinet in the framing of measures; and it believed that it did so. There is no need of reviewing further the history of the Federation during this period, for its position remained unchanged until Mr. Gladstone brought in his Home Rule Bill in 1886. But on two points the action of the Council is noteworthy in connection with its subsequent career. The resolutions passed at the annual

[1] Ann. Rep. to Council, December, 1882.
[2] *Cf.* Ostrogorski, I., 218–25.

meetings began to cover a wider field. This was especially true after the downfall of the Liberal government, in 1885, when they assumed the proportions of a full programme of internal reforms.[1] Then again amendments to the resolutions offered were moved from the floor. In 1883, for example, an amendment in favour of woman suffrage was carried; and in 1885 another demanding local option in regulating the sale of liquor.

The Struggle over Home Rule.

Mr. Gladstone's ministry having resigned in consequence of a defeat on the budget, the Conservatives came to power in June, 1885, and the general election at the end of the year, with the political upheavals to which it gave rise, proved a turning-point in the history of the Caucus. The election left both parties without a working majority; for the Conservatives and Home Rulers together almost exactly balanced the Liberals. In January the Conservatives were beaten on the address with the help of Irish votes, and Mr. Gladstone, returning to office, prepared a bill for a separate Parliament in Ireland. Some members of the moderate wing of the party had already left him during the debate on the address; and in March, while the Home Rule Bill and its complement, the Irish Land Bill, were under discussion in the cabinet, several of the ministers, including Mr. Chamberlain, resigned, one of their chief stumbling blocks being the exclusion of Irish representatives from the House of Commons. A struggle began at once for the control of the National Liberal Federation. On one side stood Mr. Gladstone with his cabinet, the official leaders of the party; on the other Mr. Chamberlain, hitherto the hero and idol of the Caucus, which he had nurtured and made great, which had treated him as its special representative in the cabinet, and had passed each year a vote to welcome him when he came to make his speech. He

[1] The resolutions adopted by the Council in October, 1885, related to primogeniture and entail, tenure and compensation of tenants, registration of land titles, enfranchisement of leaseholders, compulsory purchase of land for labourers, public elementary schools, election of rural governing bodies, and disestablishment of the Church.

had declared in Parliament not long before that he was not the Caucus,[1] but it certainly expressed his views, and he fought its battles. During the late election he had made the country ring with appeals for the reforms advocated in its programme, especially the demand for labourers' allotments, embodied in the cry for "three acres and a cow." The Caucus was the weapon of the Radical wing of the party, while he was the greatest Radical champion, and although Kitson, the president of the Federation, was against him, the majority of the officers were on his side, among them William Harris, the founder of popular party organisation in Birmingham and still the chairman of the General Committee.

Mr. Chamberlain is Defeated in the Council;

On April 6, two days before Mr. Gladstone brought in the Home Rule Bill, the officers sent a circular to the federated associations asking them to consider the proposals of the government, as soon as they were made known, with a view to an expression of opinion by the Liberal party. A special meeting of the Council was then summoned to meet in London on May 15. There Mr. Harris moved a resolution drawn up by the officers, and expressing Mr. Chamberlain's ideas. It approved of giving the people of Ireland a large control over their own affairs by means of a legislative assembly; but, while declaring the confidence of the Council in Mr. Gladstone, requested him to amend his bill by retaining the Irish representatives at Westminster. The resolution was met by an amendment moved by the followers of the Prime Minister, commending the Home Rule Bill, thanking him for it, and assuring him of support in the present crisis. After a long and eager discussion the amendment was carried by an overwhelming majority.

and Withdraws from the Federation.

The result, so far as the Federation was concerned, was decisive. Six members of the General Committee, including Mr. Harris,[2] thereupon resigned; and several influential

[1] Hans. 3 Ser. CCXCIII., 573 (Oct. 30, 1884).

[2] Mr. Harris came back a few years later and served on the executive body.

public men, among them Mr. Chamberlain, withdrew from the organisation. But the mass of the people think on broad lines, delight in strong contrasts easily understood, and have little sympathy with a half-way group that stands between the two opposing parties in the state. Hence like the Peelites in 1846, and the Free Trade Conservatives in 1905, the Liberal Unionists in 1886 were a body in which the members of Parliament were many and their following in the country comparatively few. The personal secessions from the Federation were not numerous, and not a single local association left the fold.[1] But the break soon became incurable. The opponents of the Home Rule Bill ceased to be regarded by their former companions in arms as members of the party, and were constrained to leave the Liberal associations;[2] while Mr. Chamberlain in conjunction not only with his Radical friends, but with all the Liberals who could not follow Mr. Gladstone's Irish policy, including even Lord Hartington and the Whigs, founded a new organisation upon the old model, called the Liberal Unionist Association.

New Position of the Federation.

The National Liberal Federation did not save Mr. Gladstone and his adherents from defeat at the general election of 1886; but they had obtained control of the organisation, and must find out what to do with it. If a power, it had also been a source of anxiety, and under the wrong management it might again be used to put pressure on the members of Parliament, and even on the leaders themselves. It was useful and must be cajoled; but it was also dangerous and must be kept in check. Like a colt, it must be treated kindly, but must be broken to harness, and above all the reins must not be allowed to get into strange hands lest it learn bad tricks.

Removal to London.

Obviously the offices of the Federation could remain no longer at Birmingham, because in spite of the loss of his organisation Mr. Chamberlain still controlled the city so completely that his candidates carried every seat there at

[1] Rep. of the Gen. Com. in 1886. [2] *Cf.* Ostrogorski, I., 293, 307–9.

the election of 1886. The offices were, therefore, moved to London, where they were established in the same building with the Liberal Central Association — the body that acts in conjunction with the party whips — and what is more, M. Schnadhorst, the paid secretary of the Federation, who had taken Mr. Gladstone's side at the time of the split, was also appointed honorary secretary of the Association. This arrangement, which lasted until he retired in 1894, and has continued ever since under his successor Mr. Hudson, was not mentioned at the time in the printed reports of the General Committee, but its effects in bringing the leaders of the party into close touch with the management of the Federation can readily be imagined. Another link of the same kind was soon made. The General Committee had always been in the habit of distributing political literature, and in 1887 a publication department was created under the direction of a joint committee consisting of two representatives of the Central Association, and two of the Federation.[1] All these changes brought the Federation nearer to the party chiefs, and gave it also a more national stamp.

The Federation Broadened.

At the same time the constitution was slightly modified. The principal changes adopted in 1887 were: making the representation on the Council more nearly proportional to population; giving to each association for a whole constituency three votes in the General Committee, and to all others one vote apiece without regard to size; and lastly providing for district federations, especially for Wales, the Home Counties and London, which should be represented as separate organisations upon the governing bodies. The object of these changes appears to have been to make the Federation attractive to all Liberals throughout the country, for it had hitherto been regarded as preëminently an instrument of the Radical wing of the party, and many local associations had held aloof. The managers now tried to induce them to join in order to make the Federation as

[1] Rep. of 1887, pp. 28, 29, 40.

fully representative of the whole party as possible. In this they were successful in a high degree, as may be seen from the fact that the federated associations, which numbered in 1886, before the split over Home Rule, only two hundred and fifty-five, rose in two years to seven hundred and sixteen.[1] In carrying out this object there was no need of opening the door to local associations not framed upon a popular and representative basis, because societies of that kind had already been entirely superseded.[2]

Relation to the Party Leaders.

When the Federation, breaking away from Mr. Chamberlain, chose the side of Mr. Gladstone, the leaders of the party took it at once under their patronage, and began to show a keen interest in its proceedings. Not only did Mr. Gladstone address almost every year a great public meeting held in the evening during the session of the Council, as Mr. Chamberlain had been in the habit of doing before 1886; but other leaders of the party attended the meetings of the Council itself, and former cabinet ministers made speeches there in moving, seconding or supporting the resolutions. This practice magnified the apparent importance of the Federation, and lasted until the Liberals came into office again in 1892.

Resolutions of the Council.

Meanwhile the Council, meeting as before in one after another of the great provincial towns, continued to adopt a series of resolutions setting forth the policy of the Liberal party. The embarrassment that might come from this in the future was not fully perceived at the time, and there was at first no attempt to discourage it. In fact a statement of the objects of the Federation published with the new rules in 1887 repeated the words originally written ten years earlier: "the essential feature of the Federation is the participation of all members of the party in the formation and direction of its policy, and in the selection of those particular measures of reform and progress to which priority shall be given."[3] The resolutions became, in fact, more and more comprehensive, because the Council was naturally

[1] Rep. of 1888, p. 14. [2] *Ibid.*, p. 12. [3] *Ibid.*, 1887, p. 39.

in the habit each year of reaffirming its previous votes about internal reforms, and adding new ones, the older expressions of opinion being after a while condensed into what was known as the "omnibus resolution." At the meeting held at Nottingham in 1887 a series of resolutions was adopted condemning coercion, urging Home Rule, the principle of one man one vote, registration reform, disestablishment of the Church in Wales, and the need of reform in the land laws, in labourers' allotments, county government, local option, London municipal government, and free education. The resolutions were talked about as a programme for the party, and the managers began to see that a danger was involved, but apparently as yet only the danger of splitting the party. The General Committee, therefore, in its next annual report, after speaking of the influence exerted by the Federation, remarked: "A force so great and so overwhelming requires to be directed with the utmost care and judgment, and your Committee asks for the support of the Federated Associations in applying it only to questions of a practical character, with regard to which there is a general consensus of opinion in the party. . . . Much has been said and written of the Nottingham programme. Neither the resolutions submitted at Nottingham, nor the resolutions which are submitted at the present meetings of the Council, are intended to constitute a political programme. The resolutions which were submitted last year, and those which will be submitted this year, refer to subjects upon which there is a general consensus of opinion in the Liberal ranks. Every question added which is not thus approved tends to divide and to weaken the party." [1]

The Nottingham Programme

The principle that resolutions on which there was not a general consensus of opinion ought not to be adopted by the Council was given a very definite application at that meeting. A motion stood upon the agenda in favour of one man one vote, and the payment out of the public rates of returning officers' expenses. The president, Sir James

Amendments Ruled Out of Order.

[1] Rep. of 1888, pp. 13, 14.

Kitson, stated that a delegate wished to add the question of the payment of members, but he must rule that it should be sent up by one of the federated associations with a request for inclusion in next year's programme. As the agenda was prepared by the General Committee, the action of the president was in effect a ruling that a question not placed by that committee upon the paper could not be proposed from the floor. A little later in the meeting he took the same position when a member wanted to bring forward the grievances of the Scotch crofters.[1]

The ruling was a complete innovation, for amendments of a similar character had not only been adopted by the Council in former years, in 1883 and 1885, for example; but in the great struggle for the control of the Federation in 1886, the defeat of Mr. Chamberlain had been brought about by an amendment in favour of the Home Rule Bill, which was carried in the Council by a large majority. The conditions, however, had changed. A freedom of making motions that was harmless when the Federation contained only one extreme wing of the Liberals, became a very different thing when it comprised all the elements in their ranks, and the ruling was now essential if motions were not to be made that might divide or weaken the party. It was repeated the next year when a delegate sought to add to the omnibus resolution a rider on the question of the eight-hour day;[2] and it was confirmed by the new president, Dr. Spence Watson, in 1891.[3] In fact, Dr. Watson in his opening address at the meeting explained that in his opinion the exclusion of any alteration or amendment of the resolutions submitted to the Council arose from the very nature of the case;[4] and thereafter the rule was firmly established in the proceedings of the body.

[1] Rep. of 1888, pp. 109, 112. [2] *Ibid.*, 1889, pp. 128–29.
[3] *Ibid.*, 1891, pp. 87, 96.
[4] *Ibid.*, p. 42. On other occasions he repeated the statement, adding that the practice saved the Council the risk from which the Union of Conservative Associations had suffered, of having alterations made suddenly under the magic strains of eloquence. Rep. of 1895, p. 58; 1896, p. 57.

Three matters, however, deserve a brief notice in this connection. First, the rule has never been applied to the General Committee. At its meetings amendments may be freely moved and carried; but then the General Committee has power merely to discuss public questions, not to express definitely the opinion of the party.[1] Second, the rule in the Council would seem to apply only to amendments that may provoke a difference of opinion. At the meeting of 1889, for example, immediately after the eight-hour day amendment had been ruled out of order, another declaring "that Welsh disestablishment and disendowment should be dealt with as soon as Irish Home Rule is attained," was adopted, without objection from the president, with the unanimous approval of the meeting.[2] Third, the rule in the Council applies only to resolutions affecting the Liberal programme. It has not been applied to such a matter as a revision of the rules of the Federation, and in 1896 and 1897 several motions to amend proposals relating to the rules were made, and one of them, which occasioned a count of votes, was carried by a narrow majority.[3]

Resolutions and Speakers Cut and Dried.

With no questions submitted, save those on which there was believed to be a general consensus of opinion in the Liberal ranks, and no amendments allowed, serious dissent about the adoption of the resolutions never occurred. Nor was there much real discussion. In accordance with a common English custom an agenda paper was distributed before the meeting, which contained not only a list of the resolutions to be brought forward, but also the names of the proposer, the seconder, and sometimes a third or fourth man who would support each of them. Now these persons were expected to make speeches long enough to fill together nearly the whole of the sitting; and hence the other delegates, although at liberty to take part, did not often feel inclined

[1] As late as 1894 the General Committee declared that the Registration Bill of the Liberal government was not satisfactory and urged its amendment. Rep. of 1894.

[2] Rep. of 1889, p. 129.

[3] *Ibid.*, 1896, pp. 73–78; Rep. of 1897, pp. 77–80.

to make, upon an unopposed resolution, remarks that in the presence of one or two thousand people must be in the nature of an harangue. As a rule, therefore, the proceedings followed closely the agenda; a resolution was proposed, seconded, and supported as had been arranged, and was then carried unanimously.

Under such conditions the duty of preparing the resolutions for the Council, by drawing up the agenda, was of prime importance. If the Federation was no longer used, as in the days when it was guided from Birmingham, to press forward a policy upon which all Liberals were not agreed, it might now be supposed to speak with a more authoritative voice on behalf of the whole party; and while its votes were passed by common consent, the right to select the questions which should be presented for general acceptance conferred no small power. Nominally this function was intrusted to the General Committee, but that body, which was far too large for such a task, had been in the habit of delegating the preliminary work to a few of its own members under the title of the General Purposes Committee,[1] and in 1890 amendments to the rules of the Federation were proposed chiefly in order to confer the power definitely upon the smaller body. They provided that the General Purposes Committee should consist of the officers of the Federation, and of not more than twenty other members elected by the General Committee; that it should prepare the business for meetings of the Council, and generally carry on the affairs of the Federation. Although the change involved a concentration of power it was adopted at the time without opposition,[2] but was the cause of heart-burning at a later date.

The Process of Preparing Resolutions.

In his opening speech the next year the President explained the functions of the Council. "From the earliest time," he said, "it has been the practice and the rule of these meetings to make certain declarations. Some of us think those declarations are a little too numerous already. Some of

[1] Rep. of 1890, p. 29.

[2] *Ibid.*, pp. 6–8, 58.

us are afraid that the declarations partake somewhat of the character of a programme. Some of us look back to the good old time when we took up one burning question and fought it, and fought it until we carried it into law. In the first place this is a business meeting for the purpose of receiving the report. In the second place it has come to be a meeting for making certain declarations. It is not — and I wish to be particularly clear upon this point — for the discussion of subjects. But you will say 'The National Liberal Federation not to discuss subjects!' Certainly it can, and certainly it does. It does not discuss them at the annual meeting. It does discuss them at the General Committee meetings, and at the conferences held from time to time.[1] Great dissatisfaction is found with the fact that there are rules affecting the Federation. No federation, no society of any kind, could ever exist without rules. There must be absolute rules of procedure, and one of the rules of the proceedings of these meetings has been that beforehand the General Purposes Committee sends out to every association which is federated — between 800 and 900 — to ascertain what the wishes of that association may be. From the replies it receives, from prior resolutions, from the business which has been transacted at the General Committee meetings of the Federation and at the conferences, the General Purposes Committee prepares the resolutions which are submitted, and those resolutions are either accepted or rejected. They are not altered or amended. That arises from the very nature of the case. . . . It is absolutely impossible to discuss questions in which great numbers of men take a great interest and hold different views in a gathering of this character. The first discussion must take place in the individual associations. The individual associations must send up their delegates to our General Committee meetings and conferences, and the matter must be threshed out there, and there must be

[1] These were special conferences of delegates from the associations of the whole, or of some part, of the country. They were not infrequently held.

clear evidence as to the question having received general acceptance before it comes to a meeting of this kind." Then, after referring to the question of an eight-hour day, about which the associations showed a wide difference of opinion, he added: "Do you think we wish to stifle discussion? Why, discussion is the very life-blood of Liberalism. We long for discussion of all questions. We wish to have further discussion of this question, a discussion searching out to the very bottom of the matter. We don't want a hap-hazard discussion in a great meeting where it is absolutely impossible that men can give their real opinions, can argue the question out, and go down to the roots of the matter."[1]

Contrast with the Original Plan.

It would be difficult to express more forcibly the change that had come over the Federation, in the functions, and still more in the aims, of the Council meetings. According to the original plan the Federation was to be a true Liberal parliament outside the imperial legislature; and it was a far cry from that conception to a body voting, without amendment or real debate, ratifications of measures prearranged by a small committee, and found by previous inquiry to express the universal sentiment of the party. If the Federation, with its General Purposes Committee, its General Committee and its Council, still remained a shadow of a Liberal parliament, it was one somewhat after the model of Napoleon's legislature with its Council of State, its Tribunate, and its Legislative Assembly, where one body prepared the laws, another debated, and a third voted them.[2]

The Newcastle Programme.

As the General Purposes Committee placed upon the agenda for the Council only resolutions on which the party was believed to be united, it is not strange that they were

[1] Rep. for 1891, pp. 42–44.

[2] "Now whilst the Council of the Federation declares what the party as a whole desires, the General Committee attempts by preliminary discussion to arrive at what the desires are. As the General Committee examines but does not declare, the freest and fullest discussion takes place at its meetings." Rep. of 1898, p. 42.

invariably carried, and almost always with substantial unanimity. The surprising thing is the number of questions on which the whole body of Liberals appeared to agree; but it must be remembered that the party was in Opposition, so that neither the leaders, nor any one else, could make any effort at present to put into effect the resolutions that had been voted. They expressed merely aspirations, and the impulse of every one was to assent to any proposal for a reform to which he had no fixed objection. This was the more true because all assemblies of that kind are attended most largely by the ardent or advanced members of the organisation, the more moderate elements caring far less to be present. The resolutions, therefore, increased until they reached high-water mark at the very meeting of 1891,[1] where Dr. Spence Watson in his opening address said he thought them too numerous already. From the town where the Council met that year the resolutions became known as the "Newcastle Programme." At the evening meeting Mr. Gladstone took up, one after another, most of the subjects included therein, and dwelt upon the importance of each of them; but before doing so he remarked that when the Liberals came to power they would want the additional virtue of patience, because with the surfeit of work to be done it would be difficult to choose proper subjects of immediate attention.[2]

The virtue of patience was needed very soon. The Council had met at Newcastle in October, 1891. Owing to a change in the date of meeting, it was not called together again until January, 1893; and in the meanwhile a Liberal ministry had come into office. The Council took up no new questions, and passed a single modest resolution relating to the party policy, saying "That this Council confirms the series of Resolutions known as 'the Newcastle Programme,' and confidently expects that Mr. Gladstone's government will promptly introduce into the House of Commons Bills embodying Reforms which have been de-

[1] Rep. of 1891, pp. 6–8. [2] *Ibid.*, p. 101.

clared again and again by this Council to be essential to the welfare of the people of the United Kingdom." [1] As the reforms contained in the Newcastle Programme could hardly have been embodied in statutes in less than ten years by a cabinet with a large and homogeneous majority, the demand that bills upon all those subjects should be promptly introduced by a ministry with a very narrow majority, and depending for its life upon the support of Irish votes, showed the need of patience rather than its presence. In fact most of the speakers at the meeting emphasised the reforms in which they were especially interested, and the rest urged the importance of the whole array.

Its Effects.

The wealth of the programme speedily caused embarrassment to the leaders of the party. Home Rule, as every one admitted, was entitled to the first place; but after that had been put on the shelf by the House of Lords difficulties arose, for the Liberals in the House of Commons were not all of one mind. Some of them were more interested in one reform, some in another, and each had an equal right to feel that his subject had been accepted as an essential part of the Liberal policy deserving immediate attention. People said that the traditional division into parties was passing away, that the parties were falling apart into groups, like those in continental legislatures. The assertion was frequently repeated, although it was disproved by the constancy with which the ministers were supported by their followers in a House of Commons where the defection of a dozen members at any moment would have turned the scale. Month after month the whips came regularly to the table with their slight margin of Liberal votes. In fact the government defeats on minor matters were less frequent than in Mr. Gladstone's previous administration; and no defeat on a question of political importance occurred until June, 1895, when it was accomplished by the trick of bringing Conservatives secretly into the House through the terrace. After that defeat the ministers resigned, not because their fol-

[1] Rep. of 1892, p. 6.

lowers had ceased to vote with them, but because they were weary of a hopeless struggle. Nevertheless the Newcastle Programme with its magnificent promises had been a source of weakness to them. It restrained their freedom of action, and forced their hands. In short, it hampered their initiative in party policy, and it caused disappointment among their followers.

Lord Rosebery's Criticism.

Lord Rosebery, who had succeeded Mr. Gladstone as Prime Minister in 1894, felt the bad effects of the Newcastle Programme. At the public meeting, held when the Council met in January, 1895, he spoke of the function of the Federation in threshing out the issues lying before the party, and that of the cabinet in winnowing them, selecting from a vast field the bills to be brought forward in the session. "Now, this programme," he went on, "as it stands now, without any addition, would require many energetic years in which a strong Government, supported by a united and powerful Liberal Party, would have to do their best to carry into effect (*sic*). But what is sometimes forgotten is this — that we cannot pass all the measures of this programme simultaneously. . . . Whilst this process of winnowing is going on, all Cabinet Ministers are subject to a bombardment of correspondence . . . by appeals, some of them menacing, some of them coaxing and cajoling, but all of them extremely earnest, and praying that the particular hobby of the writer shall be made the first Government Bill. . . . Any delay in pushing forward each measure that has been recorded in what is called the Newcastle programme implies, we are told, the alienation of all the earnest and thoughtful members of the Liberal Party — in fact, the backbone of the Liberal Party. And I have come to the conclusion that the Liberal Party is extremely rich in backbones." [1]

At the public meeting in the following year, after the fall of his government, he spoke even more plainly. He said there had been complaint that officialdom had crept into the National Liberal Federation. His own experience was that

[1] Rep. of 1895, pp. 111–13.

it played a very subordinate part there, and if he had a secret hope on the subject, it was that officialdom might have a little more to do with the organisation. "I remember two occasions on which the National Liberal Federation took the bit between its teeth and, certainly uninspired by officialdom, took very remarkable action. The first occasion was when it made at Newcastle a programme, a very celebrated expression of faith which, I confess, was in my opinion too long for practical purposes."[1] Later in alluding to the fall of his ministry he asked: "Why did it fall? It fell because, with a chivalrous sense of honour too rare in politics, and with inadequate means, it determined to fulfil all the pledges that it had given in Opposition. It had, I think, given too many pledges — partly owing to you, Dr. Spence Watson. It had, I think, assumed too many responsibilities, it had taken a burden too heavy for its back, or the back of any Government or any Parliament, to bear."[2]

The Programme Cut Down after 1894.

The lesson of the Newcastle Programme had not been in vain. Already in 1895 the "omnibus resolution," which, by way of comprehensive reform, threatened the interests of the landlord, the manufacturer, the mine owner, the Church, and the House of Lords, had been omitted, although most of the matters covered by it were made the subject of special votes. The next year the programme was left out altogether. Apart from resolutions criticising the Conservative government for its foreign policy in Armenia and Egypt, and stating on what terms an education bill ought to be based, the only vote dealing with the policy of the Liberal party declared simply, "That this Council reaffirms its adherence to the principles for which the Federation has always contended," a confession of faith not likely to cause acute discomfort to a future cabinet. As the years went by the pressure for specific reforms was too strong to be resisted, and resolutions dealing with them

[1] The other occasion was when it held a conference on the subject of the House of Lords.

[2] Rep. of 1896, pp. 109, 119

were adopted; but they have never again reached anything resembling the range, the well-nigh revolutionary proportions, or the suicidal capacity, of the Newcastle Programme.

Complaints that the Whips Control the Federation.

A political, like a military, defeat is apt to cause mutual recriminations. If Lord Rosebery lamented that the leaders in Parliament had been overburdened by the programme of the Federation, there were Radicals aggrieved by the control which, in their opinion, the leaders, acting through the whips and the Liberal Central Association, had acquired over the Federation. The complaints were so loud, and so much discussed in the press, that Dr. Spence Watson felt constrained to deal with them in his presidential address. The charge was that by having the same quarters, and the same secretary (Mr. Hudson) the Federation had been fused with and merged into the Central Association. This, he insisted, was absolutely incorrect, the two organisations having duties which lay quite apart one from the other; and he defended the existing connection between them as a good business arrangement, which had resulted in much better work.[1] The charge in another form was that the General Purposes Committee, in preparing the resolutions for the Council, was swayed by the whips by means of Mr. Hudson. Of this he said: "We are told that the resolutions are not genuine; that they are forced upon us by the Whips through the secretary, Mr. Hudson. No man admires the work of Mr. Hudson more than I do, because no man sees more of his work. I think Mr. Hudson, if he were so disposed, which I imagine is very far from his disposition, would find it very difficult to impose the will of the Whips upon us. We are not exactly the men to be dealt with in that way. Now, gentlemen, I wish to put this quite plainly. There is not a grain of truth in it. I have written down these words because I wish to be precise. I assert that not a single resolution has ever, at all events since 1886, been suggested, hinted at, drawn, altered, or manipulated by any Whip or leader whatsoever." [2]

[1] Rep. of 1896, pp. 58–60.

[2] *Ibid.*, p. 58.

Power Concentrated in an Executive Committee in 1896.

Although the statement was no doubt true, and would perhaps continue to be true, the efficiency of the party might well depend upon having the resolutions of the Council prepared by a small body of men of proved discretion, who would insert nothing embarrassing to the leaders. In view of the experience with the Newcastle Programme it might be wise to take even greater care in the selection of men who could understand the situation of the front bench, and to increase their powers. At a meeting of the General Committee, at Leeds, in December, 1895, a vote was passed instructing the General Purposes Committee "to consider whether the machinery of the Federation can be made more representative and democratic." Democracy is a principle in whose name strange things are done; and in accordance with this vote a plan was reported for a revision of the rules, in which the principal changes proposed would strengthen the hands of the General Purposes Committee, renamed the Executive Committee. That body was directed to invite expressions of opinion from the federated associations about the subjects to be brought before the Council; was confirmed in its power to frame the resolutions to be submitted;[1] and was given authority to decide any questions of procedure that might arise during the sessions of the Council.[2] In order, as the General Committee said in their report, to "afford an opportunity for the ventilation of views upon subjects not dealt with in the resolutions," it was provided that upon the motion to adopt the annual report "the Council shall be open for the free discussion of any matter affecting the policy and principles of the Liberal party." A mere chance to talk supplies a useful safety valve, without doing harm; and in this case the talk could not be followed by an expression of opinion on the part of the Council, for no vote would be in order save to accept, or reject, or refer back, the annual report.[3] The discussion would be like that

[1] The agenda was to be sent to the associations in advance of the meeting.

[2] In 1902 the Committee itself proposed at the Council meeting, and carried a substitute for its own resolution. Rep. of 1902, p. 70.

[3] It was so ruled. Rep. of 1898, p. 60.

in the House of Commons on the motion to adjourn over Easter.

Hitherto the action of the General Committee had been entirely free, but the revised rules intrusted the Executive Committee with the duty of preparing the business for that body as well as for the Council; not, indeed, in the same absolute way, for any federated association could propose an amendment or further resolution, provided they gave notice thereof to the secretary five days, at least, before the meeting. Moreover the Executive Committee was given power to nominate its own members. Every association had also a right to make nominations, but these were not, like those of the Executive Committee, circulated among the local associations before the meeting.[1]

Members of Parliament Excluded Therefrom.

Finally, members of Parliament were declared ineligible to the Executive Committee. To a question why they were excluded, the chairman of the General Committee "replied that it had always been considered desirable that when a man became a Member of Parliament he should retire from the Executive, and that they should be free from all thought of outside influence."[2] The answer does not make it perfectly clear whether the object of the provision was to free the members of Parliament from the influence of the Committee, or the Committee from the influence of the members. Both results were in fact attained. The members of the House were left to the sole tutelage of the whips, so far as the Federation was concerned, for since 1886 it had ceased altogether from the practice of stirring up local asso-

[1] The text of this provision was: "One month, at least, prior to the meeting of the General Committee at which the Executive Committee is to be elected, a list of those Members of the existing Executive Committee who offer themselves for reëlection, together with the names of any others nominated by the Executive Committee, shall be sent to each of the Federated Associations. Federated Associations desiring to nominate other Candidates for the Executive Committee shall send in formal nominations to the Secretary of the Federation at least fourteen days before the meeting. In the event of nominations exceeding the number to be elected, a ballot will be taken at the meeting of the General Committee."

[2] Rep. of 1896, p. 77.

ciations to bring pressure to bear upon their representatives;[1] and, on the other hand, the new rule removed any opportunity for a member of Parliament to use, or appear to use, the Committee for his own political advancement.[2] Lord Randolph Churchill's doings in the National Union of Conservative Associations—to be related in the next chapter—was still fresh in men's minds. It is, indeed, a striking fact that from the time when the Liberals came to power in 1892 the leaders ceased for some years to attend even the sittings of the Council, which were left wholly to the lesser lights.[3] One of the chiefs spoke at a public evening meeting; but they all stayed away from the Council itself where business was transacted, thus depriving it of the weight that came from having its words sanctioned by the presence of the real leaders of the party.

Opposition to the Changes.

During the debate on the new rules in the Council,[4] a number of amendments were moved, which aimed at preventing the concentration of power in the hands of the General and Executive Committees. Of this nature were motions that the Executive Committee should be chosen by the Council; that amendments to the agenda and further resolutions might be proposed at Council meetings; that the agenda should be prepared by the General, instead of the Executive, Committee; and that the Executive Committee should not have power to nominate its own members. As these amendments struck at the very root of the revision, none of them were carried, and in fact the new rules were adopted without substantial alteration.

[1] This appears from the annual reports of the General Committee, which did, however, continue for some years to send circulars to local associations urging them to pass resolutions of a general character.

[2] At the same time all the Liberal members of Parliament were made *ex officio* members of the Council, where their presence was expected to exert a restraining influence upon the extreme and impracticable elements in the party.

[3] After the party had been out of power many years this rule was not rigidly observed. In 1903, for example, Sir Henry Campbell-Bannerman spoke in support of one of the resolutions. Rep. of 1903, p. 75.

[4] Rep. of 1896, pp. 71–78.

Renewed Discussion in 1897 and 1898.

At the meeting in the following year, 1897, the same questions were raised again. Changes in the rules were proposed, similar in character to the amendments rejected in 1896, and brought forward with the same object. They were urged on the ground that the control ought to be taken from the hands of the few and placed in the hands of the many, that at present "the whole thing was wire-pulled from the top," that the Liberal party had got out of touch with the Labour party, and that the associations had not so much opportunity as they ought to have to bring matters before the Council. In the end the proposals were shelved by being referred to the Executive Committee.[1] The next report of the General Committee treated the matter with great frankness: "The Annual Council Meeting," we read, "must either be (*a*) an open conference for the debate of multitudinous questions about which the party has come to no agreement, or (*b*) an Assembly of a declaratory character to emphasise matters upon which the party are agreed. The former function is impossible, if merely because the Council may consist of more than a thousand persons sitting for less than a dozen hours. . . . It is inevitable (and there is no reason why it should not be frankly recognised) that the business of the Council Meeting should be more or less 'cut and dried' beforehand. . . . These resolutions are intended to inform the party leaders of the subjects in dealing with which they may rely upon the support of the party as a whole. The Federation does not interfere with the time or order in which questions should be taken up. That is the province of the leaders of the party." [2]

The report went on to discuss the occult question: Who was responsible for the Newcastle Programme? "The Federation," it said, "had steadily refused to formulate a

[1] Rep. of 1897, pp. 75–80. One of the arguments in favour of the election of the Executive Committee by the General Committee was that the latter was more fairly representative than the Council, because the delegates to the Council from the part of the country where the meeting was held attended in greater numbers than from more distant places.

[2] *Ibid.*, 1898, pp. 39, 41.

political programme. . . . How then did the Newcastle Programme come into existence? No Newcastle Programme was ever framed by the Federation or by any one connected with it." The Council merely passed a number of resolutions urging reforms, all of which had been demanded at previous meetings. "But the resolutions of this particular meeting received a special significance from the fact that . . . to the surprise of every one, our great leader, Mr. Gladstone . . . took up *seriatim* the resolutions which had been passed at the Council Meetings and gave them the weight of his direct approval. The newspapers at once spoke of the Newcastle Programme." [1] Poor Mr. Gladstone! It seems that by taking the action of the Federation too seriously, he became quite unconsciously [2] the unfortunate author of the Newcastle Programme.

A few members protested vehemently in favour of the changes they had proposed in the rules, but the report of the General Committee was adopted with only two dissentients; and thus the opposition to the concentration of power in the hands of a small executive body was laid to rest. But it must be observed that if the direction of the Federation is in the hands of a few men, their power is exerted, not to incite, but to restrain the Council, not to use it to carry through a policy of their own, but to prevent it from doing something indiscreet.

Discussion in the Press.

The ill-starred Newcastle Programme, and the concentration of authority within the Liberal organisation to which it gave rise, provoked discussion in the press as well as in the Federation itself, with the contending views painted in higher colours. One can find articles written to prove that the political machine had taken the place of public opinion;[3] or that the Federation acted at the instigation of the whips, was as much subject to the Liberal Government as the Board of Trade, and was used by the leaders to register opinions upon questions on which the party itself was

[1] Rep. of 1898, pp. 40–41. [2] *Ibid.*, pp. 54–55
[3] "The Ministry of the Masses," *Edinburgh Review*, July, 1894

divided;[1] or finally that the Federation had become an anti-democratic juggernaut, which elevated the aristocratic elements in the party and killed enthusiasm.[2] Opinions of this kind are exaggerated, springing from dread of the organisation, or disappointment at the results achieved.

Another writer tells us more calmly that the evolution of Liberal policy goes through three stages: first, a free discussion in the General Committee, which shows the trend if not the balance of opinion, but which does not add articles to the party programme, because the Federation does not act by majorities, and all the associations may not have sent delegates to the committee; second, the adoption by the Council, without amendment or real debate, of resolutions which have been found to command the assent of practically the whole party; and third, the unfettered selection by the Liberal cabinet from among those resolutions, of the measures they think it best to bring before Parliament.[3] The writer states correctly the theory of the matter; and sees clearly that although the General Committee is allowed to discuss very freely and to act by majority, its decisions are not considered authoritative, while the Council which speaks in the name of the party is not permitted to deal at all with questions that might arouse a serious difference of opinion.

The General Committee and Council at Work.

The actual working of the National Liberal Federation is well illustrated by its action in regard to the Boer War, a matter on which the Liberals were divided. At a meeting of the General Committee in December, 1899, a resolution was proposed, saying that there was much to deplore in the conduct of negotiations with President Kruger, and that in making peace due regard must be paid to the wishes of all sections of the South African population; but avoiding carefully any statement whether the war was inevitable or not. A second

Example in the Boer War.

[1] "The Reorganisation of Liberalism," James Annand, *New Review*, November, 1895.

[2] "The Future of Liberalism," *Fortnightly Review*, January, 1898.

[3] "The National Liberal Federation," *Contemporary Review*, February, 1898.

clause simply praised the soldiers and expressed sympathy with the sufferers. A motion was made to add somewhat incongruously in the clause a recital that "a wise statesmanship could and should have avoided" the war, and it was carried by 114 votes to 94.[1] But this was treated merely as the opinion of the persons present, not as binding the party; and in preparing the agenda for the meeting of the Council in the following March, the Executive Committee, wishing to avoid points of difference, omitted the words that had been inserted. The principal resolution relating to the war was introduced in the Council by a speech in which the mover virtually threw the blame for the war upon the Boers. This raised a storm of dissent, and speakers took the other side with no mild language. But an amendment could not be moved, and after the most contradictory opinions had been uttered the resolution was adopted unanimously.[2] The members of the General Committee, therefore, expressed their views individually and collectively, but ineffectually, while in the larger assembly the members could personally declare their opinions, but the Council as a whole could not. It could only pass a resolution carefully drawn so as to conceal the differences of opinion that existed.

Selection of the Party Leader.

At one time the Federation was tempted to lay its hand on a matter even more delicate than the formulation of party policy, and that is the selection of the party leader. On Dec. 13, 1898, Sir William Harcourt's resignation of the Liberal leadership in the House of Commons was made public, and it so happened that the General Committee met three days later. There a motion was made requesting him to reconsider his position, and another "That, in the opinion of this meeting, the question of the leadership of the Liberal party should be taken into immediate consideration, and calls upon the leaders to close up their ranks." In deference, however, to a strong feeling that the motions did not come within the functions of the Federation they were with-

[1] Rep. of 1900, p. 15.

[2] *Ibid.*, pp. 63–70.

drawn;[1] and before the Council met the Liberals in the House of Commons had chosen Sir Henry Campbell-Bannerman as their leader. The decision in the Committee was wise, for the success of parliamentary government depends upon the fact that the leaders in the Commons possess the influence required to command the support of their followers, and this can be secured only by having them selected, formally or informally, by the members of the party in Parliament. A man chosen by a popular body outside might well be quite unable to lead the House.

The Federation is Muzzled.

The National Liberal Federation has now had a history of thirty years, and it has proved very different from what it was originally intended to be. As an organisation it is highly useful to the party in many ways. It does valuable work in promoting local organisation, in distributing party literature, in collecting information, and in keeping the Liberal workers throughout the country alert. Even the Council does good service in arousing enthusiasm, and preserving an appearance of participation by the rank and file in the management of party affairs. But as a Liberal parliament outside of the imperial legislature, which directs the policy of the party, the Federation is a sham. The General Committee can debate and act freely, but the lack of a sufficiently representative character, and the almost invariable absence of all the leading Liberals,[2] deprives its deliberations of any real might; while the Council is effectively muzzled. Its resolutions are carefully prepared so as to express no opinions on which every one does not agree, and hence they declare nothing that every one did not know already. Nevertheless it involves some dangers. Popular excitement on some question might force the Executive Committee to bring in unwise resolutions; the Council itself might become roused, and by a change in the rules tear off the muzzle; and it is not inconceivable that a man

[1] Rep. of 1899, pp. 21, 24.

[2] The exceptions are rare. In 1903, however, Mr. Bryce moved a resolution on education. Rep. of 1903, p. 20.

with popular talents and a demagogic temperament might capture the organisation, and use it to combat the leaders and thrust himself into power.

To a person unfamiliar with the hopes and fears inspired by the Caucus a generation ago, a discussion of this length about a body that wields very little real power may seem like a long chapter on the snakes in Iceland; but there are a couple of good reasons for treating the subject thoroughly. The very fact that the Caucus was regarded as the coming form of democracy, destined to undermine the older political institutions of the nation, makes its subsequent history important, for it shows that among a highly practical people democratic theories about direct expression of the popular will yield to the exigencies of actual public life. The story of the Caucus illustrates also the central conception of this book, that in the English parliamentary system leadership must be in the hands of the parliamentary leaders. We have seen this principle at work in the House of Commons, and a popular organisation, in attempting to direct party policy, strove against it in vain. That the result is not an accident may be seen from the experience of the Conservative party, where a similar movement, not less dramatic at times, has travelled through different paths to the same end.

CHAPTER XXX

THE RISE AND FALL OF THE CAUCUS

The Conservatives

Formation of the National Union of Conservative Associations.

TEN years before the National Liberal Federation was founded, a Tory organisation, called the National Union of Conservative and Constitutional Associations, had been started upon similar lines. After some preliminary meetings it was definitely formed at a conference in November, 1867, where delegates from fifty-four towns and the University of London were present.[1] Here a constitution was adopted, which, with the amendments made in the first few years, contained the following provisions. Any Conservative or Constitutional association might be admitted to the Union on payment of one guinea a year, and would then be entitled to send two delegates to the Conference. This last body was the great representative assembly of the Union. Like the Council of the National Liberal Federation it was to meet in a different place each year,[2] and was composed of the two delegates from each subscribing association, of the officers of the Union, and of such honorary members as were also members of the Council. The Council was the executive body of the Union, and consisted of the president, treasurer, and trustees; of twenty-four members elected by

[1] The reports of the first three Conferences are found only in the manuscript minutes of proceedings. Reports of the fourth to the ninth Conference inclusive were printed. Since that time only the reports of the Council and the programmes for the Conferences have been published.

[2] In the original constitution it was to meet every third year in London, but this was changed in 1868. It will be observed that the Conference corresponds to the Council of the National Liberal Federation; and the Council, although a much smaller body, to the General Committee of the Federation.

the Conference; of not more than twenty nominated by the principal provincial associations; and of such members of the Consultative Committee as were willing to act, the last being a body formed out of vice-presidents and honorary members to which difficult questions could be referred.

In order to attract money, it was provided that any one subscribing a guinea a year should be an honorary member of the Union, that the subscribers of five guineas a year should be vice-presidents with seats *ex officio* in the Conference, and that any one subscribing twenty guineas should be a vice-president for life. In order to attract titles provision was made for the election of a patron and ten vice-patrons of the Union. These methods of procuring the countenance of rank and wealth were not tried in vain. In 1869 Lord Derby became the patron of the Union, and on his death he was succeeded by the Duke of Richmond. In the report of the Council in 1872 we read, "the total number of vice-presidents is now 365, among whom are 66 noblemen, and 143 past and present members of the House of Commons." The honorary members at the same time numbered 219.

Objects of the Union.

Although the National Union was much older than the National Liberal Federation, it attracted far less notice. During its earlier years, indeed, the Conferences were very small affairs. At the second Conference, for example, in 1868, there were present only three officers and four delegates, and in the two following years respectively only thirty-six and thirty-five persons all told. The chief reason, however, why the Union made so much less stir than the Federation, lies in the nature of the work it undertook to do. The Federation was a weapon of militant radicalism, designed to carry into effect an aggressive public policy, and was considered a serious menace to old institutions; but the Union was intended merely as an instrument for helping the Conservative party to win victories at the elections. Its object was to strengthen the hands of local associations; while its work consisted chiefly in helping to form such

associations, and in giving information.[1] For this purpose, it kept a register of all Conservative associations, so that it could act as their London agency; it offered suggestions, was ready to give advice, printed and distributed pamphlets, and arranged for speeches and lectures.[2] The Union made no claim to direct the policy of the party. At the meeting in 1867, when the Constitution was adopted, one speaker said that "unless the Union was managed by the leaders of the Conservative party it would have no force and no effect whatever," and this was given as a reason for making the honorary members eligible to the Council.[3] The matter was put in a nutshell some years later by Mr. Cecil Raikes, one of the founders, when he said that "the Union had been organised rather as what he might call a handmaid to the party, than to usurp the functions of party leadership."[4] In fact, for the first nine years the Conference passed no resolutions of a political character at all, and those which it adopted during the decade that followed expressed little more than confidence in the leaders of the party.

It did not Try to Guide Party Policy.

Mr. (afterwards Sir John) Gorst, who had presided at the first Conference in 1867, was appointed in 1870 principal agent of the party — that is, the head, under the whips, of the Conservative Central Office — and in order to connect the new representative organisation with the old centralised one he was made the next year honorary secretary of the Union.[5] The policy was soon carried farther. In their report for 1872 the Council said: "Since the last conference, an arrangement has been made by which the work of the Union has been more closely incorporated with that of the party generally, and its offices have been removed to the head-quarters of the party in Parliament Street. This arrange-

Its Relation to the Party Leaders.

[1] *Cf.* Statement made at first Conference, 1868, and Rep. of the Council at the Conference of 1875.

[2] *Cf.* Leaflet No. 1, 1876.

[3] Manuscript minutes, p. 57.

[4] Rep. of the Conference of 1873.

[5] Rep. of the Council for 1871. He held the post of principal agent through the general election of 1874 which his efforts helped much to win. In 1881 he took the position again, and at that time was made a vice-chairman of the Council so as to bring the Union into coöperation with the whips' office. (Rep. of the Council for 1881.)

ment has been productive of the most satisfactory results, not only by having brought the Union into more direct contact with the leaders of the party, and thereby enhancing the value of its operations, but also by greatly reducing its working expenses." At an early stage of its existence, therefore, the Union took for its honorary secretary an officer responsible through the whips to the leaders of the party in Parliament, and this was openly proclaimed an advantage. No secret was made of the fact that the Union was expected to follow, not to lead; for at the banquet held in connection with the Conference that same year the Earl of Shrewsbury, in proposing a toast to the Army, said, "The duty of a soldier is obedience, and discipline is the great characteristic of the army and navy, and I may also say that in a like manner it is characteristic of the Conservative Union."

The Conference of 1872.

The Conference held in 1872 seems to have been the first that attracted much public attention, and it was notable for two things. Mr. Disraeli had insisted that the working classes were by nature conservative, and that the extension of the franchise would bring an accession of strength to his party. His opponents, assuming that Liberalism was a corollary of democracy, had laughed at the idea; and although his followers had expended much energy in organising Conservative workingmen's associations, the results of the election of 1868 appeared to have disproved his theory. But the meeting in 1872 showed that among the artisans Tories were by no means rare. In connection with the Conference, which was held in London, a great banquet was given at the Crystal Palace, and this caused Mr. Cecil Raikes, the chairman of the Council, to remark: "a few years ago" everybody said "that if a Conservative workingman could be found he ought to be put in a glass case. We have found for him the largest glass case in England to-night." The banquet was also notable for a speech by Mr. Disraeli, which was ridiculed at the time on account of the characteristically grandiloquent phrase, "You have nothing to trust to but your own energy and the sublime instinct

of an ancient people." [1] Nevertheless it was a remarkable speech, for it laid down the main principles of Tory policy for the next thirty years and more, a feat that is probably without parallel in modern history.[2]

Complaints that the Union was not Representative.

Although the Conservative party carried the country at the general election of 1874, and Mr. Disraeli, for the first time, came into power with a majority at his back, popular interest in the Union grew slowly. As late as 1878 not more than two hundred and sixty-six out of the nine hundred and fifty Conservative associations were affiliated to the Union, and delegates from only forty-seven of them attended the Conference.[3] Yet complaints were already heard that foreshadowed the strife to come in the future. In 1876 Mr. Gorst, the honorary secretary, but no longer the principal agent of the party, proposed to reorganise the Council by making it more representative in character.[4] His suggestion was opposed by Mr. Raikes, and was voted down. The next year, however, he returned to the subject, moving first to abolish the Consultative Committee altogether, and then that its members should not sit on the Council. He withdrew these motions on the understanding that the Council would consider the matter; and although other persons also urged that the Council should be strengthened by becoming a more representative body, the only action taken at this meeting was to provide that the Council itself should not propose for reëlection more than two thirds of its retiring members.

[1] Punch made the expression the subject of a cartoon.

[2] Curiously enough he suggested one principle which has only recently been taken up seriously by Conservative leaders. Among the three great objects of the party he placed the upholding of the empire, and in speaking of this he said that when self-government was given to the colonies, it ought to have been with provisions for an imperial tariff, common defence, and some representative council in London.

[3] Rep. of Conference of 1878. But many of the local associations may have been branches with less than one hundred members, and therefore not admissible under the rules.

[4] The need of a reorganisation of the party on a more popular basis was afterward urged by Mr. Gorst and Sir Henry Drummond Wolff in an article entitled "The State of the Opposition," *Fortnightly Review*, November, 1882.

Changes in its Rules.

Mr. Gorst resigned his position as honorary secretary in November, and in spite of continued criticism of the Council on the ground that it was to a great extent self-elected,[1] nothing was done to change its composition until after the Liberals had won the general election of 1880. Under the pressure of the defeat the Conference of that year adopted a new set of rules drawn up by the Council itself. They provided that the associations should be represented at the Conference in proportion to their size; that the members of the Consultative Committee should no longer sit on the Council; and that instead of the twenty members of the Council nominated by the principal associations, who were said to attend little, the Council itself should add twelve persons to its number. This plan of coöptation was destined to open the door for a most audacious attempt to capture the organisation.

The Fourth Party.

The chance for a new man to distinguish himself in Parliament comes in Opposition. As Mr. Winston Churchill remarks in the life of his father: "There is small scope for a supporter of a Government. The Whips do not want speeches, but votes. The Ministers regard an oration in their praise or defence as only one degree less tiresome than an attack." [2] But in the Opposition free lances are applauded if they assault the Treasury Bench from any quarter. Moreover, although the game of politics in England is played under a conventional code of rules which are scrupulously observed, a skilful player can achieve a rapid prominence by violating the rules boldly, if he has great ability, high social rank, or wins the ear of the people. These truths were turned to advantage in the Parliament which sat from 1880 to 1885 by Lord Randolph Churchill and his small band of friends, who, in contradistinction to the Liberals, Conservatives, and Irish Home Rulers, came to be known as the Fourth Party. The general election of 1880 had brought Mr. Gladstone back to power, and in

[1] *E.g.*, by Dr. Evans. Rep. of Conference of 1878.
[2] "Lord Randolph Churchill," I., 69.

the course of this administration he was obliged to face unexpectedly many delicate and difficult questions. The Conservative Opposition was led by Sir Stafford Northcote, a man of decorous rather than combative temperament, who had been Mr. Gladstone's private secretary in early life, and was not inclined to carry parliamentary contests to extremes. The conditions were favourable to a small body of members, something between knights errant and banditti, who fought as guerillas under the Conservative banner, but attacked on occasion their own leaders with magnanimous impartiality.

Its Origin and Policy

The Fourth Party began in one of those accidents that happen in irregular warfare.[1] The Bradlaugh case, involving the thorny question whether a professed atheist could qualify in the House of Commons by affirmation or oath, vexed the whole life of the Parliament, and brought together in the opening days Sir Henry Wolff, Mr. John Gorst, Lord Randolph Churchill, and Mr. Arthur Balfour. This case, in which they played successfully upon the feelings of the House, made them at once conspicuous, and taught them the value of concerted action. With a short interruption, caused by a difference of opinion about the Irish Coercion Bill of 1881, the friends acted in harmony for four years. They had no formal programme, and no one of them was recognised as the chief, but it was understood that they should defend one another when attacked, and they were in the habit of dining together to arrange a common plan of action. They took a vigorous part in all debates, criticised the government unsparingly, and under the pretence of assisting to perfect its measures, spun out the discussions and obstructed progress. They showed great skill in baiting

[1] The best accounts of the Fourth Party are to be found in Winston Churchill's "Life of Lord Randolph Churchill," I., Ch. iii., and in three articles by Harold E. Gorst entitled "The Story of the Fourth Party" in the *Nineteenth Century* for November, and December, 1902 and January, 1903, afterward republished as a book. These accounts are written by the sons of two of the members of the group, and may be taken to express the views of those two members.

Mr. Gladstone, and when delay was their object, in drawing him by turns into long explanations in response to plausible questions about the clauses of his bills. Their aggressiveness, and their profession of popular principles under the name of Tory democracy, spread their reputation in the country, and gave them an importance out of proportion to their number or their direct influence in the House of Commons.

Its Attacks on the Tory Leaders.

Throughout its career the Fourth Party assumed to be independent of the regular Conservative leaders in the House. At times it went much farther, accusing them of indecision and an inability to lead, which disorganised the party. Lord Beaconsfield's death in 1881 left the Conservatives with no single recognised leader; for Lord Salisbury was chosen by the Tory peers leader of the House of Lords; and Sir Stafford Northcote remained, as he had been in Lord Beaconsfield's last years, the leader in the House of Commons, neither of them being regarded as superior in authority to the other. The members of the Fourth Party asserted that this dual leadership, by causing uncertainty in the counsels of the party, was disastrous; and they soon settled upon Sir Stafford Northcote as the object of their censure. The attack upon him culminated in April, 1883, when his selection to unveil the statue of Lord Beaconsfield seemed to indicate that he was to be the future premier whenever the Conservatives might come to power. On that occasion Lord Randolph Churchill published a couple of letters in *The Times* in which he spoke of Sir Stafford in strong terms, and declared that Lord Salisbury was the only man capable of taking the lead. These he followed up by an article in the *Fortnightly Review* for May, entitled "Elijah's Mantle," describing the decay of the Conservative party, setting forth his ideas of Tory democracy as a means of regeneration, designating Lord Salisbury as the proper heir to Lord Beaconsfield's mantle, but revealing at the same time his confidence in his own fitness for command. His quarrel with his chief in the House of Commons did not im-

Council," they went on, "will, no doubt, perceive that for the proper discharge of these duties, now imposed upon them by the leaders of the party, the provision of considerable funds becomes a matter of first-class necessity." They ought, therefore, to claim a definite sum out of the funds in the hands of the Central Committee, from which they had as yet received only irregular and uncertain contributions. The report recommended that a small executive committee be appointed with directions to carry out Lord Salisbury's scheme, to incur liability for urgent expenditure, to enter into communication with all the local associations in order to learn about their candidates, elections, funds, and agents, and to invite from those associations the "fullest and freest communication of all information bearing upon political and parliamentary questions as viewed in the localities." All questions involving large and general principles of party policy were to be reserved for the determination of the Council, but the chairman and vice-chairman were to be authorised to perform all ordinary executive acts between meetings. It is needless to point out the imitation of the National Liberal Federation as it worked at that time, or the great power that these changes would throw into the hands of Lord Randolph Churchill.

Further Correspondence.

Lord Salisbury was informed of the report, and hastened to remove any misapprehension. In a letter to Lord Randolph, on March 6, he said he had not contemplated that the Union should in any way take the place of the Central Committee, and he hoped there was no chance of their paths crossing. Lord Randolph replied that he feared that hope might be disappointed. "In a struggle between a popular body and a close corporation, the latter, I am happy to say, in these days goes to the wall." [1] A correspondence took place also between Lord Salisbury and Lord Percy, in the course of which the former wrote: "the Central Committee represents the leaders, by whom

[1] These two letters do not appear in the report of the Council, but are quoted by Mr. Winston Churchill.

it is appointed. So far as those duties are concerned which attach, and always have attached, to the leaders of the party, and depend on their sanction, these can only be delegated to gentlemen whom we appoint." He said that in his opinion no change in this respect would be desirable, and that he could not think the adoption of the report would be expedient. Lord Percy laid the letter before the Council, and moved that the report should not be accepted, but his motion was rejected by a vote of nineteen to fourteen; the report was then adopted, and the committee was instructed to confer with the leaders of the party as to the best way of carrying out the plans foreshadowed in their letters.

The temper of the leaders may be imagined, and may well excuse a step, which was, nevertheless, a mistake, because it offended members of the Council of local importance,[1] who had probably intended no disrespect to Lord Salisbury. Three days after the adoption of the report a curt letter came from Mr. Bartley, the principal agent of the party, giving the National Union notice to quit the offices occupied jointly with the Central Committee. Lord Randolph Churchill displayed no open resentment at this; but treating the objections of the leaders as if they applied only to the details of the report, he proposed to modify it in part, especially by a change which showed that the general questions of policy reserved for the Council were to relate not to public affairs, but merely to party organisation.

Lord Salisbury's Letter of April 1, 1884.

He held also a conference with Lord Salisbury, which was again an occasion for misunderstanding; for on April 1 that nobleman wrote that as he and Sir Stafford Northcote had already expressed their disapproval of the report, they could not consider it further in the absence of explanation, but that some passages had been explained at the conference, and it had been made clear that the National Union did not intend to trench on the province of the Central Committee, or take any course on political questions not acceptable to the leaders of the party. It was very satisfactory, the let-

[1] Winston Churchill, "Lord Randolph Churchill," I., 318.

ter said, to find the Council agreeing that matters hitherto disposed of by the leaders and the whips must remain in their hands, including the expenditure of the funds standing in the name of the Central Committee. Lord Salisbury then went on to describe the proper functions of the Council in language evidently intended to cover the same ground as his letter of Feb. 29.[1] He added that to insure complete unity of action it was desirable to have the whips sit *ex officio* on the Council, and be present at the meetings of all committees; and he ended by saying that under the circumstances a separation of establishments would not be necessary.

Lord Randolph's Caustic Reply.

Lord Randolph called at once a meeting of the committee on organisation, and although only three members besides himself were present, he sent to Lord Salisbury, in the name of the committee, a letter unique in English political annals. The document is long, but the following extracts may serve to show its meaning and portray its tone: "It is quite clear to us," it said, "that . . . we have hopelessly failed to convey to your mind anything like an appreciation, either of the significance of the movement which the National Union commenced at Birmingham in October last, or of the unfortunate effect which a neglect or a repression of that movement by the leaders of the party would have upon the Conservative cause. The resolution of the Conference at Birmingham . . . signified that the old methods of party

[1] "It appears to us that these objects may be defined to be the same as those for which the Associations themselves are working. The chief object for which the Associations exist is to keep alive and extend Conservative convictions, and so to increase the number of Conservative voters. This is done by acting on opinion through various channels; by the establishment of clubs, by holding meetings, by securing the assistance of speakers and lecturers, and by the circulation of printed matter in defence of Conservative opinions, by collecting the facts required for the use of Conservative speakers and writers, and by the invigoration of the local press.

"In all these efforts it is the function of the Council of the National Union to aid, stimulate and guide the Associations it represents.

"Much valuable work may also be done through the Associations, by watching the registration and, at election time, by providing volunteer canvassers and volunteer conveyance."

This letter and the reply to it are printed in full in Winston Churchill's "Lord Randolph Churchill," I., App. II.

organisation, namely, the control of parliamentary elections, by the leader, the whip, the paid agent drawing their resources from secret funds, which were suitable to the manipulation of the ten pound householder were utterly obsolete and would not secure the confidence of the masses of the people who were enfranchised by Mr. Disraeli's Reform Bill. . . . The delegates at the Conference were evidently of opinion that . . . the organisation of the party would have to become an imitation . . . of the Birmingham Caucus. The Caucus may be, perhaps, a name of evil sound and omen in the ears of aristocratic and privileged classes, but it is undeniably the only form of political organisation which can collect, guide, and control for common objects, large masses of electors. . . . It appeared at first, from a letter which we had the honour of receiving from you on the 29th February, that your Lordship and Sir Stafford Northcote entered fully and sympathetically into the wishes of the Council.[1] . . . The Council, however, committed the serious error of imagining that your Lordship and Sir Stafford Northcote were in earnest, in wishing them to become a real source of usefulness to the party. . . . The Council have been rudely undeceived . . . the precise language of your former letter of the 29th February is totally abandoned, and refuge taken in vague, foggy, and utterly intangible suggestions. Finally, in order that the Council of the National Union may be completely and for ever reduced to its ancient condition of dependence upon, and servility to certain irresponsible persons who find favour in your eyes, you demand that the whips of the party, . . . should sit *ex officio* on the Council. . . . It may be that the powerful and secret influences which have hitherto been unsuccessfully at work on the Council with the knowledge and consent of your Lordship and Sir Stafford Northcote, may at

[1] Here follows a rehearsal of the functions Lord Salisbury had ascribed to the Council, which are pronounced to have been clear, definite, and satisfactory. The assurance with which they are assumed to mean something quite different from what his Lordship must have intended is one of the marvellous things about the affair.

last be effectual in reducing the National Union to its former make-believe and impotent condition; in that case we shall know what steps to take to clear ourselves of all responsibility for the failure of an attempt to avert the misfortunes and reverses which will, we are certain, under the present effete system of wire-pulling and secret organisation, overtake and attend the Conservative party at a general election."

A copy of the letter was read to the Council the next day, when a motion was made regretting its disrespectful and improper tone, and declining to accept any responsibility for it. This was defeated by a vote of nineteen to thirteen, and then an executive committee was appointed to carry out the recommendations in the report.

Negotiations Reopened,

It might be supposed that after receiving a letter of that kind Lord Salisbury would have had no more to do with Lord Randolph Churchill forever, and would have refused to hold further communication with the Council; but politics makes strange bedfellows, especially in a parliamentary form of government. Lord Salisbury could not afford to alienate a body which represented a considerable fraction of the Conservatives in the country; while it would have been folly for Lord Randolph to burn the bridges behind him. Negotiations were, therefore, opened through a third person, very nearly on the lines of Lord Salisbury's letter of April 1, except that three thousand pounds a year were to be paid to the National Union; and an understanding was nearly reached, when an event took place which broke it off for a time.

and Interrupted.

Mr. J. M. Maclean, one of Lord Randolph's supporters in the Council, whose object had been simply to supplant Sir Stafford Northcote, became alarmed lest the movement might result in supplanting Lord Salisbury also, or might cause a real breach in the party. Not being aware of the pending negotiations, he moved at a meeting of the Council on May 2 the appointment of a committee to confer with the Central Committee in order to secure harmony and united

action.[1] Although letters were read showing that steps already taken would probably lead to an understanding, and although Lord Randolph told Mr. Maclean that he should regard the motion as one of want of confidence, the latter persisted, and, as several of Lord Randolph's friends were absent, carried his proposal by a vote of seventeen to thirteen. Lord Randolph then resigned as chairman of the Council; but his popularity in the country was great, and there was a widespread feeling of regret at a quarrel among influential members of the party. A conference of chairmen of the Conservative associations in eight of the chief provincial towns acted as peacemaker. It drew up a memorandum regretting the lack of harmony, suggested an arrangement very similar to that almost reached in the negotiations recently broken off, and submitted that if these suggestions were accepted Lord Randolph should withdraw his resignation.

A Truce Effected.

The memorandum was laid before the Council at a meeting on May 16, and Lord Randolph was unanimously re-elected chairman. At the same meeting, the committee, composed mainly of Lord Randolph's opponents, which had been appointed to confer with the Central Committee, reported that they had effected an agreement. Again the terms were almost precisely the ones indicated by Lord Salisbury in his letter of April 1, save for the payment of three thousand pounds a year to the Union.[2] Coming from this

[1] Maclean's own account of the matter is given in his "Recollections of Westminster and India," 68–79.

[2] The terms were briefly as follows: —

1. The two bodies to occupy the same offices.

2. The Union to attend to the formation and maintenance of local associations. The agents of the Central Committee to assist in this and report to the Union through the principal agent.

3. Parliamentary elections, the recommendation of candidates, and questions of general policy, to be outside the province of the Union.

4. The Union to publish literature as it may desire, and to provide speakers.

5. The Council to help the party leaders to organise public meetings, and circulate pamphlets.

6. The Central Committee to allot a sum of money to be paid annually to the Union.

source it is not surprising that they were unsatisfactory to Lord Randolph's friends, and they were referred back for further consideration to the committee reënforced by new members. A month elapsed, and at a meeting on June 13 the committee reported that they had suggested some changes, which the leaders would not accept.[1] The matter was again recommitted, but finally on June 27, the committee reported that they had made an agreement on the lines of the earlier plan, and this was adopted as it stood.

Except for a moderate annual subsidy, Lord Randolph Churchill had really obtained nothing for the National Union.[2] Personally he had become the leading figure of what purported to be the great representative organisation of the party, for the chairman of the Council was the most important officer in the Union; but the position of the organisation itself remained substantially unchanged. The agreement that had been reached was, however, merely a truce, and both sides canvassed eagerly the delegates to the approaching Conference, each hoping for a decisive victory that would give undisputed control of the Council.

The Conference of the National Union for 1884 met at Sheffield on July 23. It was unusually well attended, with some four hundred and fifty delegates in the hall, representing two hundred and thirty-four associations. In his speech on presenting the report of the Council Lord Randolph de- The Conference at Sheffield.

7. The chief whip and the principal agent to have seats on the Council, and the chief whip to sit on all committees.

8. If the chief whip thinks any action of the Union inconsistent with the welfare of party, the matter to be referred to the leaders for decision.

9. The leaders of the party to appoint one or two members of the Council on the Central Committee.

It may be observed that this arrangement gave the leaders of the party more formal power of control over the Union than ever.

[1] The changes were the omission of Nos. 1 and 9; and that the chief whip should have merely a right to be present at all the committees, instead of being a member of them.

[2] Mr. Winston Churchill (I., 324, 331) and Mr. Ostrogorski attribute a larger measure of success to Lord Randolph, but that opinion seems to me inconsistent with the correspondence, the reports of the committees and the proceedings of the Council, which are set forth in the printed report laid before the next Conference.

scribed the dissensions that had occurred, and begged the delegates to elect members who would support one side or the other. His object, he said, had been to establish a bona fide popular organisation, bringing its influence to bear right up to the centre of affairs, so that the Tory party might be a self-governing party; but as yet this had been successfully thwarted by those who possessed influence. The speech was followed by a fierce debate, ending, of course, in the adoption of the report. The real interest of the meeting centred in the ballot for the Council, and before that began a change was made in the method of election. Instead of choosing twenty-four members, and allowing them to add twelve more to their number, a resolution was adopted, whereby all thirty-six were elected directly by the Conference, thus making the ballot there conclusive upon the complexion of the Council. Judging from the action of the Conference on certain minor questions of organisation, and from the size of Lord Randolph's personal vote for the Council, he had the sympathy of a majority of the delegates; but they did not, as he had hoped, divide on a sharp line for one side or the other. Lord Randolph himself received 346 votes, while the next highest on the list, although his supporter, received only 298. When, however, the result was announced, his friends formed only a small majority on the Council.

Lord Randolph Makes his Peace and Abandons the Union.

Lord Randolph Churchill had won a victory; but a victory that was little better than a drawn battle. His own reëlection as chairman was assured, and for the moment he controlled the Council, but his control would be neither undisputed nor certain to endure. He could use the Union in a way that would be highly uncomfortable for Lord Salisbury, but he had not captured it so completely that he could do with it as he pleased. Again it was for the interest of both sides to make peace, and the negotiations were completed in a few days. The Central Committee was in form abolished; the Primrose League, recently founded by the Fourth Party, was recognised by the leaders; Lord Randolph withdrew

from the chairmanship of the Council; and mutual confidence and harmony of action were restored. These appear to have been the nominal conditions.[1] Whether the real terms were ever definitely stated, or were merely left in the shape of a tacit understanding, it is at present impossible to say. The practical upshot was that the Fourth Party was broken up; Lord Randolph abandoned the National Union to its fate, acted in concert with the parliamentary leaders, and was given a seat in the cabinet when the Conservatives next came to power. The reconciliation was sealed by a dinner given by Lord Salisbury to the Council of the Union.

His Later Career.

The subsequent career of Lord Randolph Churchill may be told in a few words. In the reorganisation of the Union he took no part, and, indeed, he ceased before long to attend the meetings of the Council altogether. But when Lord Salisbury formed a ministry in June, 1885, he was offered the post of Secretary of State for India, with a seat in the cabinet. He made it a condition of acceptance that Sir Stafford Northcote should cease to lead in the House of Commons. Lord Salisbury, who had been hitherto loyal to Sir Stafford, hesitated, but at last the old statesman was transferred to the oblivion of the House of Lords, and Sir Michael Hicks-Beach took his place as leader of the Commons. Lord Randolph's success had been extraordinary, but he was destined to reach even greater eminence in the near future. The Home Rule Bill, in the session of 1886, gave him a chance to increase his reputation as a debater, and when the general elections following the rejection of that bill brought a new Conservative government into office, he was given the position of Chancellor of the Exchequer with the leadership of the House of Commons. His popularity in the country was greater than ever; his appearance on the platform at a Conference of the National Union, on Oct. 26, 1886, "was the signal for a tremendous outburst of long-sustained cheering," [2] and addresses were presented

[1] Winston Churchill, "Lord Randolph Churchill," I., 356–59.
[2] *The Times* of Oct. 27, 1886, p. 6, c, 3.

to him from several hundred associations. But he overestimated his personal power, and is commonly supposed to have thought that one more quarrel would leave him master of the party. His battle-ground was unfortunately chosen, for he took his stand in the cabinet for a reduction of the army and navy estimates, at a time when the national desire for economy was on the wane. His colleagues did not agree with him, and on Dec. 20 he tendered his resignation to the Prime Minister. He was apparently confident of coming out victorious; but Mr. Goschen, a Liberal Unionist, took his place, and the government went on without him.[1] He failed to realise that a conflict in 1884 with the leaders of the Conservative party in the Houses of Parliament, two men neither of whom had yet proved his capacity to be at the head of the cabinet or won the full confidence of the country, was a very different thing from a quarrel in 1886 with the government of the nation, at a time when it stood in the eyes of the majority of the people as the bulwark against disunion. His miscalculation was fatal, and during the few years of his life that were left he never regained a position of political importance.

Reconstruction of the National Union.

Meanwhile the National Union underwent a transformation. The leaders of the party were determined that it should not be captured again, or used to force their hand. But any changes must be made without losing the semblance of a democratic organisation; and, in fact, it was believed that if the Union were in reality broadly popular it would be more inclined to follow the leaders of the party, and less easily captured, than if it represented only a fraction of the local associations. In this respect the position bore some resemblance to that of the National Liberal Federation after the Home Rule struggle a year later. The time was propitious for reconstructing the Union, because the

[1] Mr. Winston Churchill's account of the occurrence is extremely interesting; but the motives he attributes to his father do not seem wholly consistent with one another.

redistribution act of 1885 had marked off the constituencies on new lines, and thus involved the formation of many of the local associations afresh. It is interesting to note that the changes provoked no struggle between those elements in the Union which had recently been in conflict; and, indeed, the dissensions ceased with the withdrawal of Lord Randolph Churchill.

The First Changes; 1885.

The first alterations, made in 1885, were designed merely to give the Union a broader basis, and the Council a more representative character. The most important provision was that every Conservative association should be affiliated without the need of any formal action. The Union thus came to be a really national party organisation in a way that it had never been before, the report for 1887 stating that the affiliated associations numbered 1100. The changes of 1885 did not affect seriously the structure of the Union, or its relation to the whip's office, but these questions were taken up at once by three men. One of them was Sir Albert Rollit, who drafted and carried through a new set of rules. Another was Captain Middleton, who devised the scheme on which those rules were based. He was appointed principal agent of the party in 1885, and in 1886 was made honorary secretary of the Union. He continued to hold both positions until 1903, and so far as the success of the Conservatives at the polls during the period of their ascendency was the result of political organisation, it was due to him more than to any one else. The third was Mr. Southall, who became in 1886, and has ever since remained, the secretary of the Union. His constant coöperation with Captain Middleton removed the severe friction that had existed between the Union and the whip's office, and enabled them to work in perfect harmony.

The New Organisation.

The new rules were adopted at a special conference held in May, 1886, at which more than six hundred delegates were present. Slightly modified so far as the National Union itself is concerned in 1887, and as regards the divisional unions in 1888, 1889, and 1890, they remained in

force until 1906; and hence they governed the organisation of the Conservative party during the period of greatest and longest prosperity that it has known since the Reform Act of 1832. They recite that the objects of the Union are: to form a centre of united action, communication, and coöperation, among associations; to promote the organisation of associations; to spread Conservative principles; and to enable associations to give expression to Conservative feeling by petitions and resolutions. They provide that the chief association of each constituency in England and Wales shall be a member of the Union without payment, while any other association or club with fifty members may be admitted on paying one guinea a year;[1] and that any person may be admitted as an honorary member or vice-president on payment of a sum appropriate to those dignities.[2] The Conference was made to consist of the officers and honorary members, and of delegates from subscribing associations, from the ten new divisional unions, and from the chief organisations of Scotland and Ireland.[3] The Council was composed of the president and trustees; of one of the whips, and the principal agent of the party; of twenty-one members elected by the Conference; and of the chairman and three representatives elected by each of the divisional unions.

The Ten Divisional Unions.

Within the National Union, which included only England and Wales, there were created ten new territorial divisions; and a provincial or divisional union consisted of all the members of the National Union, whether associations or individuals, within that division. It had its annual meeting

[1] For workingmen's clubs with less than one hundred members the fee is only half as large.

[2] The sums required for these offices are the same as when the Union was originally formed. The subscriptions from associations go one half each to the National and divisional unions; those of individuals go wholly to the divisional union except in the case of life payments, which are made to the National Union, one half of the interest being paid over to the division.

[3] To these the principal paid agent, or secretary, in each English or Welsh constituency was added in 1892. This has not been a matter of much importance, because few of them can afford to attend.

corresponding to the Conference, and its council.[1] In fact, it was intended to be a miniature of the National Union itself, with similar structure and functions.

The mechanism of the National Union, and its subordinate branches, looks formidable; but it has not proved in practice so complex as it appears. The principal change was the creation of the provincial or divisional unions, which were interposed between the local associations and the central Conference and Council. The object in creating them was said to be the development of local effort as essential to the success of the party. Representation, it was pointed out, thus passed by graduated steps from the individual elector, through the branch or district associations and clubs, and through the central associations in each constituency to the provincial councils, to be summed up in the Conference and Council of the whole Union.[2] Perhaps the words "strained" or "filtered" would, better than "passed," have signified the real intention, for the divisional unions were designed as a safeguard against popular caprice and personal ambition. They were expected to act like water-tight compartments, as it was believed that all ten divisions would not go mad at once, and that any man would find it very hard to capture enough of them, one at a time, to control the Union. They did not, however, develop any vigorous life of their own, and have not had corporate solidity enough to maintain separate deliberative bodies. The annual meetings have been little more than an occasion for an address by the president. In short, the divisions did not turn out to be of much consequence as a basis for representative party gatherings.

Concentration of Power.

Although the divisions did not prove important from a deliberative point of view, they have had a very distinct

[1] All the Conservative members of Parliament for constituencies in the division were given the right to attend the annual meeting, and were made members of the Council.

[2] Rep. of the Council, October, 1886.

value for administrative purposes, and have been distinctly convenient as districts for the spread of Conservative doctrines. Moreover, they have furnished a means for controlling the party from headquarters, and a channel through which it could be kept in touch with the whip's office. This was darkly hinted at when, on behalf of the committee that framed the new rules, a hope was expressed that "In your local associations, in the provincial unions, and in the National Union, and with the help also of the principal whip and the principal agent of the party, you will have a chain of assistance, experience and authority, which will bind together our party." One of the whips and the principal agent of the party were, indeed, given seats *ex officio* not only upon the Council of the National Union itself, but both upon the Council and the Executive Committee of each of its divisions. This was, of course, part of the "chain of assistance, experience and authority which will bind together our party."

Another provision in the rules relating to the divisional unions has also proved important in this respect. It is one that contemplated the employment as divisional secretary of a sub-agent of the central office without cost. By doing this the division saved both salary and rent; while the principal agent, who represented the leaders and the whips, had in the secretary an agent selected and paid by him. The relation was the more useful because the habit of changing every year the president of the divisional union, and the chairman of its council, prevented any one from acquiring a large influence, except the secretary, who was permanent. The arrangement was made in most of the divisions. Even where it was not, the secretary acted as though he were a subordinate of Captain Middleton, and being in constant communication with the local agents, he could give information about political matters throughout his division, thus keeping the principal agent in touch with the whole organisation of the party. Personally popular and tactful, Captain Middleton was enabled by his relation to the divi-

sional agents, by close coöperation with the National Union, with the Conservative clubs, and with other ancillary bodies, to draw all the threads of the Conservative organisation into his office without provoking jealousy, or appearing to exert more power than naturally belonged to his office. The result was that while he held the place of principal agent the Conservative organisation was a highly efficient administrative machine, working in perfect harmony with the leaders.

Resolutions on Political Questions

Any popular party organisation in England involves two dangers, one personal and the other political; one that a man may use it for selfish purposes; the other that it may force upon the leaders a policy which they were not prepared to adopt. We have seen how this second peril actually confronted the Liberal Ministry in the form of the Newcastle Programme, and how it was met by muzzling the Council of the National Liberal Federation. In the National Union the difficulty has been solved in a very different way. Until 1885 the Conference passed no resolutions on general policy, save in the form of expressing confidence in the leaders, or congratulating them on their exploits; but in that year, when an effort was made to give to the Union the appearance of a free popular organisation, confessions of faith on current politics began. Resolutions of this kind soon became numerous and included demands to which the Conservative leaders could not assent, such as woman suffrage, and fair trade, that is, protection in a modified form.[1]

are Free:

But, except for occasional cases where a delegate was persuaded to withdraw his motion, or where it was shelved by the previous question on the ground that a vote on the subject would be impolitic, no attempt has been made by the managers to fetter the free expression of opinion. The Conservative leaders, however, made it clear almost at once that they did not take the action of the Conference very seriously. In 1887 it adopted resolutions in favour of fair trade,

[1] These were both passed in 1887 and at intervals thereafter.

woman suffrage, and reforms in the tenure and sale of Church livings; but although Lord Salisbury, then Prime Minister, in a public speech immediately afterward said, "More and more in this day political leading and the making of political opinion must be a matter of local effort," and although he referred to agricultural distress, and the forthcoming budget, he made no allusion to fair trade, or for that matter to woman suffrage or Church livings.[1] There was, at first, no doubt, some dread of the effect the resolutions might have on the public, and on several occasions the chairman called attention to the fact that among the delegates were men connected with the press, warning them not to report the proceedings.[2] At one time, in fact, an unofficial proposal was made to forbid the passing of resolutions altogether. In 1889 a delegate moved that although general questions of policy might be discussed, no vote should in future be taken upon them. The fair trade resolution of 1887, which had provoked criticism, was referred to, and several gentlemen said they wished to prevent a repetition of that incident. The matter was referred to the Council, which reported in the following year that they had considered both this suggestion and another that no resolution should be placed upon the agenda without the consent of the Council; but that they had decided to recommend no change in the rules, except an increase in the number of days prior to the Conference that notice of a motion must be sent in. They went even further, and advised that reporters for the press should be admitted to the meetings, which was done forthwith.

but are Ignored.

The proceedings at the Conference of the National Union are thus quite free. Any delegate or other member has a right, on giving the prescribed notice, to prepare a resolution on any subject, and amendments can be moved upon the spot. The result has been a large number of declarations of opinion on public questions, not always consistent or unopposed. A resolution in favour of woman suffrage

[1] *The Times*, Nov. 24, 1887.
[2] *E.g.* Rep. of the Conference in October, 1886.

was adopted in 1887, 1891, and 1894, and then defeated in 1897 by a substantial majority. The action of the Conference is not fettered; it is ignored. Some great nobleman presides, and one of the party leaders usually addresses a public meeting in the evening; but statesmen of the first rank take no part in the regular proceedings, which have, therefore, no political weight.

The Fiscal Question.

A proof of the small importance attached to the votes is furnished by the history of the movement for fair trade or preferential tariffs. Resolutions in favour of such a policy were passed over and over again, but they did not bring the question even within the range of active political issues until Mr. Chamberlain made his speech on the subject to his constituents at Birmingham in the spring of 1903. The meeting of the Conference at Sheffield in the following October then awoke a real interest; and yet the proceedings at that very meeting show how the National Union shrank from a decided stand at a critical moment. The situation was extraordinary. Mr. Chamberlain had taken his stand for a preferential tariff in favour of the colonies, including a duty on grain, and had recently resigned from the cabinet to advocate his views more freely before the country; while other ministers had resigned because they could not abandon the principle of free trade. Mr. Balfour had expressed no definite opinion, and was expected to make a statement on the subject at a public meeting after the close of the first day's session of the Union. Under these circumstances a resolution was placed upon the agenda which stated the need for reconsidering the fiscal system, thanked the Prime Minister for instituting an inquiry on the subject, and welcomed the policy of retaliatory tariffs he had foreshadowed. To this Mr. Chaplin moved a rider favouring explicitly Mr. Chamberlain's views; while Sir John Gorst stood ready to move another against any protective duty on food. During the afternoon the fiscal question was hotly debated, and, judging by the way the free trade speakers were interrupted, a large majority of those present

must have agreed with Mr. Chamberlain's opinions; but in order not to pass a vote before hearing the Prime Minister, the debate was adjourned until the following day.

In the evening Mr. Balfour declared himself in favour of a retaliatory tariff as a means of commercial bargaining with other nations, but said that a tax on food was not within the limits of practical politics. When the debate was resumed the next morning, Mr. Chaplin withdrew his rider, on the ground that it might look like a resolution hostile to the Prime Minister; and Sir John Gorst said that Mr. Balfour's statement was so far satisfactory that he should make no motion. Thus the sharp differences of opinion that seethed in the Conference were calmed on the surface, and the original resolution was adopted unanimously, only a couple of staunch free traders abstaining from the vote. If ever an English political organisation had a chance to determine the policy of the party it was on this occasion, and a decisive majority was undoubtedly on Mr. Chaplin's side. Yet this Conference which had often voted for fair trade when the ministers would have none of it, shrank from saying what it thought when the ministers were undecided. A stronger proof could hardly be found that the National Union is powerless to direct the policy of the party.

The Organisation Breaks Down after 1903.

Although the popular character of the National Union was unreal, as regards both administrative machinery and the formulation of political opinion, the system worked well so long as the Conservatives were in the ascendent, and Captain Middleton remained in control. But he had concentrated the whole management so completely in his own hands that the machinery could not run smoothly of itself after he retired in 1903. His successor, instead of consulting the officers of the Union, proceeded as if the Central Office was all-powerful, and thus lost touch with the Union and the local associations. Moreover, the sub-agents in some of the divisions were not wisely chosen, and caused friction rather than harmony in the party. Complaints became loud, and found expression at the meeting of the

Conference at Newcastle in November, 1905, where a resolution was adopted "that in the opinion of this Conference the management of the Central Conservative Association in London is defective, and needs revising; and for this purpose a popularly elected committee should be appointed to coöperate with the Conservative Whips." The principal agent thereupon resigned; and the resolution of the Conference, followed by the disastrous defeat at the general election in the January following, led to another reorganisation of the party in 1906.

When a ministry that has been in power is beaten at the polls, much of the blame is always laid at the door of the party organisation, and a cry is raised for its reform upon a more democratic basis. The movement on this occasion is interesting enough to merit a little study, because it furnishes the latest illustration of the way a demand for popular control within the party is constantly cropping up in England, and of the obstacles that it meets. As in earlier cases, the party machinery was not so largely responsible as some people asserted. Still it had fallen out of repair. Besides the dislocation at headquarters, the local associations had been neglected in many places; many Tory members of Parliament having come to feel that the country was normally Conservative, and that their own seats were safe, had done little or nothing to keep the local organisations in working order; while for a time some associations had not dared to meet, knowing that any discussion would bring to light sharp differences of opinion on the question of fiscal policy.

Changes of 1906.

The election of January, 1906, was no sooner over than the whips and the officers of the National Union set to work to overhaul the party machinery. In the first place they created an advisory committee of seven persons, charged, indeed, with no executive powers, but with the duty of advising the whip, and thus keeping the leaders in touch with the currents of opinion in the party. The committee consisted of the chief whip, three persons selected by him, and

three chosen by the National Union.[1] In the second place they transferred a number of functions from the Central Office to the Union, together with a staff of clerks to carry them out, and a grant of money from the funds to defray the expense; the most important function so transferred being the entire supervision of local organisations, the supply of speakers over the country, and the publication of party literature, the last two of these having been hitherto only to a very small extent in the hands of the Union. They worked out also a plan for changes in the organisation of the National Union itself, which were discussed and adopted at a special conference in London.

The Conference in July.

The Conference met on July 27; and after a unanimous vote in favour of the fiscal policy of the party leaders had been passed, an attack was made upon the Central Office in the form of a motion that it ought to be brought under more effective popular control. The supporters of the motion pointed out that in the new advisory committee the representatives of the National Union were in a minority; that the committee had authority merely to tender advice; and that even this function did not extend to party finance, to the recommendation of candidates for Parliament, or to patronage of any kind. They repeated the charge, familiar even before the days of Lord Randolph Churchill, that the party was a democracy managed by aristocratic methods, that the leaders ought to trust it more and suspect it less, and that the Central Office had not its confidence. In short the demand was the old one for a more popular control of the party machinery. Sir Alexander Acland-Hood, the chief whip, met it by stating frankly that the finances were a delicate and confidential matter, which must be in the hands of one man; and — referring to the new advisory body of seven — he said that it would be disastrous to have the party managed by a committee. The party could stand many

[1] In the original plan these were to be chosen by the Council; but at the special Conference in July it was agreed that they should be elected at the annual Conference.

things, but in his judgment it could not stand a caucus. Policy must, he said, be initiated by the leaders; no leader and no whip would submit to anything else. Although the demand for greater popular control had been greeted with applause, it was evident that the prevailing sentiment of the meeting was with the chief whip, and the motion was finally withdrawn; not, however, without an intimation that it would be renewed in the near future.

The New Rules of 1906.

The special Conference then went on to debate and adopt the new set of rules, the most important change involved being the enlargement of the Central Council by the direct representation thereon of the counties and boroughs, the former in the proportion of one member for every fifty thousand voters, the latter in that of one for every twenty-five thousand. This, it was thought, would make the body more truly representative, by freeing it both from the control of a small group of men, and from the tendency of every annual Conference to choose persons whose names were known in the part of the country where the Conference happened to meet.[1] The only other change of importance related to the provincial divisions. These were made more elastic by a provision that any one or more counties might be erected into a separate division. Their internal organisation was also remodelled; and the arrangement for furnishing sub-agents of the Central Office as their secretaries, free of charge, was abolished, partly because it had ceased to

[1] Under the new rules the Central Council — previously called simply the Council — consists of the president and trustees of the National Union; the chief whip and the principal agent of the party; one representative for every fifty thousand voters, or fraction thereof, in each county, chosen at the meeting of the provincial division by the delegates of the county thereat; one representative for every complete twenty-five thousand voters in each parliamentary borough that contains so many, chosen by the central council of the borough; twenty-one members elected annually by the Conference; the chairman, honorary secretary, and two representatives from the National Society of Conservative Agents; one representative from each of the eight local associations of Conservative agents; and two representatives apiece from the Association of Conservative Clubs, the National Conservative League, and the United Club. The Council as thus enlarged contains nearly two hundred members.

work smoothly, and partly because many members of the Union felt that it kept them in leading strings.[1] The discussion of the divisional councils brought up an interesting question. By the rules of the National Union honorary members had already a right to attend the Conference without votes;[2] and by the new rules they were given full membership in the councils of the provincial divisions. When strenuous objection was made to this as undemocratic, a delegate replied that if money was the root of all evil, it was also the source of all power; and that in order to get money it was necessary to do something for the men who gave it. The clause was the subject of the only vote at the Conference close enough to require a count, and the new provision was adopted by 148 to 103. In other respects the existing rules, though much changed in detail, were not altered in their essential features.[3]

Their Probable Effect.

The new arrangements have increased the functions of the National Union, while the enlargement of the Council will, no doubt, change its method of work, and may possibly make it more useful as an organ for interpreting the feelings of the party. But it is highly improbable that these things will cause any substantial change in the relation of the organisation to the leaders in Parliament. There are still several means of controlling the Union, and preventing it from getting out of hand. One of these is furnished by the party war chest, or campaign fund, over which Lord Randolph Churchill tried in vain to get a large share of control. It is disbursed by the Central Office, and its distribution holds many constituencies in a state of more or less dependence.

K. A. Rahman.

[1] Opinion on this question was by no means unanimous. One or two divisions wanted to retain the former system on the score of economy, and the chief whip agreed to allow them to do so for a time. [2] Rule V.

[3] By the new rules the Conference consists of the officers of the Union, and the members of the Central Council; of the honorary members of the Union, who have, however, no vote; of the Conservative members of both Houses of Parliament; of the officers of each provincial division; of the chairman, the paid agent, and three representatives of the central association in each constituency; of one representative for each subscribing association or club; and of twenty representatives apiece from Scotland and Ireland.

Then again, even in the last reorganisation, the recommendation of candidates for Parliament to places seeking for them has been retained under the exclusive control of the Central Office, instead of being allowed to pass into the hands of the National Union; and this is in itself no small source of power. As a further security against capture of the Union, the practice was established in 1889 of changing the chairman of the Council every year, so that no one could acquire influence enough to be dangerous. Moreover, fidelity upon the Council has often brought its reward in the form of a seat in Parliament, or of a baronetcy. So far these various precautions have been effective. Since 1884 no one has attempted to get control of the Union for his personal advantage. Certainly the capture of the organisation has been made more difficult than it was formerly, but it would be rash to predict that it is altogether impossible. Nor would it be safe to say that the Union will never embarrass the leaders by laying down a definite course of policy and insisting that the leaders should adopt it; this, however, never has happened, and there appears no more reason to expect it in the future than in the past.

The National Unions both in England and Scotland[1] The Caucus is Largely a Sham.

[1] The Union hitherto described covers England and Wales alone, although the Scotch and Irish organisations are entitled to send to the Conference twenty delegates apiece. North of the Tweed there is a separate National Union of Conservative Associations for Scotland. It is a copy of the English body, but except for the twenty delegates is entirely independent. It has a conference which adopts resolutions as ineffective as those passed farther south. It has six territorial divisions; but, owing to the fact that Scotland is in the main Liberal, several of these are not very vigorous, and do not raise money enough to have councils of their own. All the divisions are very much under the control of the Central Council of the Scotch Union, to which they send their reports for approval. They are, indeed, largely ornamental. The Scotch National Union.

But if the National Union for Scotland is independent of the English Union it is by no means free from the influence of the whip's office. The party agent for Scotland, who has a right to attend — although without a vote — all meetings of the central and divisional councils and their committees, is appointed by the principal agent in London, and, like the secretaries of the divisions in England, is practically his subordinate. In this way the whip and the principal agent, acting through the agent for Scotland and the local agents, and fortified by subsidies at election times, maintain a real control over the whole party organisation throughout the kingdom.

have very important functions, which they perform with great efficiency; but they are really electioneering bodies. Their work is to promote local organisation, to arouse interest, to propagate Conservative doctrines, and this they do exceedingly well by means of departments for the publication of party literature and for providing lecturers. The English Union has established also a political library in London, which collects a large amount of information, including the speeches and records of all the leading men in public life. But as organs for the popular control of the party, for formulating opinion, and for ascertaining and giving effect to the wishes of the rank and file, these bodies are mere pretences. Both the National Liberal Federation and the National Union of Conservative Associations have been sources of anxiety to the party leaders, but for the time, at least, both have been made harmless. The process in each case has not been the same, although the results are not unlike. Both are shams, but with this difference that the Conservative organisation is a transparent, and the Liberal an opaque, sham.

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